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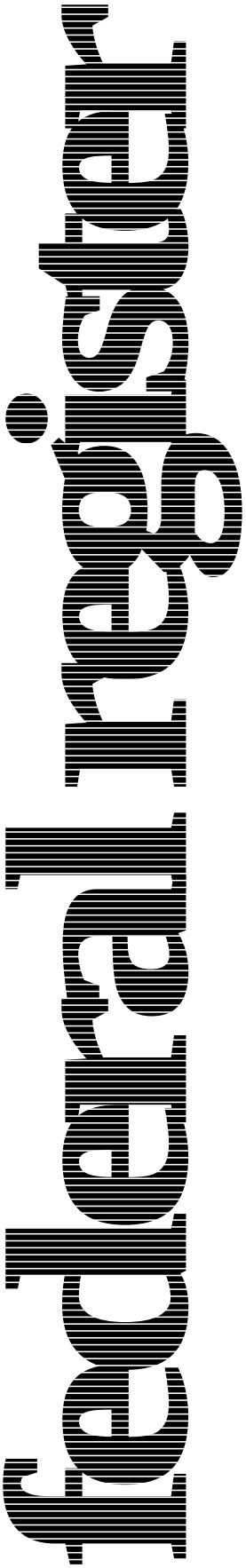

Thursday
May 11, 1995

Briefings on How To Use the Federal Register
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WASHINGTON, DC

WHEN: May 18 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

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WHEN: June 20 at 9:00 am

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Thursday, May 11, 1995

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 110

[SD–94–001]

RIN 0581–AB22

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides

AGENCY: Agricultural Marketing Service (AMS).

ACTION: Final rule; delay of effective date.

SUMMARY: The Agricultural Marketing Service (AMS), United States Department of Agriculture, is delaying the effective date of a final rule previously published in the **Federal Register** on February 10, 1995, which amended the regulations at 7 CFR Part 110 governing recordkeeping of federally restricted use pesticides by certified applicators. This action delays the rule's effective date from May 11, 1995, to August 1, 1995.

EFFECTIVE DATE: The effective date of the regulation published on February 10, 1995, amending 7 CFR Part 110, is August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Chief, Pesticide Records Branch, Science Division, AMS, 8700 Centreville Road, Suite 200, Manassas, VA 22110, 703–330–7826.

SUPPLEMENTARY INFORMATION:

Background

As part of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 136i–1), Congress mandated the establishment by the Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency, of requirements for recordkeeping by all certified applicators of federally restricted use pesticides.

The regulations at 7 CFR part 110, ''Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides,'' (hereinafter referred to as the regulations) require certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of 2 years. The regulations also provide for access to pesticide records or record information by federal or state officials, or by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions.

On April 6, 1994, AMS published a document in the **Federal Register** (59 FR 16400–16403) proposing to amend the recordkeeping regulations for federally restricted use pesticides. The final regulations revise the definitions of the terms ''medical emergency'' and ''licensed health care professional,'' provide new requirements for recording location of ''spot applications'' of federally restricted use pesticides, reduce the time period for a certified applicator to make a record of the application of a federally restricted use pesticide, clarify the circumstances under which licensed health care professionals may obtain, utilize, and release restricted use pesticide records or record information, and clarify the penalty provisions in the regulations. The final rule was published on February 10, 1995, (60 FR 8118–8124). The effective date of the final rule that was published on February 10, 1995 was May 11, 1995.

Since the publication of the final rule, AMS has received a number of comments from agricultural organizations expressing concern that the May 11, 1995, effective date did not allow certified applicators adequate time to be informed of the new requirements or make changes in existing recordkeeping procedures. The May 11, 1995, effective date also comes at the peak of spring planting season for many private certified applicators, the majority of whom are farmers. Based on these comments and re-evaluation of the timing of the effective date, AMS has determined that additional time is appropriate for the final regulations to become effective. The additional time will provide AMS adequate time to inform certified applicators of the new pesticide recordkeeping requirements and will reduce the burden on certified applicators to make changes in recordkeeping procedures during the peak of the spring planting season.

Therefore, the Effective Date of the final rule that was published February 10, 1995, (60 FR 8118–8124), is delayed from May 11, 1995 to August 1, 1995.

Dated: May 8, 1995.

William J. Franks, Jr.,

Director, Science Division.

[FR Doc. 95–11656 Filed 5–10–95; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 98

[Docket No. 94–110–2]

Limited Ports; Denver, CO

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning importation of animals and animal germ plasm by removing Denver, CO, from the list of limited ports of entry for animals and animal products that do not require restraint or holding facilities. The port has handled few importations and no longer has the personnel required to effectively provide inspection services for this location.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 92 and 98 (referred to below as the regulations) restrict the importation of specified animals, animal products, and animal germ plasm into the United States to prevent the introduction of various animal diseases. The regulations designate limited ports of entry for germ plasm and certain animals and animal products, such as test specimens, that

do not require restraint or holding facilities. Sections 92.102(d), 92.203(d), 92.303(d), 92.403(e), 92.503(e), and 98.33(d) of the regulations list the limited ports having inspection facilities for the importation of certain birds, poultry and poultry products, horses and horse products, ruminants and ruminant products, swine and swine products, and germ plasm, respectively.

On February 7, 1995, we published in the **Federal Register** (60 FR 7137–7138, Docket No. 94–110–1), a proposal to amend §§ 92.102(d), 92.203(d), 92.303(d), 92.403(e), 92.503(e), and 98.33(d) of the regulations by removing Denver, CO, from the list of limited ports of entry for animals and animal products that do not require restraint or holding facilities.

We solicited comments concerning our proposal for 60 days ending April 10, 1995. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change. Executive Order 12866 and Regulatory Flexibility Act.

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Only certain animals and animal products from Canada and germ plasm have been imported into Denver, CO, during the past several years. Therefore, we believe that the primary impact of this final rule will be on importers of those animals and animal products from Canada and importers of animal germ plasm. These importers will no longer be able to import these articles through the Stapleton International Airport, which is located in Denver, CO. However, there have been few shipments of animals, animal products, or germ plasm imported through Denver, CO, during the past year. After removing Denver, CO, as a limited port of entry, there are still many ports throughout the United States that will remain available as alternate ports, including over 20 limited ports. Because of the reasons provided above, we believe that removing Denver, CO, from the lists of limited ports will have little if any economic impact on importers or other entities, large or small. We do not anticipate any change in the volume or number of shipments of animals, animal products, or germ plasm entering the United States, or in the number of persons importing them, due to removing Denver, CO, as a limited port.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, 9 CFR parts 92 and 98 are amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.102 [Amended]

2. In § 92.102, paragraph (d) is amended by removing ''Denver, CO;''.

§§ 92.203, 92.303, 92.403, and 92.503 [Amended]

3. Sections 92.203, 92.303, 92.403, and 92.503 are amended by removing the words ''Denver, Colorado;'' in the following places:

(a) In § 92.203, paragraph (d);

(b) In § 92.303, paragraph (d);

(c) In § 92.403, paragraph (e); and

(d) In § 92.503, paragraph (e).

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

4. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 98.33 [Amended]

5. In § 98.33, paragraph (d) is amended by removing the words ''Denver, Colorado;''.

Done in Washington, DC, this 3rd day of May 1995.

George O. Winegar,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–11562 Filed 5–10–95; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 94–137–2]

Change in Disease Status of Spain Because of Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Spain free of swine vesicular disease. As part of this action, we are adding Spain to the list of countries that, although declared free of swine vesicular disease, are subject to restrictions on pork and pork products offered for importation into the United States. There have been no outbreaks of swine vesicular disease in Spain since April 1993. This rule relieves certain prohibitions and restrictions on the importation of swine and fresh, chilled, and frozen meat of swine into the United States from Spain. However, because African swine fever continues to exist in Spain, certain pork and pork products will continue to be prohibited.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Blackwell, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of

various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On February 7, 1995, we published in the **Federal Register** (60 FR 7138–7139, Docket No. 94–137–1) a proposal to amend the regulations by adding Spain to the list in § 94.12(a) of countries declared free of SVD. We further proposed to add Spain to the list in § 94.13 of countries that have been declared free of SVD, but from which the importation of pork and pork products is restricted.

We solicited comments concerning our proposal for 60 days ending April 10, 1995. We did not receive any comments. The facts presented in the proposed rule still provide a basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves certain prohibitions and restrictions on the importation of swine and fresh, chilled, and frozen meat of swine into the United States from Spain. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This final rule amends the regulations in part 94 by adding Spain to the list of countries that have been declared free of SVD. This action relieves certain prohibitions and restrictions on the importation of swine and fresh, chilled, and frozen meat of swine into the United States from Spain. However, other requirements will continue to restrict the importation of live swine and pork and pork products.

Even without considering the export-constraining effects of the restrictions that will remain in effect, it is unlikely that the change in Spain's disease status will noticeably affect U.S. markets for swine and fresh, chilled, and frozen meat of swine. Due to current restrictions, the United States does not import any uncooked pork or pork products from Spain. In 1991, the United States did not import any pork or pork products from Spain. In 1992, the United States imported only 21 metric tons of prepared and preserved pork products from Spain, valued at approximately $69,000, and representing only 0.008 percent of total U.S. pork imports for that year.

Further, Spain has historically imported significantly larger amounts of pork and pork products than it exports. During 1991 and 1992, Spain imported 66,300 metric tons of pork while exporting only 13,000 metric tons (''FAO, Production Yearbook, 1992,'' 1992, and ''FAO, Trade Yearbook,'' 1992). Given Spain's negative trade balance for pork and pork products, and since it is unlikely that Spain would export a significant portion of its pork exports exclusively to the United States, the effect of this final rule on U.S. domestic prices or supplies or on U.S. businesses, including small entities, will be negligible.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.12 [Amended]

2. In § 94.12, paragraph (a) is amended by removing the word ''Rumania'' and adding the word ''Romania'' in its place, and by adding ''Spain,'' immediately after ''Romania,''.

§ 94.13 [Amended]

3. In § 94.13, the introductory text, the first sentence is amended by adding ''Spain,'' immediately after ''Republic of Ireland,''.

Done in Washington, DC, this 3rd day of May 1995.

George O. Winegar,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–11559 Filed 5–10–95; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule; extension of compliance date.

SUMMARY: The NCUA Board is publishing a change to the compliance date of Appendix C to NCUA's Truth in Savings regulation. This document extends the compliance date for all credit unions until January 1, 1996. This extension gives credit unions more time to come into compliance with the technicalities of the Truth in Savings regulation.

DATES: Effective Date: This document is effective May 11, 1995.

Compliance Date: The compliance date of Appendix C to part 707 is extended to January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martin S. Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Savings Act (''TISA''), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law No. 102–242, 12 U.S.C. 4301 et seq., was enacted in December 1991. TISA directed the Federal Reserve Board (''FRB'') to issue final regulations governing depository institutions other than credit unions. Regulation DD was promulgated by the FRB on September 21, 1992, with a compliance date of June 21, 1993. 57 FR 43337 (September 21, 1992), as extended in 58 FR 15077 (March 19, 1993). In addition, the FRB issued an Official Staff Commentary to Regulation DD to expand upon and interpret TISA requirements for banks and thrifts. 59 FR 40217 (August 8, 1994). The FRB made compliance with the Official Staff Commentary optional for six months, making compliance mandatory on February 6, 1995.

NCUA, obligated to issue a rule for credit unions substantially similar to Regulation DD, promulgated part 707 to the NCUA Rules and Regulations on September 27, 1993, with a compliance date of January 1, 1995, for most credit unions. 58 FR 50394 (September 27, 1993). To be substantially similar to Regulation DD, NCUA also promulgated an Official Staff Commentary to explain and interpret TISA requirements for credit unions. 59 FR 59887 (November 21, 1994). Like the FRB, NCUA made compliance with the Official Staff Commentary optional for six months, making compliance mandatory on May 22, 1995. Small, nonautomated credit unions with assets of $2 million or less are exempt from part 707 coverage, including the Official Staff Commentary, until January 1, 1996. 59 FR 39425 (August 3, 1994).

In the meantime, several bills have been introduced into the 104th Congress of the United States to either repeal, or restrict the scope of TISA. ''A bill to repeal the Truth in Savings Act,'' H.R. 337, introduced in the House of Representatives on January 4, 1995, would repeal TISA. The ''Financial Institutions Regulatory Relief Act of 1995,'' H.R. 1362, introduced in the House of Representatives on March 30, 1995, would amend TISA by repealing many of its disclosure requirements and civil liability provisions. The ''Economic Growth and Regulatory Paperwork Reduction Act of 1995,'' S. 650, introduced in the Senate on March 30, 1995, would repeal TISA and replace it with the Payment of Interest Act (''PIA''). PIA would basically eliminate TISA's disclosure requirements, but would retain the requirement that interest and dividends on accounts be calculated on the full amount of principal in the account for each day and at the rate(s) disclosed by the depository institution.

Given all of this legislative activity, and requests for a postponement in the Official Staff Commentary from several credit unions and a national trade association, the Board has decided, in the name of regulatory relief and in the spirit of the National Performance Review and the Presidential Regulatory Reform Initiative, to delay the compliance date of the Official Staff Commentary, Appendix C, to part 707 until January 1, 1996. The new Official Staff Commentary compliance date will coincide with the general part 707 compliance date for small, nonautomated credit unions. A compliance date extension of this length will enable the NCUA to observe and implement any possible legislative initiatives by the 104th Congress, while also providing regulatory relief to all credit unions already complying with NCUA's Truth in Savings rules. 12 CFR 707.1–-707.9, Apps. A and B.

Administrative Procedure Act

The extension made to this part is not subject to the notice and comment provisions of the Administrative Procedure Act (the ''APA''), 5 U.S.C. 551 et seq. The extension relates to the Official Staff Interpretations of part 707, and not to the sections 707.1 through 707.9 or Appendices A and B to part 707. No major changes are contemplated, or made, by this extension. Therefore, the NCUA Board has determined that, in this case, the APA notice and comment procedures for this extension is impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

By the National Credit Union Administration Board on May 5, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–11657 Filed 5–10–95; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–02–AD; Amendment 39–9224; AD 95–10–07]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A, 205A–1, and 204B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A, 205A–1, and 204B helicopters. This action requires verification that the tail rotor control system is rigged in accordance with the applicable maintenance manual; a fluorescent penetrant inspection for cracks at the roots of the gear teeth on the pinion and gear of affected 42-degree tail rotor drive gearbox assemblies (42-degree gearboxes) and replacement of the 42-degree gearbox pinion or gear if cracks are found, and creation of a component history card to track the numbers of torque events. A torque event is defined as a takeoff or a lift (internal or external). This amendment is prompted by 14 accidents reported in the United States and Canada related to failure of the 42-degree gearbox. The actions specified in this AD are intended to prevent failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective May 26, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to BHTI Model 205A, 205A–1, and 204B helicopters. There have been 14 accidents reported since 1979 in the United States and Canada, with

the most recent accident occurring on August 31, 1994, related to failure of the 42-degree gearbox. In operation, these helicopters undergo many more torque events than were originally anticipated during the certification and fatigue-life substantiation processes. This was confirmed by BHTI after bench test results indicated that gear life is reduced when the helicopter is subjected to repeated torque events. Obviously, operations at power and load levels outside the gross weight and/or external cargo hook weight limits specified in the flight manual (i.e., operations at power and load levels in excess of those allowed by the operating limitations) will also accelerate drivetrain or structural component failure. The National Transportation Safety Board (NTSB) has investigated these accidents and issued a recommendation that operators should not exceed the limitations stated in the rotorcraft flight manual. Obviously, the FAA concurs with this recommendation. The 42-degree gearbox is an integral part of the tail rotor drivetrain. Failure of the 42-degree gearbox could lead to a complete loss of directional control. Due to the criticality of the drivetrain and structural components in maintaining control of the helicopter, and the short compliance time required, this AD is being issued immediately to correct an unsafe condition. This condition, if not corrected, could result in failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 205A, 205A–1, and 204B helicopters of the same type design, this AD is being issued to prevent failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter. This AD requires, before further flight, and thereafter, at intervals not to exceed 400 torque events, disassembly of the affected 42-degree gearbox, part number (P/N) 204–040–003–023 or –037, a fluorescent penetrant inspection for cracks at the roots of the gear teeth on the pinion, P/N 204–040–500–007 or –009, and gear, P/N 204–040–500–008 or –010, and replacement of any unairworthy pinions or gears as necessary. This AD also requires creation of a component history card to track the number of torque events.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–02–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–10–07 Bell Helicopter Textron, Inc.: Amendment 39–9224. Docket No. 95–SW–02–AD.

Applicability: Model 205A, 205A–1, and 204B helicopters, with a 42-degree tail rotor drive gearbox assembly (42-degree gearbox), part number (P/N) 204–040–003–023, or –037, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss

of control of the helicopter, accomplish the following:

(a) Before further flight, after the effective date of this AD, verify that the tail rotor control system is rigged in accordance with the applicable maintenance manual.

(b) Before further flight, and thereafter at intervals not to exceed 400 torque events, disassemble the affected 42-degree gearbox and inspect for cracks at the roots of the gear teeth on the pinion, P/N 204–040–500–007 or –009, and gear, P/N 204–040–500–008 or –010, using a fluorescent penetrant inspection method in accordance with the applicable maintenance manual. Only post emulsified fluorescent penetrant inspection materials (Type I, Method B or D, Sensitivity Level 3 or greater) are approved for use. A torque event is defined as a takeoff or a lift (internal or external).

(c) If any crack is found at the roots of the gear teeth on the pinion or gear, replace the pinion or gear with an airworthy pinion or gear in accordance with the applicable maintenance manual.

(d) Create a component history card for the 42-degree gearbox. Record the number of torque events on a daily basis.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on May 26, 1995.

Issued in Fort Worth, Texas, on May 4, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–11541 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–SW–03–AD; Amendment 39–9225; AD 95–10–08]

Airworthiness Directives; Bell Helicopter Textron, Inc.-Manufactured Restricted Category Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI)-manufactured restricted category Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters. This action requires verification that the tail rotor control system is rigged in accordance with the applicable maintenance manual; a fluorescent penetrant inspection for cracks at the roots of the gear teeth on the pinion and gear of affected 42-degree tail rotor drive gearbox assemblies (42-degree gearboxes), and replacement of the 42-degree gearbox pinion or gear if cracks are found; and, creation of a component history card to track numbers of torque events. A torque event is defined as a takeoff or a lift (internal or external). This amendment is prompted by 14 accidents reported since 1979 in the United States and Canada related to failure of the 42-degree gearbox. The actions specified in this AD are intended to prevent failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective May 26, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to BHTI-manufactured restricted category Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters. There have been 14 accidents reported since 1979 in the United States and Canada, with the most recent accident occurring on August 31, 1994, related to failure of the 42-degree gearbox. In operation, these helicopters endure many more torque events than were originally anticipated during the certification and fatigue-life substantiation processes. This was confirmed by BHTI after bench test results indicated that gear life is reduced when the helicopter is subjected to repeated torque events. Obviously, operations at power and load levels outside the gross weight and/or external cargo hook weight limits specified in the flight manual (i.e., operations at power and load levels in excess of those allowed by the operating limitations) will accelerate drivetrain and/or structural component failure. The National Transportation Safety Board (NTSB) has investigated these accidents and issued a recommendation that operators should not exceed the limitations stated in the rotorcraft flight manual. Obviously, the FAA concurs with this recommendation. The 42-degree gearbox is an integral part of the tail rotor drivetrain. Failure of the 42-degree gearbox could lead to a complete loss of directional control. Due to the criticality of the drivetrain and structural components in maintaining control of the helicopter, and the short compliance time required, this AD is being issued immediately to correct an unsafe condition. This condition, if not corrected, could result in failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI-manufactured restricted category Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters of the same type design, this AD is being issued to prevent failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter. This AD requires, before further flight, and thereafter, at intervals not to exceed 400 torque events, disassembly of the affected 42-degree gearbox, part number (P/N) 204–040–003–023 or –037, a fluorescent penetrant inspection for cracks at the roots of the gear teeth on the pinion, P/N 204–040–500–007 or –009, and gear, P/N 204–040–500–008 or –010, and replacement of any unairworthy pinions or gears as necessary. This AD also requires creation of a component history card to track the number of torque events.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not

preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–03–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–10–08 CALIFORNIA DEPARTMENT OF FORESTRY; ERICKSON AIR-CRANE CO.; GARLICK HELICOPTERS; HAWKINS AND POWERS AVIATION, INC.; INTERNATIONAL HELICOPTERS, INC.; SMITH HELICOPTERS; SOUTHWEST FLORIDA AVIATION; WEST COAST FABRICATIONS; WESTERN INTERNATIONAL AVIATION, INC.; WILLIAMS HELICOPTER TECHNOLOGY, INC.; AND, UNC HELICOPTERS: Amendment 39–9225. Docket No. 95–SW–03–AD.

Applicability: Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters, with a 42-degree tail rotor drive gearbox assembly (42-degree gearbox), part number (P/N) 204–040–003–023, or –037, installed, certificated in the restricted category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the 42-degree gearbox, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, after the effective date of this AD, verify that the tail rotor control system is rigged in accordance with the applicable maintenance manual.

(b) Before further flight, and thereafter at intervals not to exceed 400 torque events, disassemble the affected 42-degree gearbox and inspect for cracks at the roots of the gear teeth on the pinion, P/N 204–040–500–007 or –009, and gear, P/N 204–040–500–008 or –010, using a fluorescent penetrant inspection method in accordance with the applicable maintenance manual. Only post emulsified fluorescent penetrant inspection materials (Type I, Method B or D, Sensitivity Level 3 or greater) are approved for use. A torque event is defined as a takeoff or a lift (internal or external).

(c) If any crack is found at the roots of the gear teeth on the pinion or gear, replace the pinion or gear with an airworthy pinion or gear in accordance with the applicable maintenance manual.

(d) Create a component history card for the 42-degree gearbox. Record the number of torque events on a daily basis.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on May 26, 1995.

Issued in Fort Worth, Texas, on May 4, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–11540 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 97

[Docket No. 28214; Amdt. No. 1662]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 5, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 22, 1995*

Springdale, AR, Springdale Muni, VOR/DME or GPS RWY 36, Amdt 8
Brazil, IN, Brazil Clay County, VOR or GPS RWY 9, Amdt 7
Griffith, IN, Griffith-Merrillville, VOR or GPS RWY 8, Amdt 7

Logansport, IN, Logansport Muni, VOR–A, Amdt 7
Logansport, IN, Logansport Muni, NDB RWY 9, Amdt 2
Logansport, IN, Logansport Muni, VOR/DME RNAV RWY 27, Amdt 3
Marion, IN, Marion Muni, VOR RWY 22, Amdt 1
Marion, IN, Marion Muni, VOR RWY 15, Amdt 9
Marion, IN, Marion Muni, VOR RWY 4, Amdt 12
Marion, IN, Marion Muni, ILS RWY 4, Amdt 6
Rochester, IN, Fulton County, NDB RWY 29, Amdt 10
Sheridan, IN, Sheridan, VOR/DME–A, Amdt 6
Terre Haute, IN, Sky King, VOR or GPS–A, Amdt 6
Teterboro, NJ, Teterboro, ILS RWY 6, Amdt 27
Pryor Creek, OK, Mid-America Industrial, VOR/DME or GPS–A, Amdt 4, Cancelled
Pryor Creek, OK, Mid-America Industrial, VOR/DME or GPS–A, Orig
Chetek, WI, Chetek Muni-Southworth, VOR/DME or GPS RWY 17, Amdt 2
Ladysmith, WI, Rusk County, NDB or GPS RWY 32, Amdt 2
Siren, WI, Burnett County, VOR or GPS RWY 4, Amdt 2
Solon Springs, WI, Solon Springs Muni, NDB RWY 19, Amdt 1

* * * *Effective 20 July, 1995*

Riverside, CA, Riverside Muni, VOR or GSP–A, Amdt 5
Campbellsville, KY, Taylor County, SDF RWY 23, Amdt 2
Campbellsville, KY, Taylor County, NDB or GPS RWY 23, Amdt 3
Campbellsville, KY, Taylor County, VOR/DME or GSP–A, Amdt 5
Bedford, MA, Laurence G Hanscom Fld, NDB RWY 11, Amdt 20
Bedford, MA, Laurence G Hanscom Fld, NDB or GPS RWY 29, Amdt 6
Bedford, MA, Laurence G Hanscom Fld, ILS RWY 11, Amdt 23
Bedford, MA, Laurence G Hanscom Fld, ILS RWY 29, Amdt 4
Newark, NJ, Newark Intl, GPS RWY 11, Orig.
McMinnville, TN, Warren County Memorial, LOC RWY 23, Amdt 1
McMinnville, TN, Warren County Memorial, NDB or GPS RWY 23, Amdt 1
Green Bay, WI, Austin Straubel International, VOR or GPS RWY 12, Amdt 18
Green Bay, WI, Austin Straubel International, VOR/DME or TACAN or GPS RWY 36, Amdt 7
Green Bay, WI, Austin Straubel International, LOC BC RWY 24, Amdt 17
Green Bay, WI, Austin Straubel International, NDB or GPS RWY 6, Amdt 16
Green Bay, WI, Austin Straubel International, ILS RWY 6, Amdt 20
Green Bay, WI, Austin Straubel International, ILS RWY 36, Amdt 6
Green Bay, WI, Austin Straubel International, RADAR–1, Amdt 8

[FR Doc. 95–11670 Filed 5–10–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28215; Amdt. No. 1663]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these charge changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the

affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 5, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
03/13/95	NM	Sante Fe	Sante Fe County Muni	FDC 5/1152	ILS RWY 2 AMDT 4...
04/05/95	GA	Cartersville	Cartersville	FDC 5/1453	LOC RWY 19 AMDT 1A...
04/05/95	GA	Cartersville	Cartersville	FDC 5/1454	NDB or GPS RWY 19 AMDT 3A...
04/07/95	AL	Troy	Troy Muni	FDC 5/1487	RADAR–1 RWY 7 AMDT 6A...
04/09/95	FM	Weno Island	Chuuk Intl	FDC 5/1525	NDB/DME RWY 4 ORIG...
04/09/95	FM	Weno Island	Chuuk Intl	FDC 5/1526	NDB–A ORIG...
04/09/95	FM	Weno Island	Chuuk Intl	FDC 5/1527	NDB–B AMDT 4...
04/11/95	GA	Brunswick	Malcom Mckinnon	FDC 5/1547	VOR or GPS RWY 4, AMDT 14A...
04/12/95	MI	Hancock	Houghton County Memorial	FDC 5/1577	ILS RWY 31 AMDT 12...
04/12/95	MI	Hancock	Houghton County Memorial	FDC 5/1578	NDB or GPS RWY 31 AMDT 11...
04/20/95	CA	Monterey	Monterey Peninsula	FDC 5/1710	NDB or GPS RWY 10R AMDT 12...
04/27/95	AK	Nenana	Nenana Muni	FDC 5/1842	NDB or GPS RWY 3L AMDT 1...
04/27/95	FL	Miami	OPA Locka	FDC 5/1838	VOR RWY 9L, AMDT 16...
04/27/95	OK	Stillwater	Stillwater Muni	FDC 5/1844	VOR or GPS RWY 17 AMDT 13...
04/27/95	OK	Stillwater	Stillwater Muni	FDC 5/1847	VOR/DME or GPS RWY 35 ORIG...
04/27/95	OK	Stillwater	Stillwater Muni	FDC 5/1849	NDB RWY 17 ORIG...
04/27/95	OK	Stillwater	Stillwater Muni	FDC 5/1851	ILS RWY 17 ORIG...
04/27/95	TN	Knoxville	Knoxville Downtown Island	FDC 5/1843	LOC RWY 26, AMDT 3...
05/01/95	KS	Abilene	Abilene Muni	FDC 5/1912	VOR/DME or GPS–A, AMDT 2...
05/01/95	ME	Wiscasset	Wiscasset	FDC 5/1903	NDB or GPS RWY 25, AMDT 4...
05/01/95	NH	Berlin	Berlin Muni	FDC 5/1900	VOR or GPS–B, AMDT 1...
05/01/95	NH	Berlin	Berlin Muni	FDC 5/1901	VOR/DME RWY 18, AMDT 1...
05/01/95	NH	Berlin	Berlin Muni	FDC 5/1902	NDB RWY 18, ORIG...

[FR Doc. 95–11671 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28216; Amdt. No. 1664]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes

occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 5, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective July 20, 1995*

Rochester, NH, Skyhaven, NDB or GPS RWY 33, Amdt 4 Cancelled
Rochester, NH, Skyhaven, NDB RWY 33, Amdt 4
Versailles, OH, Darke County, NDB or GPS RWY 27, Orig
Block Island, RI, Block Island State, VOR or GPS RWY 28, Amdt 3A Cancelled
Block Island, RI, Block Island State, VOR RWY 28, Amdt 4
Majuro Atoll, RM, Marshall Islands Intl, NDB OR GPS RWY 7, Orig
Majuro Atoll, RM, Marshall Islands Intl, NDB OR GPS RWY 25, Orig
Amarillo, TX, Amarillo Intl, VOR or GPS RWY 22, Amdt 25 Cancelled

Amarillo, TX, Amarillo Intl, VOR RWY 22, Amdt 25

[FR Doc. 95–11672 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 950306068–5068–01]

RIN 0625–AA45

Antidumping and Countervailing Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Interim regulations; request for comments.

SUMMARY: The International Trade Administration (ITA) hereby amends its regulations on antidumping and countervailing duty proceedings on an interim basis in order to implement certain provisions of the Uruguay Round Agreements Act (''URAA'').

The interim rules amend and supplement the existing antidumping and countervailing duty regulations in accordance with certain amendments to the antidumping and countervailing duty laws made by the URAA.

DATES: Interim regulations effective May 11, 1995. See Supplementary Information section for discussion on comments.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: Interim Regulations/Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 482–4412, or Penelope Naas, (202) 482–3435.

SUPPLEMENTARY INFORMATION: On December 8, 1994, the URAA was enacted (Pub. L. 103–465). This legislation, which implements the results of the Uruguay Round multilateral trade negotiations, makes significant amendments to the antidumping and countervailing duty provisions of Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*) (''the Act'') and other related statutes. The interim rules described below amend and supplement the ITA's regulations concerning antidumping and countervailing duties in accordance with certain provisions of the new legislation.

These interim regulations are effective on the date of publication, and apply to investigations and reviews initiated pursuant to petitions filed or requests made after January 1, 1995, the date on which the World Trade Organization Agreement entered into force with respect to the United States. *See* section 291 of the URAA. These rules will remain in effect until the ITA adopts final rules promulgated pursuant to the notice-and-comment procedures of the Administrative Procedure Act. In this regard, the ITA has published an Advance Notice of Proposed Rulemaking seeking public comments and suggestions regarding amendments to the antidumping and countervailing duty regulations.

Written comments on these interim-final regulations may be submitted in combined form with comments which the Department expects to request pursuant to a notice of proposed rulemaking. Accordingly, the due date for comments on these interim-final regulations and comments on the Department's proposed rulemaking will be stated in the forthcoming notice of proposed rulemaking.

Parties should submit comments on the interim regulations in the same format as that requested for comments pursuant to the Advance Notice of Proposed Rulemaking (60 FR 80), which is as follows: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth in the Advance Notice of Proposed Rulemaking; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

To simplify the processing and distribution of these comments, parties are encouraged to submit documents in electronic form accompanied by an original and two paper copies. All documents filed in electronic form should be on DOS formatted 3.5″ diskettes, and should be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Each comment submitted should be on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues outlined in the Department's Advance Notice of Proposed Rulemaking (60 FR 80; January 3, 1995). Comments received on diskette will be made available to the public on Internet under the following addresses:

FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT or

FTP://FTP.FEDWORLD.GOV/PUB/IMPORT/IMPORT.HTM

In addition, ITA will make comments available to the public on 3.5″ diskettes, with specific instructions for accessing compressed data, at cost, and paper copies available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

Explanation of the Interim Rules

General Background

These interim regulations are limited to certain new or revised procedures and obligations mandated by the URAA. The interim rules amend or supplement the existing regulations only to the extent necessary to implement certain new or revised procedures that will have an immediate impact on the orderly administration of the antidumping and countervailing duty laws. The ITA has concluded that the administration of these laws will be made more efficient by issuing these interim procedural regulations now.

The ITA is in the midst of a rulemaking procedure designed to conform its existing regulations in their entirety to the URAA. Following the completion of that exercise, including consideration of comments by the public, the ITA will issue final revised rules. Pending the issuance of final rules, the existing regulations, as supplemented by these interim rules, will form the basis for the ITA's administration of the antidumping and countervailing duty laws. In the event of a conflict between the existing regulations and the statute, the statute will control.

Explanation of Particular Provisions

Part 353

Part 353 contains the ITA's antidumping regulations. The citation for Part 353 is amended to include a reference to the URAA.

Section 353.1

Section 353.1 (Scope) is revised to consist of two paragraphs. Paragraph (a) continues to provide that 19 CFR Part 353 sets forth rules and procedures

applicable to antidumping proceedings under Title VII of the Tariff Act (''the Act''). While the ITA will rely on these rules and procedures in conducting antidumping investigations and reviews, paragraph (a) also clarifies that in the event of a conflict between the regulations and the Act, the Act controls.

Paragraph (b) identifies those sections of Part 353 that have been revised or added to reflect certain amendments made by the URAA. The ITA concludes that these limited regulations are necessary for orderly administration of the law pending completion of the rulemaking proceeding. In addition, in accordance with section 291 of the URAA, paragraph (b) provides that these revisions and additions apply only to antidumping investigations and reviews that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

Section 353.12(b)(2)

Section 353.12(b)(2), which deals with the contents of antidumping petitions, is revised to reflect the new requirement of amended section 732(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. To facilitate the Secretary's analysis of industry support, revised section 353.12(b)(2) requires a petitioner to provide information relevant to this issue.

Section 353.13(a)

Section 353.13(a), which deals with determinations regarding the sufficiency of antidumping petitions, is revised to reflect the new requirement of amended section 732(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. In addition, section 353.13(a) is revised to reflect the fact that, in exceptional circumstances, the Secretary may extend the deadline for determining the sufficiency of a petition where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry and where additional time is necessary to meet that requirement. The additional time will not be extended automatically to the forty days permissible, but only to the time necessary.

Section 353.15(a)(1)

Section 353.15(a)(1), which deals with the deadline for preliminary determinations in antidumping investigations, is revised to reflect the deadlines in amended section 733(b) of the Act.

Sections 353.15(b) and 353.15(c)

Sections 353.15(b) and 353.15(c), which deal with extensions of the deadline for preliminary determinations in antidumping investigations, are revised to reflect the deadlines in amended section 733(c) of the Act.

Sections 353.22(c)(4) and 353.22(c)(7)

Sections 353.22(c)(4) and 353.22(c)(7), with deal with the deadlines for preliminary and final results, respectively, of reviews under section 751(a)(1) of the Act, are revised to reflect the deadlines in amended section 751(a)(3) of the Act.

Section 353.22(h)

Section 353.22(h) is added to establish procedures for conducting so-called ''new shipper reviews,'' a new procedure contained in amended section 751(a)(2) of the Act. Section 353.22(h) generally is based on existing section 353.22(c), which sets forth procedures for so-called ''normal administrative reviews.'' However, certain features of section 353.22(h) merit discussion.

First, the deadlines in section 353.22(h) differ from those in section 353.22(c) in order to reflect the expedited nature of new shipper reviews.

Second, because the purpose of a new shipper review is to provide a new shipper the opportunity to obtain its own dumping margin on an expedited basis, section 353.22(h)(1)(iii) precludes a new shipper review where the exporter or producer requesting such a review already has received its own margin during a prior stage of the antidumping proceeding in question.

Third, consistent with the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)) (''the SAA''), section 353.22(h)(2) requires an exporter or producer requesting a new shipper review to provide certain information, along with appropriate certifications, supporting its claim as a new shipper.

Fourth, section 353.22(h)(3) sets forth rules regarding the timing of new shipper reviews and defines the term ''semiannual anniversary month.'' As an example of how section 353.22(h)(3) would operate, assume that an antidumping order is issued on January 15. The semiannual anniversary months for this order would be January and July. If a request were received at any time during the period February through July, a new shipper review would be commenced in August. If a request for a new shipper review were received at any time during the period August through January, a new shipper review would be commenced in February.

Fifth, section 353.22(h)(5) provides that the Secretary will determine the time period to be covered by a new shipper review. Because new shipper reviews are a new procedure, the ITA did not consider it appropriate to establish a standard review period without first obtaining public comment.

Finally, section 353.22(h)(9) addresses situations in which a new shipper may be subject to more than one review or more than one request for review, particularly in the first few years of the administration of the amended statute. For example, a new shipper might request a review notwithstanding that the new shipper is already subject to a review pursuant to section 353.22(a). In order to minimize the potential for confusion and to conserve administrative resources, section 353.22(h)(9) permits the Secretary to terminate, or decline to commence, a review under section 353.22, including a new shipper review.

Section 353.31(a)

Section 353.31(a), which deals with general time limits for the submission of information, is revised by the addition of a new paragraph (a)(1)(iii) that establishes deadlines for the submission of information in new shipper reviews. Because the deadline for completing new shipper reviews is shorter than for normal administrative reviews, the deadline for submitting information is shorter, as well.

Section 353.31(c)

Section 353.31(c), which deals with the time limits for certain allegations, is revised to include the deadline for submitting allegations of sales below cost of production in new shipper reviews. Because the deadline for completing new shipper reviews is shorter than for normal administrative reviews, the deadline for submitting allegations of sales below cost is shorter, as well. In addition, existing section 353.31(c)(2), which deals with the time limits for allegations regarding lack of industry support for a petition, has been deleted as obsolete. As noted above, under the amended Act, the Secretary must make a determination regarding industry support prior to the initiation of an investigation.

Section 353.38(i)

Section 353.38(i) is added to reflect the requirements of section 782(g) of the

Act regarding pre-final release of information and the opportunity to comment thereon.

Part 355

Part 355 contains the ITA's countervailing duty regulations. The authority citation for Part 355 is amended to include a reference to the URAA.

Section 355.1

Section 355.1 (Scope) is revised to consist of two paragraphs. Paragraph (a) continues to provide that 19 CFR Part 355 sets forth rules and procedures applicable to countervailing duty proceedings under Title VII of the Tariff Act (''the Act''). While the ITA will rely on these rules and procedures in conducting countervailing duty investigations and reviews, paragraph (a) also clarifies that in the event of a conflict between the regulations and the Act, the Act controls.

Paragraph (b) identifies those sections of Part 355 that have been revised or added to reflect certain amendments made by the URAA. The ITA concludes that these limited regulations are necessary for orderly administration of the law pending completion of the rulemaking proceeding. In addition, in accordance with section 291 of the URAA, paragraph (b) provides that these revisions and additions apply only to countervailing duty investigations and reviews that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

Section 355.12(b)(2)

Section 355.12(b)(2), which deals with the contents of countervailing duty petitions, is revised to reflect the new requirement of amended section 702(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. To facilitate the Secretary's analysis of industry support, revised section 355.12(b)(2) requires a petitioner to provide information relevant to this issue.

Section 355.13(a)

Section 355.13(a), which deals with determinations regarding the sufficiency of countervailing duty petitions, is revised to reflect the new requirement of amended section 702(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. In addition, section 355.13(a) is revised to reflect the fact that, in exceptional circumstances, the Secretary may extend the deadline for determining the sufficiency of a petition where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry and where additional time is necessary to meet that requirement. The additional time will not be extended automatically to the forty days permissible, but only to the time necessary.

Section 355.15(a)(1)

Section 355.15(a)(1), which deals with the deadline for preliminary determinations in countervailing duty investigations, is revised to reflect the deadlines in amended section 703(b) of the Act.

Sections 355.15(a)(2)(ii) and 355.15(a)(4)

Sections 355.15(a)(2)(ii) and 355.15(a)(4), which deal with the contents of preliminary countervailing duty determinations, are revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single countrywide subsidy rate in countervailing duty proceedings.

Sections 355.15(b) and 355.15(c)

Sections 355.15(b) and 355.15(c), which deal with extensions of the deadline for preliminary determinations in antidumping investigations, are revised to reflect the deadlines in amended section 703(c) of the Act.

Sections 355.20(a)(2)(ii) and 355.20(a)(4)

Sections 355.20(a)(2)(ii) and 355.20(a)(4), which deal with the contents of final countervailing duty determinations, are revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

Section 355.20(d)

Section 355.20(d), which deals with the calculation of individual countervailing duty rates, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The text of section 355.20(d) is deleted. However, because the Department anticipates that these interim rules will be replaced by final rules as soon as possible, we have designated section 355.20(d) as ''[Reserved]'' rather than renumber all of section 355.20.

Section 355.20(e)

Section 355.20(e), which deals with the effect of a decision not to exclude a firm from a countervailing duty order, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

Section 355.22(a)

Section 355.22(a), which deals with procedures for requesting administrative reviews of countervailing duty orders and suspended investigations, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The procedures of revised section 355.22(a) are based on the company-specific approach of section 353.22(a) of the antidumping regulations.

Section 355.22(c)

Section 355.22(c), which deals with procedures for administrative reviews of countervailing duty orders and suspended investigations, under section 751(a)(1) of the Act, is revised to (1) reflect the deadlines in amended section 751(a)(3) of the Act; and (2) reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

Section 355.22(d)

Section 355.22(d), which deals with the calculation of individual countervailing duty rates in reviews, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The text of section 355.22(d) is deleted, and, in order to avoid renumbering all of section 355.22, section 355.22(d) is designated ''[Reserved]''.

Section 355.22(f)

Section 355.22(f), which deals with reviews of an individual producer or exporter, is revised in light of the changes, described above, to section 355.22(a). The text of section 355.22(f) is deleted, and, in order to avoid renumbering all of section 355.22, section 355.22(f) is designated ''[Reserved]''.

Section 355.22(i)

Section 355.22(i), which deals with reviews at the direction of the President under section 762 of the Act, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

Section 355.22(j)

Section 355.22(j) is added to establish procedures for conducting so-called ''new shipper reviews,'' a new procedure contained in amended section 751(a)(2) of the Act. Because section 355.22(j) is virtually identical to section 353.22(h), for an explanation of section 355.22(j) please refer to the discussion of section 353.22(h), above.

Section 355.31(a)

Section 355.31(a), which deals with general time limits for the submission of information, is revised by the addition of a new paragraph (a)(1)(iii) that establishes deadlines for the submission of information in new shipper reviews. As in the case of antidumping new shipper reviews, the deadlines are shorter than those for normal administrative reviews.

Section 355.31(c)

Section 355.31(c), which deals with the time limits for certain allegations, is revised to include the deadline for submitting allegations of subsidies in new shipper reviews. This deadline is shorter than the deadline for making similar allegations in normal administrative reviews. In addition, existing section 355.31(c)(2), which deals with the time limits for allegations regarding lack of industry support for a petition, has been deleted as obsolete. As noted above, under the amended Act, the Secretary must make a determination regarding industry support prior to the initiative of an investigation.

Section 355.38(i)

Section 355.38(i) is added to reflect the requirements of section 782(g) of the Act regarding pre-final release of information and the opportunity to comment thereon.

Section 355.40

A new section 355.40 is added to establish procedures for reviews of countervailing duty orders in connection with investigations under section 753 of the Act. In general, section 753 deals with outstanding countervailing duty orders on merchandise from a member of the World Trade Organization that were issued without a finding of material injury. Under section 753, upon receipt of a proper request, the U.S. International Trade Commission (''ITC'') will conduct an investigation to determine if a U.S. industry is likely to be materially injured if a countervailing duty order is revoked.

Under section 753(b)(2), the ITA must provide the ITC with information regarding the net countervailable subsidy that is likely to prevail if the order in question is revoked, as well as information regarding the nature of the countervailable subsidy. Section 355.40 sets forth procedures the ITA will follow in performing this task. In addition, section 355.40(a) reflects the Administration's commitment to notify domestic interested parties as soon as possible after their opportunity for requesting a section 753 investigation arises. *See* the SAA, pp. 942–943.

Classification

Administrative Procedure Act (APA)

ITA rules to implement new legislation ordinarily are promulgated in accordance with the requirements of the APA, 5 U.S.C. 553 *et seq.* The ITA is publishing this interim final rule without prior notice, an opportunity for public comment, and a 30-day delay in effective date pursuant to authority to waive such requirements for good cause contained in 5 U.S.C. 553(b)(B) and 553(d)(3). The URAA became effective less than 30-days after its enactment, rendering portions of existing antidumping and countervailing duty regulations obsolete. It also makes significant revisions and additions to existing procedures. In view of the timing and number and degree of URAA procedural changes, some new implementing regulations must be in place immediately to allow ITA to administer antidumping and countervailing duty proceedings effectively and efficiently. As such, ITA has determined that the provision of prior notice and an opportunity for public comment for these rules, which have the limited purpose of amending existing regulations where they are clearly at odds with the URAA and where regulations are essential to administration of the new law, would be impracticable and contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address the new procedures in the URAA, described above, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date.

The ITA recognizes that interim final rules, because they are issued without public participation, should be narrowly drawn to respond to no more than the situation that justified waiving the APA. The agency is undertaking a full rulemaking proceeding to conform existing antidumping duty, countervailing duty, and NAFTA Article 1904 regulations to the URAA, as well as other substantive and procedural changes that might be warranted. To that end, on January 3, 1995 (60 FR 80), the ITA published an advance notice of proposed rulemaking seeking public comment on subjects that should be considered in revising the antidumping and countervailing duty regulations.

E.O. 12866

This interim final rule has been determined to be significant under E.O. 12866.

Paperwork Reduction Act

This interim final rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act.

E.O. 12612

This interim final rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: May 3, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR parts 353 and 355 are amended as follows:

PART 353—ANTIDUMPING DUTIES

1. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

2. Section 353.1 is revised to read as follows:

§ 353.1 Scope.

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) (''the Act''), as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103–465; 108 Stat. 4809 (Dec. 8, 1994), relating to the imposition of antidumping duties. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 353.1, 353.12(b)(2), 353.13(a),

353.15(a)(1), 353.15(b), 353.15(c), 353.22(c)(4), 353.22(c)(7), 353.22(h), 353.31(a)(1), 353.31(c), and 353.38(i). These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

3. Section 353.12(b)(2) is revised to read as follows:

§ 353.12 Petition requirements.

* * * * *

(b) * * *

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition;

* * * * *

4. Section 353.13(a) is revised to read as follows:

§ 353.13 Determination of sufficiency of petition.

(a) *Determination of sufficiency.*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under § 353.12, the Secretary will determine whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry under section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting ''a maximum of 40 days'' for ''20 days''.

* * * * *

5. Section 353.15 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 353.15 Preliminary determination.

(a) *In general.* (1) Not later than 140 days after the date on which the Secretary initiates an investigation under § 353.11 or § 353.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that the merchandise is being sold at less than fair value. The Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

* * * * *

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 190 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

(i) The large number of complex nature of the transactions or adjustments under subpart D of this part;

(ii) Novel issues raised; or

(iii) The large number of producers and resellers; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 190 days after the date on which the Secretary initiated the investigation, unless the Secretary finds compelling reasons to deny the request.

* * * * *

6. Section 353.22 is amended by revising paragraphs (c)(4) and (c)(7), and by adding paragraph (h) to read as follows:

§ 353.22 Administrative review of orders and suspension agreements.

* * * * *

(c) * * *

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

* * * * *

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

* * * * *

(h) *Determination of antidumping duties for new shippers.*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (h)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of an antidumping duty order to the United States (or, in the case of an order described in section 736(d) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter or producer who exported the merchandise to the United States (or in the case of an order described in section 736(d) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a weighted-average dumping margin for such exporter or producer, the Secretary will conduct a review to establish a weighted-average dumping margin for such exporter or producer.

(2) *Certification of new shipper status.* A request described in paragraph (h)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, export the merchandise during the period of investigation.

(3) *Time for new shipper review.*

(i) *In general.* The Secretary will commence a review under paragraph (h)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.* The semiannual anniversary month is:

(A) The calendar month in which the anniversary of the date of publication of the order occurs; or

(B) The calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (h)(1) of this section is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (h)(1), (h)(2) and (h)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of ''Initiation of New Shipper Antidumping Duty Review;''

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under § 353.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The weighted-average dumping margin, if any, for each person reviewed;

(v) Publish in the **Federal Register** notice of ''Preliminary Results of New Shipper Antidumping Duty Administrative Review,'' including the weighted-average dumping margins, if any, and an invitation for argument consistent with § 353.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The weighted-average dumping margins, if any, for each person reviewed;

(viii) Publish in the **Federal Register** notice of ''Final Results of New Shipper Antidumping Duty Administrative Review,'' including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (h)(4) of this section, and to collect a cash deposit of estimated antidumpting duties on future entries.

(7) *Time limits.*

(i) *In general.* The Secretary will issue preliminary results in a review conducted under paragraph (h)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception.* If the Secretary concludes that the case is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews.* The results of a review under paragraph (h)(1) of this section shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews.* Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (h)(1) of this section, the Secretary may:

(i) Terminate, in whole or in part, a review in progress under this section; or

(ii) Decline to commence, in whole or in part, a review under this section.

7. Section 353.31 is amended by revising paragraph (a)(1) and (c) to read as follows:

§ 353.31 Submission of factual information.

(a) *Time limits in general.* (1) Except as provided in § 353.32(b) and paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, seven days before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review under § 353.22 (c) or (f), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review;

(iii) For the Secretary's final results of an administrative review under § 353.22(h), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review; or

(iv) For the Secretary's final results of an expedited review under § 353.22(g), a date specified by the Secretary.

* * * * *

(c) *Time limits for allegations of sales below cost of production.* (1) The Secretary will not consider any allegation of sales below the cost of production that is submitted by the petitioner or other interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, later than:

(i) In an investigation 45 days before the scheduled date for the Secretary's preliminary determination, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review under § 353.22 (c) or (f), 120 days after the date of publication of the notice of initiation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(iii) In an administrative review under § 353.22(h), 60 days after the date of publication of the notice of initiation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit; or

(iv) In an expedited review under § 353.22(g), 10 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not

longer than 10 days in an investigation or 30 days in an administrative review.

* * * * *

8. Section 353.38 is amended by adding paragraph (i), to read as follows:

§ 353.38 Written argument and hearing.

* * * * *

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 353.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

PART 355—COUNTERVAILING DUTIES

9. The authority citation for part 355 is revised to read as follows:

Authority: 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

10. Section 355.1 is revised to read as follows:

§ 355.1 Scope.

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 *et seq.*) (''the Act''), relating to the imposition of countervailing duties, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103–465; 108 Stat, 4809 (Dec. 8, 1994) and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) (''Trade Agreements Act''), relating to subsidies on quota cheese. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 355.1, 355.12(b)(2), 355.13(a), 355.15(a)(1), 355.15(a)(2)(ii), 355.15(a)(4), 355.15(b), 355.15(c), 355.20(a)(2)(ii), 355.20(a)(4), 355.20(d), 355.20(e), 355.22(a), 355.22(c), 355.22(d), 355.22(f), 355.22(i)(5)(ii), 355.22(j), 355.31(a)(1), 355.31(c), 355.38(i), 355.40. These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

11. Sections 355.12(b)(2) is revised to read as follows:

§ 355.12 Petition requirements.

* * * * *

(b) * * *

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition.

* * * * *

12. Section 355.13(a) is revised to read as follows:

§ 355.13 Determination of sufficiency of petition.

(a) *Determination of sufficiency.*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry under section 702(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting ''a maximum of 40 days'' for ''20 days''.

* * * * *

13. Section 355.15 is amended by revising paragraphs (a)(1), (a)(2)(ii), (a)(4), (b) and (c) to read as follows:

§ 355.15 Preliminary determination.

(a) *In general.* (1) Not later than 65 days after the date on which the Secretary initiates an investigation under § 355.11 or § 355.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) * * *

(ii) The individual countervailing duty rate for each person investigated and an all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

* * * * *

(4) The Secretary will publish in the **Federal Register** notice of ''Affirmative (Negative) Preliminary Countervailing Duty Determination,'' including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38.

* * * * *

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

(i) The large number or complex nature of the alleged subsidies;

(ii) Novel issues raised;

(iii) The need to determine the extent to which particular subsidies are used by individual producers or exporters; or

(iv) Large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation, unless the Secretary finds compelling reasons to deny the request.

* * * * *

14. Section 355.20 is amended by revising paragraphs (a)(2)(ii), (a)(4), and (e), and by removing and reserving paragraph (d), to read as follows:

§ 355.20 Final determination.

(a) * * *

(2) * * *

(ii) The estimated individual countervailing duty rate for each person investigated and an estimated all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

* * * * *

(4) The Secretary will publish in the **Federal Register** notice of ''Affirmative (Negative) Final Countervailing Duty Determination,'' including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any.

* * * * *

(e) *Effect of decision not to exclude from order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, any net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be either the individual rate calculated for that person, the all-others rate, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate.

* * * * *

15. Section 355.22 is amended by revising paragraphs (a), (c), (i)(5)(ii), (i)(6), (i)(9)(ii), and (i)(10), by removing and reserving paragraphs (d) and (f), and by adding paragraph (j), to read as follows:

§ 355.22 Administrative review of orders and suspension agreements.

(a) *Request for administrative review; withdrawal of request for review.* (1) Each year during the anniversary month of the publication of an order (the calendar month in which the anniversary of the date of publication of the order occurs), an interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, may request in writing that the Secretary conduct an administrative review of specified individual producers or exporters covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or exporters.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only a producer or exporter of the merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurs), an interested party, as defined in § 355.2(i), may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which suspension of investigation was based.

(5) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the **Federal Register** notice of ''Termination of Countervailing Duty Administrative Review'' or, if appropriate, ''Partial Termination of Countervailing Duty Administrative Review.''

* * * * *

(c) *Procedures.* After receipt of a timely request under paragraph (a) of this section, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Not later than 15 days after the anniversary month, publish in the **Federal Register** notice of ''Initiation of Countervailing Duty Administrative Review;''

(2) Normally not later than 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.36;

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** notice of ''Preliminary Results of Countervailing Duty Administrative Review,'' including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** notice of ''Final Results of Countervailing Duty Administrative Review,'' including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entries. Both the assessment and the cash deposit will be

at the rates found in the final results of review.

* * * * *

(i) * * *

(5) * * *

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

* * * * *

(6) Publish in the **Federal Register** notice of ''Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President,'' including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38;

* * * * *

(9) * * *

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

* * * * *

(10) Publish in the **Federal Register** notice of ''Final Results of Countervailing Duty Administrative Review at the Direction of the President,'' including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes; and

* * * * *

(j) *Determination of countervailing duties for new shippers.*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (j)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of a countervailing duty order to the United States (or, in the case of an order described in section 706(c) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter or producer who exported the merchandise to the United States (or in the case of an order described in section 706(c) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a countervailing duty rate for such exporter or producer, the Secretary will conduct a review to establish a countervailing duty rate for such exporter or producer.

(2) *Certification of new shipper status.*—A request described in paragraph (j)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, export the merchandise during the period of investigation.

(3) *Time for new shipper review.*—(i) *In general.* The Secretary will commence a review under paragraph (j)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.* The semiannual anniversary month is:

(A) the calendar month in which the anniversary of the date of publication of the order occurs; or

(B) the calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (j)(1) of this section is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (j)(1), (j)(2), and (j)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of ''Initiation of New Shipper Countervailing Duty Review;''

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a certification under § 355.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The countervailing duty rate, if any, for each person reviewed, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate;

(v) Publish in the **Federal Register** notice of ''Preliminary Results of New Shipper Countervailing Duty Administrative Review,'' including the countervailing duty rates or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The countervailing duty rate, if any, for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate;

(viii) Publish in the **Federal Register** notice of ''Final Results of New Shipper Countervailing Duty Administrative Review,'' including the countervailing duty rates or country-wide subsidy rate, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure of a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (j)(4) of this section, and to collect a cash deposit of estimated countervailing duties on future entries.

(7) *Time limits.*—(i) *In general.* The Secretary will issue preliminary results in a review conducted under paragraph (j)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception.* If the Secretary concludes that the case is extraordinarily complicated, the

Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews.* The results of a review under paragraph (j)(1) of this section shall be the basis for the assessment of countervailing duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews.* Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (j)(1) of this section, the Secretary may:

(i) Terminate, in whole or in part, a review in progress under this section; or

(ii) Decline to commence, in whole or in part, a review under this section.

16. Section 355.31 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 355.31 Submission of factual information.

(a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review other than a review under § 355.22(j), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review; or

(iii) For the Secretary's final results of an administrative review under § 355.22(j), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review.

* * * * *

(c) *Time limits for allegations of subsidies.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, later than:

(i) In an investigation, 40 days before the scheduled date for the Secretary's preliminary determination;

(ii) In an administrative review other than a review under § 355.22(j), 120 days after the date of publication of the notice of initiation of the review; or

(iii) In an administrative review under § 355.22(j), 60 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

* * * * *

17. Section 355.38 is amended by adding paragraph (i), to read as follows:

§ 355.38 Written argument and hearings.

* * * * *

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 355.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

18. A new section 355.40 is added to subpart C, to read as follows:

§ 355.40 Likelihood of continued subsidization; revocation under section 753 of the Act.

(a) *Notification of domestic interested parties.* (1) As soon as possible after the opportunity arises for requesting an investigation under section 753 of the Act, the Secretary will:

(i) Notify domestic interested parties on the Department's service list by first class mail or personal service of the opportunity to request an injury investigation by the Commission; and

(ii) Publish in the **Federal Register** a notice informing domestic interested parties of the opportunity to request an injury investigation by the Commission.

(2) The notification provided for in paragraph (a)(1) of this section will inform domestic interested parties of the opportunity to request that reviews of outstanding antidumping orders or findings and countervailing duty orders under section 751(c) of the Act involving the same or comparable merchandise be expedited.

(3) For purposes of paragraph (a) of this section, ''domestic interested parties'' means interested parties described in paragraphs (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, or in section 771(9)(G) of the Act.

(b) *Suspension of liquidation.* (1) The Secretary will instruct the Customs Service to suspend liquidation with respect to entries of subject merchandise made on or after:

(i) In the case of an order described in section 753(a)(1(B)(i) of the Act, the date on which the country described in section 753(a)(1)(A) of the Act becomes a Subsidies Agreement country within the meaning of section 701(b) of the Act; or

(ii) In the case of an order described in section 753(a)(1)(B)(ii) of the Act, the date on which such order is issued.

(2) Liquidation shall be suspended under paragraph (b)(1) of this section at the cash deposit rate in effect on the date described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, whichever is applicable.

(c) *Net countervailable subsidy; nature of subsidy.* The Secretary will provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked. The Secretary will normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751 of the Act. At the same time, the Secretary also will inform the Commission of the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement, as defined in section 771(8)(A) of the Act.

(d) *Initiation and conduct of review.*—(1) *In general.* Where the Secretary deems it necessary in order to provide to the Commission the information described in paragraph (c) of this section, the Secretary will initiate a review of the countervailing duty order in question.

(2) *Notice of initiation of review.* Where the Secretary initiates a review under paragraph (d)(1) of this section, the Secretary will publish in the **Federal Register** a notice of ''Initiation of Countervailing Duty Section 753 Review.''

(3) *Conduct of review.* Following the initiation of a review under paragraph (d)(1) of this section, the Secretary will:

(i) If the Secretary considers it appropriate, send to interested parties and other persons, or a sample of

interested parties and other persons, questionnaires requesting factual information for the review;

(ii) If the Secretary considers it appropriate, conduct a verification under § 355.36;

(iii) Issue, based on available information, preliminary results of review that include the factual and legal conclusions on which the preliminary results are based;

(iv) Publish in the **Federal Register** notice of ''Preliminary Results of Countervailing Duty Section 753 Review,'' including an invitation for argument consistent with § 355.38;

(v) Promptly notify all parties to the proceeding of the preliminary results, and provide to such parties which request disclosure a future explanation of the calculation methodology used in reaching the preliminary results;

(vi) Issue final results of review that include the factual and legal conclusions on which the final results are based;

(vii) Publish in the **Federal Register** notice of ''Final Results of Countervailing Duty Section 753 Review;'' and

(viii) Promptly notify all parties to the proceeding and the Commission of the final results, and provide such parties which request disclosure a further explanation of the calculation methodology used in reaching the final results.

(e) *Effect of affirmative Commission determination.* Upon being notified by the Commission that it has made an affirmative determination under section 753(a)(1) of the Act:

(1) The Secretary will order the termination of the suspension of liquidation required pursuant to paragraph (b) of this section; and

(2) The countervailing duty order shall remain in effect until revoked, in whole or in part.

(f) *Effect of negative Commission determination.* Upon being notified by the Commission that it has made a negative determination under section 753(a)(1) of the Act, the Secretary will revoke the countervailing duty order and refund, with interest, any estimated countervailing duty collected during the period liquidation was suspended pursuant to paragraph (b) of this section.

[FR Doc. 95–11582 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8581]

RIN 1545–AQ87

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (T.D. 8581), which were published in the **Federal Register** for Friday, December 23, 1994, (59 FR 66165) relating to certain cash or deferred arrangements and employee and matching contributions under employee plans.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez (202) 622–4606 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 401(a)(30), 401(k), 401(m), 402(a)(8), 402(g), 411(d)(6), 415(c), 416, and 4979 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8581 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(k)–1 (h)(4)(ii) is revised to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(h) * * *

(4) * * *

(ii) * * *

(A) The plan does not fail to satisfy the requirements of section 401(a) merely because of the nonqualified cash or deferred arrangement.

(B) Employer contributions under the nonqualified cash or deferred arrangement are considered to satisfy the requirements of section 401(a)(4).

(C) Except as provided in paragraphs (a)(7) and (f) of this section, elective contributions under the arrangement are treated as employer contributions under the Internal Revenue Code of 1986, as if the arrangement were a qualified cash or deferred arrangement. See § 1.401(k)–1(a)(4)(ii). See § 1.402(a)–1(d) for rules governing when elective contributions under the arrangement are includible in an employee's gross income.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–11583 Filed 5–10–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–232; Combined Program Amendments Numbers 25R and 56R]

Ohio Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to revise Ohio's ''Guidelines for Evaluating Revegetation Success'' to be consistent with the corresponding Federal regulations. These guidelines describe the sampling methods which Ohio proposes to use to evaluate revegetation success prior to bond release on areas with different postmining land uses.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

On October 21, 1993 (Administrative Record No. OH–1944), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted a final combined version of two previous program amendments, Program Amendments Numbers 25R and 56R (PA 25R and PA 56R). In this combined submission, Ohio proposed to revise parts of the Ohio Administrative Code (OAC) pertaining to land use and revegetation success standards. Ohio also submitted ''Guidelines for Evaluating Revegetation Success'' establishing the sampling methods for measuring vegetative ground cover, tree and shrub stocking, and crop and pasture productivity.

In the May 2, 1994, **Federal Register** (59 FR 22507), the Acting Assistant Director of OSM announced his decision approving combined PA 25R and 56R with certain exceptions. In that decision, the Assistant Director required Ohio to submit a proposed amendment to modify its ''Guidelines for Evaluating Revegetation Success'' to require that species diversity, erosion control, and other applicable requirements of OAC 1501:13–9–15 (B) and (C) be evaluated at the time of final bond release. The Assistant Director also required that Ohio revise the formula for determining the sample size for evaluating tree and shrub success and provide documentation of concurrence by other agencies with specific portions of Ohio's evaluation methods.

By letter dated July 19, 1994 (Ohio Administrative Record OH–2032), Ohio resubmitted revised ''Guidelines for Evaluating Revegetation Success'' which were intended to address the Assistant Director's requirements in his May 2, 1994, decision on PA 25R and 56R. OSM announced its receipt of the revised guidelines in the **Federal Register** (59 FR 38576) on July 29, 1994. The public comment period ended on August 29, 1994.

By letter dated October 21, 1994, (Administrative Record No. OH–2066), OSM provided its questions and comments to Ohio on the July 19, 1994, submission of Ohio's revised guidelines. These questions and comments required further changes to the guidelines in addition to the changes required as part of the May 2, 1994, decision by the Assistant Director of OSM.

By letter dated December 20, 1994 (Administrative Record OH–2075), Ohio resubmitted further revisions to the guidelines which were intended to address the questions and comments in OSM's October 21, 1994, letter. OSM announced its receipt of the revised guidelines in the **Federal Register** (60 FR 3184) on January 13, 1995. The public comment period ended on February 13, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

All of the proposed changes in this Ohio program amendment concern Ohio's ''Guidelines for Evaluation of Revegetation Success.'' None of the proposed changes modify Ohio's statutes in the Ohio Revised Code or rules in the Ohio Administrative Code (OAC). Only substantive changes to Ohio's guidelines are discussed below. Revisions which are not discussed below concern editorial or nonsubstantive wording changes intended to improve the clarity and readability of the guidelines.

Ohio's proposed guidelines govern reclamation of surface mining activities and the surface effects of underground mining activities. The Federal counterparts are 30 CFR part 816 for surface mining activities and 30 CFR part 817 for underground mining activities. With a few exceptions, 30 CFR parts 816 and part 817 are substantively identical. OSM will discuss the proposed changes to Ohio's guidelines in relation to the Federal rules governing surface mining activities at 30 CFR part 816 with the understanding that such discussion also applies to the Federal rules governing underground mining activities at 30 CFR part 817. Any exceptions will be discussed separately.

(a) Verification That the Soil Surface is Stabilized From Erosion

Ohio is revising the first paragraph in Section A of its guidelines to require Ohio inspectors to verify, at the time of the final bond release inspection, that the vegetative cover is successfully stabilizing the soil surface from erosion. This verification enforces one of the general requirements for revegetation at OAC section 1501:13–9–15(B)(4), the State counterpart to 30 CFR 816.111(a)(4). The Director therefore finds that this revision to the Ohio guidelines brings those guidelines into conformity with other provisions of the Ohio program and is no less effective than the corresponding Federal rule at 30 CFR 816.111(a)(4).

(B) Evaluation of Vegetative Species Composition and Diversity

Ohio is revising the first paragraph in Section A of its guidelines to require Ohio inspectors to evaluate vegetative species composition and diversity at the time of the final bond release inspection. The inspector's evaluation will be based primarily on visual observations in the field and will be documented using a new diversity checklist, included as Attachment 4 to the guidelines. Ohio is also adding a new Section A.VI to the guidelines explaining the concept of species diversity and the use of the new diversity checklist.

This evaluation of species diversity enforces one of the general requirements for revegetation at OAC section 1501:13–9–15(b) (1) and (2), the State counterparts to 30 CFR 816.111(a) (1) and (2). The Director therefore finds that this revision to the Ohio guidelines brings those guidelines into conformity with other provisions of the Ohio program and is no less effective than the corresponding Federal rules at 30 CFR 816.111(a) (1) and (2).

As part of his May 2, 1994, decision approving combined PA 25R and 56R, the Assistant Director of OSM also required Ohio to submit documentation that it has consulted with and obtained the approval from the responsible agency for the methods which Ohio will use to evaluate species diversity. As part of its July 19, 1994, submission of PA 25R and 56R, Ohio submitted a memorandum dated July 19, 1994 (Administrative Record OH–2039), from the Acting Chief of the Division of Natural Areas and Preserves (DNAP), Ohio Department of Natural Resources. In this memorandum, DNAP discussed its participation in developing the diversity checklist and approved Ohio's use of that checklist in evaluating revegetation success. This concurrence by DNAP satisfies the Assistant Director's requirement.

(C) Proper Handling and Planting of Trees and Shrubs

Ohio is revising section B.2 of its guidelines to clarify the procedures to be used to protect tree seedlings and shrubs during planting. Ohio is adding a statement that tree plantings in stream buffer zones must comply with Ohio Policy/Procedure Directive Regulatory 94–1. Ohio is adding a statement establishing the seasonal time period for planting of willow or other stakes or posts. Ohio is clarifying the approved methods of carrying seedlings during planting. Ohio is adding a specific provision that roots cannot be exposed once a seedling is planted. Finally, Ohio is adding a provision that stakes and posts shall be planted so that at least 40 to 50 percent of their total length is beneath the soil surface. The Director finds that these revisions to the Ohio guidelines clarify and improve those guidelines and are consistent with the corresponding Federal rules at 30 CFR 816.111 and 816.116.

(D) Sampling Methods

(1) *Formulas for Sampling Adequacy:* Ohio is revising section B.1.IV and Attachment 7 of its guidelines to correct three errors in the formulas for determining the size of the samples needed to evaluate the success of tree and shrub plantings. Ohio is also revising section C.1.IV and Attachment 11 of its guidelines to make corresponding corrections to the formulas for determining the size of the samples needed to evaluate the productivity of pasture, grazing land, and cropland.

(2) *Procedure for evaluating ground cover using less than 100 samples:* Ohio is revising sections A.1.II and A.1.IV and is deleting old Attachment 4 in its guidelines in order to require a minimum of 100 samples to evaluate ground cover.

(3) *Reference to ''subsamples, for hay'':* Ohio is deleting the reference in section C.1.V of the guidelines to ''subsamples, for hay.''

The Director finds that, with these three revisions, the Ohio guidelines are consistent with the corresponding Federal rules at 30 CFR 816.111 and 816.116.

(E) State Agency Concurrence on Stocking Standard for Commercial Forest

In his May 2, 1994, decision approving combined PA 25R and 56R, the Acting Assistant Director of OSM also required Ohio to provide documentation that Ohio has obtained approval from the Division of Forestry (DOF), Ohio Department of Natural Resources, for the standard regarding the maximum percentage of non-commercial trees planted on areas with commercial forest as the proposed postmining land use. As part of its July 19, 1994, submission of PA 25R and 56R (Administrative Record OH–2032), Ohio submitted a memorandum dated July 11, 1994, from the Chief of DOF. In this memorandum, DOF agreed with Ohio's standard that a maximum of 25 percent of the trees planted on lands reclaimed to commercial forest may be non-commercial trees and stated that this standard is appropriate and desirable. This concurrence by DPF satisfies the Assistance Director's requirement.

(F) Prime Farmland Crop Productivity

In Its October 21, 1994, letter to Ohio (Administrative Record No. OH–2066), OSM recommended that Ohio should revise its guidelines to clarify that the first year of crop production cannot be included in determining revegetation success of reclaimed prime farmland. As suggested by OSM, Ohio is revising the third paragraph of Part C of the guidelines to exclude the first year's yields from consideration in meeting prime farmland crop productivity.

The Director finds that, with this revision, the Ohio guidelines are no less effective than the corresponding Federal rules at 30 CFR 810.11 regarding prime farmland and 30 CFR 816.116(c)(2) regarding revegetation success.

For the reasons discussed above in Sections III.A.B, and D, the Director is removing the requirement at 30 CFR 935.16(a) that Ohio revise its ''Guidelines for Evaluating Revegetation Success.''

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment on July 29, 1994, and January 13, 1995. No public comments were received. No public hearings were held as no one requested the opportunity to provide testimony.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from the Regional Administrator of the U.S. Environmental Protection Agency (EPA); the U.S. Department of Agriculture, Soil Conservation Service (SCS); and the heads of three other Federal agencies with an actual or potential interest in the Ohio program. Nonsubstantive comments were received from SCS and from the Mine Safety and Health Administration. No other comments were received.

The Director also solicited comments on the proposed amendment from the Ohio Historic Preservation Office (OHPO). OHPO commented that, in areas where historic properties have been avoided using a buffer zone during mining operations, the reclamation of the strip mine area around the buffer zone should be consistent with the protected area within the buffer zone. The Director concurs with this comment. OAC sections 1501:13–9–15(C)(1) (a) and (d) require that reestablished plant species must be compatible with the approved postmining land use and with the plant and animal species of the surrounding area. This surrounding area would include protected areas within buffer zones. The Director finds that these existing Ohio rules adequately provide for compatible reclamation around buffer zones and that nothing in the proposed amendment negatively affects the effectiveness of these existing rules.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on July 19, 1994, and revised on December 20, 1994.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 4, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding new paragraph (vvv) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(vvv) The following amendment (Combined Program Amendments 25R and 56R) pertaining to the Ohio regulatory program, as submitted to OSM on July 19, 1994, and revised on December 20, 1994, is approved, effective May 11, 1995: Ohio Guidelines for Evaluating Revegetation Success

§ 935.16 [Removed and reserved]

3. In § 935.16, paragraph (a) is removed and reserved.

[FR Doc. 95–11649 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001; FRL–5206–2]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating final interim approval of the Operating Permits Program submitted by the State of Montana for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: June 12, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On February 14, 1995 EPA published a **Federal Register** notice proposing interim approval of the Operating Permits Program for the State of Montana (PROGRAM). See 60 FR 8335. EPA received no adverse comments on this proposed interim approval, and is taking final action to promulgate interim approval of the Montana PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Montana submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Montana on March 29, 1994. The Montana PROGRAM, including the operating permit

regulations (Sub-Chapter 20, sections 16.8.2001 through 16.8.2025, inclusive, of the Administrative Rules of Montana), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 70.5 with respect to complete application forms and criteria which define insignificant activities; 70.7 with respect to public participation and minor permit modifications; and 70.11 with respect to requirements for enforcement authority.

EPA's comments noting deficiencies in the Montana PROGRAM were sent to the State in a letter dated October 3, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. The State committed to address the PROGRAM deficiencies that require corrective action prior to interim PROGRAM approval in a letter dated October 20, 1994. The State submitted these corrective actions in letters dated March 30 and April 5, 1995. EPA has reviewed these corrective actions and has determined them to be adequate to allow for interim PROGRAM approval.

B. Final Action

The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Montana on March 29, 1994. The State must complete the following corrective actions to receive full PROGRAM approval: (1) Section 16.8.2002(1)(d) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows for the department's discretion in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. This does not meet the criteria of an administrative permit amendment listed 40 CFR 70.7(d)(1)(iii), which requires that only more frequent monitoring or reporting requirements can be processed through an administrative permit amendment. Prior to full PROGRAM approval, the State must delete section 16.8.2002(1)(d) of Sub-Chapter 20, which allows for the department's discretion in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. (2) Section 16.8.2002(1)(f) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows the State to determine if other types of permit changes not listed in the definition of administrative permit amendment can be incorporated into a permit through the administrative permit amendment process. This does not meet requirements of 40 CFR 70.7(d)(1)(vi). This provision must be changed prior to full PROGRAM approval to allow the Administrator of EPA (or EPA and the State) to determine if changes not included in the definition of administrative permit amendment can be processed through the administrative permit amendment process. (3) The definition of ''insignificant emissions unit'' in section 16.8.2002(22)(a) of Sub-Chapter 20 includes an emission threshold of 15 tons per year of any pollutant other than a hazardous air pollutant. EPA does not consider this to be a reasonable level from which to exempt emissions units from title V operating permit requirements. Prior to full PROGRAM approval, the State must lower the emissions cap for defining ''insignificant emissions units'' to assure they will not encompass activities that trigger applicable requirements. If the State defines insignificant activity levels greater than those suggested, a demonstration must be made to show why such levels are, in fact, insignificant. (4) Section 16.8.2002(24)(a)(ii) of Sub-chapter 20 defines ''non-Federally enforceable requirement'' to include any term contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 that is not Federally enforceable. However, everything contained in a preconstruction permit issued under these Sub-Chapters (which currently are, or soon will be, included in the State's SIP) is considered to be Federally enforceable. Prior to full PROGRAM approval this language must be revised or deleted. (5) Section 16.8.2008 of Sub-Chapter 20 that lists the permit content requirements does not require a severability clause consistent with § 70.6(a)(5) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must include a severability clause in Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation. (6) Section IX.C.2 of the checklist that was part of the PROGRAM submittal regarding the implementation of the enhanced monitoring requirements of section 114(a)(3) of the Act states that there are no impediments to using any monitoring data to determine compliance and for direct enforcement. However, the State has incorporated by reference the Federal new source performance standards (NSPS) and national emissions standards for HAPs (NESHAPs) in 40 CFR parts 60 and 61 into its SIP-approved regulations, which provide that compliance can be determined only by performance tests (see 40 CFR 60.11(a) and 40 CFR 61.12(a)). Prior to full PROGRAM approval, the State must provide an Attorney General's opinion verifying the State's authority to use any monitoring data to determine compliance and for direct enforcement. If the State does not have such authority, then the State's SIP-approved regulations must be revised prior to full PROGRAM approval to provide authority to use any monitoring data to determine compliance and for direct enforcement. (7) The Attorney General's Opinion regarding the State's authority to terminate permits is unclear. MCA 75–2–211(1) and 217(1) refer to ''issuance, modification, suspension, revocation, and renewal'' of permits, but not ''termination.'' Prior to full PROGRAM approval, the State must provide an Attorney General's interpretation that Montana's statutory authority extends to ''terminating'' permits. (8) The PROGRAM submittal contained a letter to Douglas M. Skie dated February 28, 1994 certifying the State's authority to implement section 112 of the Act. The letter discusses the State's authority to require permit applications from sources subject to section 112(j) of the Act, but does not address the State's ability to make case-by-case MACT determinations. Prior to full PROGRAM approval, the State must certify its ability to make case-by-case MACT determinations pursuant to section 112(j) of the Act. (9) The State's February 28, 1994 letter to EPA also discusses the State's authority to implement section 112(r) of the Act, but does not address the State's ability to require annual certifications from part 70 sources as to whether their risk management plans (RMPs) are being properly implemented, or provide a compliance schedule for sources that fail to submit the required RMP. Prior to full PROGRAM approval, the State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their RMPs and to provide a compliance schedule for sources that fail to submit the required RMP. (10) Section 16.8.2008(2)(a) allows the State to terminate, or revoke and reissue, permits for continuing and substantial violations. This language may be too limiting and may not provide full authority needed to be consistent with section 502(b)(5)(D) of the Act, which requires that state permit programs have authority to ''terminate, modify, revoke and reissue permits for cause.'' The

State addressed this issue in its March 30, 1995 letter; however, EPA was unable to determine whether Montana's PROGRAM is consistent in all respects with section 502(b)(5)(D) of the Act. Prior to full PROGRAM approval, the State must either (a) clarify that it has authority to terminate or revoke and reissue permits in all circumstances in which cause to do so exists or (b) amend section 16.8.2008(2)(a) to eliminate any provisions that may be construed to limit ''cause'' in an unacceptable manner.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of these PROGRAM deficiencies and the required corrective actions.

The scope of Montana's final interim PROGRAM approval does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151, including the following ''existing or former'' Indian reservations in the State: Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations. Before EPA would approve the State's PROGRAM for any portion of ''Indian Country,'' EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and EPA does not wish to delay interim approval of the State's PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on PROGRAM approval for sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

This interim PROGRAM approval, which may not be renewed, extends until June 11, 1997. During this interim approval period, the State of Montana is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the state of Montana. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time period for processing the initial permit applications.

If the State of Montana fails to submit a complete corrective PROGRAM for full approval by December 11, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Montana then fails to submit a corrective PROGRAM that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Montana has corrected the deficiency by submitting a complete corrective PROGRAM. Moreover, if the Administrator finds a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State of Montana has come into compliance. In any case, if, six months after application of the first sanction, the State of Montana still has not submitted a corrective PROGRAM that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Montana's complete corrective PROGRAM, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Montana has submitted a revised PROGRAM and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of Montana has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of Montana has not submitted a revised PROGRAM that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Montana has not timely submitted a complete corrective PROGRAM or EPA has disapproved its submitted corrective PROGRAM. Moreover, if EPA has not granted full approval to the Montana PROGRAM by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Montana upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's PROGRAM for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program, as well as non-part 70 sources.

EPA is also finalizing its approval of Montana's preconstruction permit program found in Sub-Chapter 11, sections 16.8.1101 through 16.8.1120, of the State's regulations under the authority of title V and part 70 solely for the purpose of providing a mechanism to implement section 112(g) during any transition period between EPA's promulgation of a section 112(g) rule and adoption by the State of rules to implement section 112(g). However, since this approval is for the single purpose of providing a mechanism to implement section 112(g) during any transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The EPA is limiting the duration of this approval to 12 months following promulgation by EPA of the final section 112(g) rule.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 2, 1995.

Jack McGraw,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for Montana in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Montana

(a) Montana Department of Health and Environmental Sciences—Air Quality Division: submitted on March 29, 1994; effective on June 12, 1995; interim approval expires June 11, 1997.

(b) [Reserved]

[FR Doc. 95–11677 Filed 5–10–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[ID12–1–6992; FRL–5204–9]

Designation of Areas for Air Quality Planning Purposes; Idaho; Designation of a Portion of Shoshone County, Idaho, to Nonattainment for Particulate Matter (PM–10); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The City of Pinehurst in Shoshone County, Idaho, was designated nonattainment for PM–10 by operation of law upon enactment of the 1990 Clean Air Act Amendments. Effective January 20, 1994, EPA approved the redesignation of an additional area in Shoshone County, adjacent to the City of Pinehurst, as nonattainment for PM–10. *See* 58 FR 67334, 67339 (December 21, 1993) and 40 CFR 81.313 (codified air quality designations for the State of Idaho). That document included a legal description of the expanded portion of the nonattainment area (the ''Pinehurst expansion area''). The legal description, however, contained several typographical errors and described the area in a more complex manner than necessary. This document corrects the typographical errors and simplifies and standardizes the legal description. This document is not intended to, and does not, change the area designated as nonattainment in the December 21, 1993, **Federal Register** document, as codified at 40 CFR 81.313. Rather, this document is intended to make the description of the Pinehurst expansion area easier to understand.

EFFECTIVE DATE: This correction is effective May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706, (208) 334–9555.

SUPPLEMENTARY INFORMATION: This document makes three types of correction to the legal description of the Pinehurst expansion area. First, the legal description of the Pinehurst expansion area published at 58 FR 67339 and codified at 40 CFR 81.313 contained several typographical omissions which are shown below in bold and brackets:

That portion of Shoshone County excluding the initial PM–10 [nonattainment area]: Including the South half of Southeast quarter of Section 31 of Range 2 east, Township 49 [north]; South quarter of Section 32 of Range 2 east, Township 49 north[;] Section 5 of Range 2 east, Township 48 north[;]-east half of Section 6 of Range 2 east, Township 48 north[;]west quarter of Section 8 of Range 2 east, Township 48 North; and excluding that portion of Shoshone County designated nonattainment for PM–10 on November 15, 1990.

Specifically, three words and three semi-colons were erroneously omitted from the description. This document corrects those errors.

Second, in the December 21, 1993, **Federal Register** document and its later codification at 40 CFR 81.313, the Pinehurst expansion area was described by first giving the legal description of the expansion area *and* City of Pinehurst and then excluding ''the area in Shoshone County which was designated nonattainment for PM–10 on November 15, 1990.'' That area is, in fact, the City of Pinehurst. In other words, the Pinehurst expansion area was essentially described as ''the Pinehurst expansion area plus the City of Pinehurst, excluding the City of Pinehurst.''

Third, the legal description of the Pinehurst expansion area as previously published was further complicated by the fact that the area was described somewhat unconventionally as the ''west quarter of Section 8, Range 2 east, Township 48 north.'' EPA is issuing this correction document to simplify the description and conform the description to standard surveying conventions.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 28, 1995.

Chuck Clarke,

Regional Administrator.

PART 81—[AMENDED]

40 CFR part 81 is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.313 is amended by revising the entry for ''Shoshone County'' in the ''Idaho PM–10 Nonattainment Areas'' table to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*		*
Shoshone County				
a. Northwest quarter of the Northwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Northwest quarter, Section 8, Township 48 North, Range 2 East; Northwest quarter of the Southwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Southwest quarter, Section 48 North, Range 2 East, Boise Base (known as ''Pinehurst expansion area'').	1/20/94	Nonattainment	1/20/94	Moderate.
b. City of Pinehurst	11/15/90	Nonattainment	11/15/90	Moderate.
* * * *	*	*		*

[FR Doc. 95–11505 Filed 5–10–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 228

[FRL–5204–6]

Ocean Dumping; Final Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore Tampa, Florida, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Tampa, Florida vicinity. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on June 12, 1995.

ADDRESSES: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U. S. Environmental Protection Agency, Region IV, 345 Courtland St, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/347–1740 ext. 4286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This designation of a site offshore Tampa, Florida, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of ''Approved Interim and Final Ocean Dumping Sites'' was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established two sites for Tampa, Site A and Site B, as interim sites. Subsequent legal action by Manatee County and extensive field efforts have resulted in the identification of the now proposed site. The details of these events can be found in the ''Final Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Located Offshore Tampa, Florida.''

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Jacksonville District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the Designation of An Ocean Dredged Material Disposal Site Located Offshore Tampa, Florida.'' On September 23, 1994, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (59 FR 48878 (September 23 1994)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the final EIS closed on October 24, 1994. The closing date was extended for 15 days due to a request by the State of Florida.

EPA received 1 comment letter on the Final EIS. The letter was from the State of Florida (dated November 18, 1994) and stated that the proposed designation was found to be consistent with the Florida Coastal Management Program.

This rule permanently designates the continued use of the previously designated Site 4 near Tampa, Florida. The purpose of the action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the permanent designation of the Tampa ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Tampa Bay area. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Tampa ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220 through 229) and the COE regulations (33 CFR 209.120 and parts 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA)

permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (Section 102(a)) or conditions of designation (Section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to this action.

Non-ocean disposal options have been examined and are discussed in the FEIS.

EPA proposed the designation of this site on January 13, 1995 (60 FR 3186). The public comment period expired on February 27, 1995. Only one letter was received on the proposed designation of the Tampa ODMDS. The letter, from the U. S. Department of the Interior (DOI), expressed concern that some of the material may come from portions of the channel that lie within the Federal Outer Continental Shelf (OCS) and the need to inform the DOI's Minerals Management Service (MMS) of such activities. The DOI also expressed concern that material coming from the OCS and used for activities such as beach nourishment could not be removed without a mineral lease issued by MSS. EPA believes that these comments are pertinent only to the COE's permitting action that is discussed previously and no response is needed.

C. Site Designation

The site is located west of Tampa, Florida, approximately 18 nautical miles (nmi) offshore. The ODMDS occupies an area of about 4 square nautical miles (nmi^2), in the configuration of an approximate 2 nmi by 2 nmi square.

Water depths within the area average 22 meters (m). The coordinates of the Tampa site are as follows:

27°32′27″ N	83°06′02″ W;
27°32′27″ N	83°03′46″ W;
27°30′27″ N	83°06′02″ W; and
27°30′27″ N	83°03′46″ W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the site were reviewed in the proposed rule in terms of these 11 criteria (the EIS may be consulted for additional information).

E. Site Management

Site management of the Tampa ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region IV assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the Tampa ODMDS was developed as a part of the process of completing the EIS. This plan, the result of partnering of the federal, state and local authorities who have an interest in ocean disposal and the protection of marine resources, provides procedures for both site management and for the monitoring of effects of disposal activities. The SMMP Team will meet regularly to review the site activities and make recommendations to EPA and the COE on future management and monitoring of the ODMDS. This SMMP is intended to be flexible and may be modified by the responsible agency for cause. Copies of the SMMP are available either separately or as part of the EIS at the address given above.

F. Site Designation

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Tampa site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The Tampa ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Tampa, Florida vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a ''major'' rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Patrick M. Tobin,

Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(18) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(18) Tampa, Florida; Ocean Dredged Material Disposal Site _____ Region IV.

(i) Location:

27°32′27″ N	83°06′02″ W;
27°32′27″ N	83°03′46″ W;
27°30′27″ N	83°06′02″ W;
27°30′27″ N	83°03′46″ W.

(ii) Size: Approximately 4 square nautical miles.

(iii) Depth: Approximately 22 meters.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Tampa, Florida vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 95–11678 Filed 5–10–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43–CFR Public Land Order 7142

[NV–930–1430–01; NV–56315]

Withdrawal of Public Land for Administrative Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Las Vegas Administrative Site in Clark County.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6507.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), to protect the Bureau of Land Management Las Vegas Administrative Site:

Mount Diablo Meridian

T. 20 S., R. 60 E.,
Sec. 22, SE¼NW¼.

The area described contains 40 acres in Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 1, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–11639 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 95026040–5040–01; I.D. 050595C]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line Gear

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

ACTION: Closure.

SUMMARY: NMFS is closing the entire Bering Sea and Aleutian Islands management area (BSAI) to directed fishing with hook-and-line gear for Pacific cod. This action is necessary because U.S. fishing vessels participating in the Pacific cod hook-and-line fishery in the BSAI have caught the second seasonal bycatch allowance of Pacific halibut.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 7, 1995, until 12 noon, A.l.t., September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The second seasonal 1995 Pacific halibut bycatch mortality allowance for the hook-and-line Pacific cod fishery, which is defined at § 675.21(b)(2)(ii)(A), is 40 metric tons (60 FR 12149, March 6, 1995.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(d), that U.S. fishing vessels participating in the Pacific cod hook-and-line fishery in the BSAI have caught the second seasonal bycatch allowance of Pacific halibut. Therefore, NMFS is closing the entire BSAI to directed fishing with hook-and-line gear for Pacific cod.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from review under E.O. 12866.

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

Dated: May 5, 1995.

Richard W. Surdi,

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

[FR Doc. 95–11578 Filed 5–5–95; 4:24 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 60, No. 91
Thursday, May 11, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AG73

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing three regulatory changes in the nonforeign area cost-of-living allowance (COLA) program. One change would allow us to simplify living-cost surveys and analyses used to determine COLA rates by permitting the survey and analysis of living costs at fewer income levels than the three levels currently used. The second change would clarify the types of housing units to be surveyed. The third change would allow the payment of foreign area post differentials without any corresponding offset for the nonforeign area COLA. OPM is also announcing its intention to change the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands and is inviting comments on this change in timing.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan G. Hearne, (202) 606–2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

Number of Income Levels Surveyed

To determine COLA rates, OPM conducts living-cost surveys in each of the allowance areas and in the Washington, DC, area. Under § 591.205(b) of title 5, Code of Federal Regulations, OPM is required to estimate living costs at ''several income levels.'' Currently, OPM surveys and analyzes living costs at three income levels.

Some COLA recipients have recommended that OPM simplify the COLA methodology by using only one income level. Conceptually, a multiple income level approach should yield a more balanced measurement of living-cost differences. In application, however, the use of multiple income levels requires certain subjective assumptions. Therefore, OPM believes the overall integrity of the model will not be impaired if fewer income levels are used.

In future COLA surveys and analyses, OPM proposes to use a single income level approach. If we adopt this approach, we will use Washington, DC, area Consumer Expenditure Survey (CES) data, provided by the Bureau of Labor Statistics, Department of Labor, to develop category and component expenditure weights for the COLA model. In the past, some COLA recipients have criticized OPM for using nationwide CES data to develop these weights. (Nationwide CES data are the only data known to OPM that provide expenditure information by income level. Detailed DC-area CES data are not available by income level.) By adopting a single income level approach, OPM would be able to use base area expenditure data to develop category and component weights. Since Washington, DC, is the reference or base area for living-cost surveys, use of DC-area derived weights would be consistent with the overall COLA methodology.

Some COLA recipients have suggested that OPM should use weights based on the expenditures of people in the allowance areas. As OPM has stated in previous **Federal Register** notices, OPM is aware of such consumer expenditure information for only two allowance areas: Anchorage, Alaska, and Honolulu, Hawaii. Although it might be possible to use allowance area derived weights for these two areas, OPM would not be able to use similarly derived weights for the nine other allowance areas. For this reason and because of the methodological considerations noted above, OPM proposes to use Washington, DC, area weights.

Types of Housing Units Surveyed

OPM is also proposing to clarify in § 591.205(b)(3) the parenthetical phrase ''(type, size, age),'' which modifies ''standard shelter specifications.'' We believe it is not practical to obtain and compare housing data for each of these three criteria. Since we are modifying this paragraph to accommodate the survey of fewer income levels, we are using this opportunity to clarify the phrase to read ''(type and size)''.

Nonforeign Area COLA and Foreign Post Differentials

OPM is further proposing to eliminate the requirement in § 591.210(d) that an employee's *nonforeign* area COLA be reduced if the employee also receives a *foreign area* post differential and the two payments combined would otherwise exceed 25 percent of basic pay. OPM has received comments from Federal employees and agencies who believe this regulation can create a disincentive for employees in nonforeign allowance areas to accept long-term temporary assignments in foreign areas. OPM agrees. Therefore, we are proposing to eliminate the requirement that an employee's nonforeign area COLA be reduced if the employee also receives a foreign area post differential.

Survey Timing

OPM is also announcing its intention to change the timing of the summer COLA surveys to correspond with the winter COLA surveys. No regulatory change is required to make this change, but OPM invites comments on the proposed change in timing. Currently, OPM surveys Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands (often called ''tropical allowance areas'') in the summer and surveys Alaska in the winter. The Washington, DC, area is surveyed twice—once in the summer and once in the winter.

Some Federal employees have suggested that OPM change the timing of the tropical area surveys to the winter months. OPM reviewed information from the Bureau of Labor Statistics; the Department of Defense Per Diem, Travel, and Transportation Allowance Committee; the Puerto Rico Department of Labor and Human Resources, and the Guam Department of Commerce. With one exception, OPM did not find evidence of significant seasonal variation in prices in the tropical allowance areas or in the Washington, DC, area. The exception was hotel and motel prices, which appear to vary significantly by season in Kauai, Hawaii; Maui, Hawaii; San Juan, Puerto Rico; and the U.S. Virgin Islands. In terms of lodging prices, the ''peak tourist season'' for these areas seems generally to be the months of January through March.

Although lodging prices may vary significantly by season in some areas, the evaluation of available information leads OPM to believe that most other prices do not. Therefore, changing the timing of the tropical area surveys should have little effect on the COLA rates and will address suggestions made by some COLA recipients. In addition, the change should reduce the survey's public burden and cost. If both the tropical areas and the Alaska areas are surveyed in the January through March time frame, Washington, DC, area prices would be surveyed only once—not twice, as is currently the case. This will reduce the reporting burden of the respondents in the DC area and some of the Government's costs associated with the surveys. Therefore, in view of the COLA recipients' suggestions, the potential benefit to the public and the Government, and anticipated minimal impact, OPM plans to conduct living-cost surveys in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands in the first quarter of the calendar year beginning with the next survey, which will be conducted in the first quarter of calendar year 1996.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because the regulation would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of Part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Section 591.205 is amended by removing the word ''several'' in paragraphs (b) and (b)(1) and by adding the words ''one or more'' in its place; in paragraph (b)(3) by removing the second and third sentences and adding in their place the sentence, ''Standard shelter specifications (type and size) and appropriate living communities are selected for survey.''; and in paragraph (c) by revising the third sentence to read as follows:

§ 591.205 Comparative cost index.

* * * * *

(c) * * * When two or more income levels are used in the analyses, the dollar amounts for each income level are weighted into one average amount to reflect the GS grade distribution for the allowance area. * * *

* * * * *

§ 591.210 [Amended]

3. In § 591.210, paragraph (d) is removed; and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), respectively.

[FR Doc. 95–11543 Filed 5–10–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 98

[Docket No. 94–085–2]

Importation of Sheep and Goats and Germ Plasm From Sheep and Goats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations to revise who may issue health certificates for ruminants offered for importation. This amendment would make the regulations more consistent with regard to different animals and countries and would provide for an alternative method of issuing health certificates. We are also proposing to amend the animal importation regulations to revise the conditions for importing sheep and goats. Likewise, we are proposing to amend the animal germ plasm regulations to revise the conditions for importing germ plasm from sheep and goats. These changes appear necessary to prevent the importation of sheep and goats, and germ plasm from sheep and goats, that may be affected with scrapie.

In addition, we are proposing to amend the animal importation regulations to allow imported goats to be quarantined in privately operated quarantine facilities that meet the requirements that now apply to privately operated quarantine facilities for sheep. This amendment would provide uniform rules for the quarantine of animals which pose an identical disease risk.

Lastly, we are proposing to remove from the regulations health certificate requirements with regard to the importation of sheep from New Zealand. Since it appears that sheep from New Zealand pose no greater disease risk than sheep from other countries, it is no longer necessary to require such sheep to meet special health certificate requirements.

COMMENTS: Consideration will be given only to comments received on or before July 10, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–085–2, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 94–085–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, or Dr. Roger Perkins, Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1228. Telephone: (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 govern the importation into the United States of live animals, including sheep and goats, which are regulated in part to prevent those infected with scrapie from transmitting the disease to livestock in the United States. The regulations in 9 CFR part 98 govern the importation into the United States of germ plasm (semen and embryos), including germ plasm from sheep and goats.

Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. Scrapie occurs more often in certain flocks and herds and certain bloodlines, indicating that these animals may be genetically predisposed to become infected with or develop the disease. Scrapie may also be transmitted by breeding and other physical contact between animals.

The disease develops slowly, with an incubation period lasting up to 5 years. The signs which then become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animals' wool, and itching. Affected animals become debilitated and die. There is no diagnostic test for confirming the presence of the disease in a live animal or in germ plasm. Therefore, presence of the disease cannot be detected until an animal becomes clinically ill. There is no known treatment for the disease. The impact of the disease in the United States could increase if spread of the disease is not controlled, or if incidence of the disease increases. For these reasons, our regulations are intended to prevent the importation of animals and germ plasm that could transmit scrapie, while controlling spread of the disease as it exists in the United States and eliminating foci of infection.

The regulations in 9 CFR parts 92 and 98 are designed, in part, to prevent the importation of scrapie-infected animals and germ plasm into the United States. Other regulations concerning scrapie are contained in 9 CFR parts 54 and 79. The regulations in part 54 deal with controlling scrapie in the United States, and include, among other things, the Voluntary Scrapie Flock Certification Program. The regulations in part 79 concern identification of sheep and goats in the United States that are or may be affected with scrapie, and restrict the interstate movement of sheep and goats so as to prevent the interstate spread of scrapie.

In this document we are proposing to amend the regulations in parts 92 and 98, as they pertain to the importation of sheep and goats and of germ plasm from sheep and goats. In our discussion, we refer to the regulations in both these parts of the CFR as ''the regulations.'' Proposed amendments to each part are discussed separately.

Changes to Part 92

Under part 92 regulations, sheep and goats may enter the United States only if they meet certain conditions intended to prevent the importation of sheep and goats that may be affected with scrapie. The regulations have varying and sometimes inconsistent requirements concerning the source of the animals, the length of time animals must have been in scrapie-free locations, and whether they must be accompanied by a health certificate.

We believe the regulations should be amended to better target the animals most likely to be infected with scrapie and not unduly restrict the animals which do not pose a significant threat of disease. We also believe the regulations should be amended to clarify them and make them more uniform. We are therefore proposing various amendments, which are discussed individually below.

Certificates—Issuance

We are proposing to amend the regulations concerning certificates. Under our current regulations, most ruminants imported into the United States must be accompanied by a certificate containing health information. Our existing regulations state that most certificates must be issued by ''a salaried veterinary officer of the national government of the country of origin,'' unless the animal is imported from Mexico, in which case, as an alternative, the certificate can also be issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico (see existing § 92.405(a)). Other sections of the regulations, concerning specific animals from specific countries, contain slightly different requirements. For example, existing § 92.418(a), concerning cattle from Canada, states that a certificate ''issued or endorsed by a salaried veterinarian of the Canadian Government'' is required. Section 92.419(a), concerning sheep and goats from Canada, states that a ''certificate either issued by a salaried veterinarian of the Canadian Government or issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government'' is required. Section 92.423(a), concerning ruminants from Central America and the West Indies, requires a ''certificate of a salaried veterinarian of the national government of the country of origin.''

We believe our regulations should be as consistent as possible. We also believe an alternative method of issuing certificates, such as is available for ruminants imported from Mexico, should be available to importers of ruminants from all countries. Such a change would not affect the risk of spreading animal diseases to the United States. Therefore, we are proposing to amend the certificate requirements in § 92.405(a) to state that certificates must be either: (1) Issued by a salaried veterinary officer of the national government of the country of origin, or, alternatively; (2) issued by a veterinarian accredited or designated by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, thereby representing that the veterinarian issuing the certificate was authorized to do so.

Like the United States, Mexico accredits veterinarians to act on behalf of the national government and perform functions required under these regulations. Other countries ''designate'' veterinarians to perform such work. For this reason, we propose to use both terms in our regulations. In addition, we would amend existing §§ 92.418(a), 92.419(a), 92.423(a), 92.427, 92.428(a), and 92.429 to remove the requirements concerning who may issue a certificate and to refer instead to the requirements in proposed § 92.405(a). As explained above, these amendments would not have any effect on disease risk. These amendments would, however, allow importers more flexibility, and would make the certificate issuance requirements uniform while consolidating them in one section of the regulations.

Health Requirements

Section 92.405(b) contains requirements for certifying the health status, with respect to scrapie, of sheep and goats intended for importation into the United States. We propose to amend § 92.405(b) to require that the certificate accompanying the sheep or goats state that:

(1) The sheep or goats have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years immediately prior to shipment;

(2) None of the female sheep or goats in the flock or herd from which the

sheep or goats will be imported was impregnated, during the 5 years immediately preceding shipment of the sheep or goats to the United States, with embryos or semen from another country other than the United States or from a flock or herd of unknown scrapie status;

(3) The veterinarian issuing the certificate has inspected the sheep or goats in the flock or herd from which the sheep or goats will be imported and found the flock or herd to be free of clinical symptoms of scrapie, and of any other infectious or contagious disease;

(4) None of the sheep or goats in the flock or herd from which the sheep or goats will be imported is the progeny of a sire or dam that has been affected with scrapie or that has produced offspring that have been affected with scrapie; and

(5) As far as it is possible for the veterinarian who inspects the animals to determine, none of the sheep or goats in the flock or herd from which the sheep or goats will be imported has been exposed to scrapie or any other infectious or contagious disease during the 60 days immediately preceding shipment to the United States.

For reasons explained below, these requirements appear necessary to help ensure that animals to be imported into the United States are not infected with scrapie and have not been exposed to scrapie.

Currently, our regulations require that sheep and goats come from a scrapie-free ''district.'' This requirement was designed to ensure that scrapie is not imported through sheep and goats originating in districts where scrapie exists. However, because scrapie is apparently transmitted through close physical contact, it is necessary to determine the health status of the sheep or goats with which the imported animal has had such contact. Therefore, we believe it is unnecessary to require that animals come from a scrapie-free ''district,'' and our proposed regulations focus instead on the animals' flock or herd.

Our regulations also currently require, in different sections, that sheep and goats, to be eligible for importation into the United States, must have been in scrapie-free locations for the preceding 3 years or for the preceding 42 months (e.g., §§ 92.405(b)(iii) and 92.419(a)(3)). However, an animal can be over 4 years of age before it shows symptoms of scrapie. The age when signs first appear is variable. We believe that 5 years, or 60 months, would be adequate to ensure that an animal is not infected.

We are proposing to require that inspections be conducted by the veterinarian who issues the certificate in order to ensure that the animals are inspected by a veterinarian qualified to detect scrapie and other diseases. The proposed requirements concerning the health of the sire and dam, and other progeny of the sire and dam are intended to help ensure that the animals to be imported are not infected with scrapie. In addition, the proposed restriction on the use of embryos or semen from other countries or from flocks or herds of unknown scrapie status is intended to ensure that scrapie has not been introduced into the flock or herd from which the animals are to be imported into the United States.

We are proposing to use both ''flock'' and ''herd'', although the terms are synonymous. This usage is standard in the livestock industry: ''flock'' is used in connection with sheep, and ''herd'' is used in connection with goats. In connection with this proposed amendment, we are also proposing to amend the definition of *herd* in § 92.400. We would make the wording identical to the definition of *flock* in § 54.1, which reads: ''All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.'' We would also add the same definition of *flock* to § 92.400 and to the regulations in part 98. These changes are intended to make our regulations consistent and avoid possible different interpretations. Later in this document, under the heading *Part 98,* we discuss our proposal to add a definition of *flock* to that part.

Additional Requirements

To further ensure that imported sheep and goats do not transmit scrapie to sheep and goats in the United States, we are proposing to add a new set of requirements in proposed § 92.435. Proposed § 92.435 would not apply to Australia, Canada, and New Zealand since we do not believe sheep and goats imported from these countries pose a risk of transmitting scrapie into the United States. Australia and New Zealand are recognized by the United States Department of Agriculture and the Office International des Epizooties (Office of International Epizootics) as scrapie-free countries. Therefore, sheep and goats from these countries pose no risk of importing scrapie into the United States. Although Canada is not free of scrapie, Canada employs reporting and surveillance requirements equivalent to the United States. Such requirements include, but are not limited to: (1) Reporting incidence of scrapie; (2) restriction of animal movement within the country because of scrapie; (3) identification of flocks or herds with scrapie; and (4) depopulation mechanisms for scrapie (i.e., removal of high-risk animals). Canadian regulations are distinctly designed to control the spread of scrapie within that country. Furthermore, APHIS and Canadian animal health authorities closely coordinate scrapie control efforts. Under these circumstances, it appears unnecessary and unproductive to impose the requirements proposed in new § 92.435 upon sheep and goats imported from Australia, Canada or New Zealand.

With certain exceptions, we propose to allow sheep or goats to be imported into the United States only if they meet one of the following two conditions: (1) They are placed in a flock or herd that participates in the Voluntary Scrapie Flock Certification Program and qualifies at the ''Certified'' level; or (2) they are placed in a flock or herd that participates in the Voluntary Scrapie Flock Certification Program and the owner of the flock or herd has agreed in writing to continue to do so until the flock or herd meets the conditions for being ''Certified.''

The Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B, §§ 54.10–54.13 and the ''Uniform Methods and Rules—Voluntary Scrapie Flock Certification Program'' (UM&R))[1] is designed to reduce the incidence and control the spread of scrapie. It was established after several years of discussion and input from industry representatives, members of the public, and other affected and interested parties. Among other things, it establishes an official tamper-proof identification system for sheep and goats in the Program. It also requires that participating animals be regularly inspected and that flock and herd owners keep records of sales and dispersals. The long-term goal of the Program is to reduce the incidence of scrapie in the United States.

Herds and flocks participating in the Voluntary Scrapie Flock Certification Program are classified according to the risk of their being infected with scrapie. Each herd receives an identifying number. From greatest to least risk (referred to also as from lowest to highest level), the classes are: Certifiable Class C, Certifiable Class B, Certifiable Class A, and Certified.

Under proposed § 92.435, prospective importers would have to provide the Volunteer Scrapie Flock Certification

[1] Individual copies of the UM&R may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

Program identification number of the receiving flock or herd as part of their permit application. A permit would not be issued unless the permit application identified a flock or herd to receive the imported animals. Wethers, sheep and goats imported for immediate slaughter, and wild sheep and goats imported to an approved zoological park for exhibition purposes would be exempt from this requirement. These animals, provided they have met all applicable permit, certificate, and other requirements of the regulations, would not present any significant risk of transmitting scrapie.

Under option 1, only animals from flocks or herds in the country of origin which were participating in a program that is equivalent to our Voluntary Scrapie Flock Certification Program, and which were at a level equivalent to the ''Certified'' level, could qualify to be imported. Animals imported into ''Certified'' flocks or herds could be removed from the flocks or herds at any time, at the option of the owner. This is in accordance with the terms of the Voluntary Scrapie Flock Certification Program, which allows participants to leave the program at any time. Animals in ''Certified'' flocks or herds pose little or no risk of transmitting scrapie.

Likewise, under option 2, receiving flocks and herds would have to participate in the Voluntary Scrapie Flock Certification Program. However, owners of receiving flocks and herds would have to agree, in writing, to abide by the requirements of the Program for a minimum of 5 years, or until the flock or herd reached ''Certified'' status. At that time, animals in the flock or herd could be removed to any location. Prior to that, animals could only be removed to other flocks or herds which have met the requirements of § 92.435 for receiving sheep or goats imported under option 2 and which have reached the same certification level or are at a lower level (i.e., are at an equal or greater risk). For example, sheep and goats in receiving herds at the Certifiable Class B level could be moved to other complying herds at the Certifiable Class B or Class C level. They could not be moved to flocks or herds at the Certified or Certifiable Class A level.

Under current requirements of the Voluntary Scrapie Flock Certification Program, such animals would have to remain in a ''Certifiable'' flock or herd until the flock or herd achieved ''Certified'' status, which would vary from 2 years (animals entering Certifiable Class A herds), 4 years (animals entering Certifiable Class B herds), and 5 years (animals entering Certifiable Class C herds). If the classification status of the receiving herd fell after the animals were added to the flock or herd, the animals would have to remain in that flock or herd, or another complying flock or herd of equal or lower status (i.e., greater risk), until the flock or herd achieved ''Certified'' status.

Animals imported under option 2 would have to be placed in Certifiable Class C flocks or herds, unless: (1) They came from flocks or herds that were participating in a program in the country of origin that was equivalent to our Voluntary Scrapie Flock Certification Program; and (2) the flock or herd was participating at a level equivalent to ''Certifiable Class B'' or ''Certifiable Class A.'' The animals would then be placed in either a certifiable Class B or A flock or herd, depending upon the level in the country of origin.

In addition to meeting the requirements of § 92.405, the certificate accompanying all sheep and goats imported under proposed § 92.435, except sheep and goats placed in Certifiable Class C flocks or herds, would have to state that: ''The animals identified on this certificate have been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of these animals to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR Part 54, subpart B.''

The Administrator of the Animal and Plant Health Inspection Service (APHIS) would determine, in advance of the importation, whether a country from which the animals are to be imported has a scrapie control program equivalent to our Voluntary Scrapie Flock Certification Program. The Administrator also would determine, in advance of the importation, the participation status of the flock or herd. Prospective importers who wish to import sheep and goats into flocks or herds in the United States would have to supply certain information to APHIS, at the time they apply for an import permit, in order for the Administrator to make these determinations. We intend to recommend that prospective importers apply for permits no less than 1 month prior to the anticipated date of importation.

The information provided would have to include the name, title, and address of a knowledgeable official in the veterinary services of the country of origin, and details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time these activities have been in effect. We would also require information concerning additions to the herd or flock from which the sheep or goats would be imported during the 5 years immediately preceding shipment to the United States. Additionally, we would require any available data concerning disease incidence, during the 5 years immediately preceding shipment, in the flock or herd from which the sheep or goats would be imported, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock or herd. The prospective importer would also be asked to include information concerning the health of other ruminants, flocks, and herds with which the imported sheep and goats, and with which animals in the sheep or goats' flock or herd, might have had physical contact over the 5 years immediately preceding shipment of the sheep or goats to the United States, and a description of the type and frequency of the physical contact. This information appears necessary to make a determination of the disease status of the flock or herd from which the sheep or goats would be imported. The Administrator could require additional information as needed in specific cases to make a final determination.

The Administrator would determine that a program was equivalent only if the requirements of the program equalled or exceeded the management practices required under our Voluntary Scrapie Flock Certification Program. We have determined, based on experience, that if these practices are followed, they effectively ensure that flocks and herds remain free of scrapie. Sheep and goats imported from flocks and herds that meet equivalent standards are unlikely to have been exposed to scrapie.

Any violation of the import requirements set forth in proposed § 92.435 would be a basis for an enforcement action, including, but not limited to, the removal from the United States of the animals imported.

Miscellaneous Amendments

We also propose to remove § 92.433 and to amend § 92.411. Section 92.433 concerns importation of sheep from New Zealand; § 92.411 contains cross-references to § 92.433 and sheep from New Zealand.

The provisions of current § 92.433 first became effective on June 10, 1988 (see 53 FR 21794–21809, Docket 88–057). At that time, there appeared to be

considerable interest in importing large numbers of sheep from New Zealand. It was anticipated that more sheep would be imported from New Zealand than could be handled at existing Federal quarantine facilities. The regulations were therefore amended to provide for privately operated quarantine facilities for sheep, including sheep from New Zealand, and to add health certification requirements concerning sheep from New Zealand.

We propose to remove the health certification requirements. Not only are large numbers of sheep from New Zealand not currently imported into the United States, but our experience has shown that sheep imported from New Zealand do not pose any disease or pest risk not also posed by sheep from other countries. We therefore believe that requiring sheep from New Zealand to meet special health certification requirements is unnecessary. We are therefore proposing to remove § 92.433. In addition, we would amend § 92.411(b) to remove references to § 92.433 and sheep from New Zealand.

Section 92.411(b)(1) also provides that certain ruminants imported into the United States must be quarantined for not less than 15 days. We propose to amend § 92.411 to require quarantine of not less than 30 days for all ruminants that must be quarantined under the regulations. A minimum of 30 days, which is already the minimum time required for cattle, is necessary to ensure that there is adequate time to complete required testing.

We also propose to amend § 92.434. This section contains requirements for privately operated quarantine facilities for sheep. We would amend this section so that the same requirements would apply to privately operated quarantine facilities for goats. Goats are normally raised under similar conditions and are subject to the same diseases and pests as sheep. They therefore pose the same disease risks as sheep. Under these circumstances, we believe goats can be safely handled in privately operated quarantine facilities that meet the same requirements that apply to privately operated quarantine facilities for sheep.

Changes to Part 98

The regulations in part 98 for importation of embryos from countries free of rinderpest and foot-and-mouth disease are contained in subpart A. These regulations require, among other things, that embryos may be imported if the donor sire and donor dam meet all the requirements they would have to meet under part 92 for a health certificate for importation into the United States (§ 98.3 (d) and (e)). The regulations in part 98 for importation of animal semen are contained in subpart C. These regulations do not contain provisions for health certification of the donor sire, except when the animal semen is imported from a country where rinderpest or foot-and-mouth disease exists (§ 98.34(c)(1)(i)). We are proposing to amend the regulations in part 98, subparts A and C, to add specific requirements concerning the importation of germ plasm from sheep and goats, to prevent importations of germ plasm that could transmit scrapie.

We are proposing that sheep and goat germ plasm from any country be accompanied by a health certificate either issued by a salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian accredited or designated by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, thereby representing that the veterinarian issuing the certificate was authorized to do so.

The certificate would have to state that:

(1) The semen donor, or the embryos' sire and dam, have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years prior to the date of collection of the semen or embryos;

(2) The semen donor, or the embryos' sire and dam, showed no evidence of scrapie at the time of collection of the semen or embryos;

(3) Scrapie has not been suspected nor confirmed in any progeny of the embryos' donor dam; and

(4) The parents of the semen donor, or the embryos' sire and dam, are not, nor were not, affected with scrapie.

These requirements appear necessary to help ensure that imported sheep and goat germ plasm is not affected with scrapie. Although it would be useful to confirm the absence of scrapie in the progeny of semen donors, we are not proposing to require this information. Obtaining it would be impracticable, as semen donors may have thousands of progeny. Consequently, as provided above in (3), we are only requiring the certificate to state such information with regard to the progeny of the embryos' donor dam.

To further ensure that sheep and goat germ plasm imported into the United States does not transmit scrapie to sheep and goats in the United States, we are proposing additional requirements for sheep and goat germ plasm from all countries except Australia, Canada, and New Zealand. As explained above, we do not believe sheep, goats, or germ plasm thereof, pose a risk of transmitting scrapie into the United States if imported from australia, Canada, or New Zealand. Australia and New Zealand are recognized by the United States Department of Agriculture and the Office of International Epizootics as scrapie-free countries. Therefore, germ plasm from sheep and goats in these countries poses no risk of importing scrapie into the United States. Although Canada is not free of scrapie, Canada employs reporting and surveillance requirements equivalent to the United States. Such requirements include, but are not limited to: (1) Reporting incidence of scrapie; (2) restriction of animal movement within the country because of scrapie; (3) identification of flocks or herds with scrapie; and (4) depopulation mechanisms for scrapie (i.e., removal of high-risk animals). Canadian regulations are distinctly designed to control the spread of scrapie within that country. Furthermore, APHIS and Canadian animal health authorities closely coordinate scrapie control efforts. Under these circumstances, it appears unnecessary and unproductive to impose restrictions on the germ plasm of sheep and goats which is imported from Australia, Canada, or New Zealand.

We are proposing to allow the germ plasm to be imported into the United States only if it is transferred into females in a flock or herd in the United States that meets one of the following two conditions: (1) The flock or herd participates in the Voluntary Scrapie Flock Certification Program and qualifies at the ''Certified'' level; or (2) the flock or herd participates in the Voluntary Scrapie Flock Certification Program, and the owner of the flock or herd has agreed in writing to continue to do so until the flock or herd, including all progeny resulting from the imported germ plasm, meets the conditions for being ''Certified.''

Prospective importers would be required to provide the Volunteer Scrapie Flock Certification Program identification number of the receiving flock or herd as part of the application for an import permit for the germ plasm.

Under option 1, only germ plasm from animals in flocks or herds in the country of origin which were participating in a program that is equivalent to our Voluntary Scrapie Flock Certification Program, and which were at a level equivalent to the ''Certified'' level, could qualify to be imported. Animals in the receiving flock or herd, including animals born of females who received

the imported germ plasm, could be removed from the flock or herd at any time, at the option of the owner. This is in accordance with the terms of the Voluntary Scrapie Flock Certification Program, which allows participants to leave the program at any time. Animals in ''Certified'' flocks or herds pose little or no risk of transmitting scrapie.

Germ plasm imported under option 2 would have to be transferred to females in Certifiable Class C flocks or herds, unless: (1) The germ plasm came from animals in a flock or herd that was participating in a program in the country of origin that was equivalent to our Voluntary Scrapie Flock Certification Program; and (2) the flock or herd was participating at a level equivalent to ''Certifiable Class B'' or ''Certifiable Class A.''

Animals in ''Certifiable'' flocks or herds, including all progeny from the imported germ plasm, would have to remain in the flock or herd, or a flock or herd of the same or lower status (i.e., greater risk), until the flock or herd met the conditions for being ''Certified.'' (See the explanation given under ''Changes to Part 92, Additional Requirements'')

In addition, the certificate accompanying all embryos imported under options 1 or 2, except embryos transferred to a female in a flock or herd at the Certifiable Class C level, would have to state that: ''The embryos identified on this certificate are the progeny of a dam and sire that have been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of the embryos to the United States, to be equivalent to [*certification level (of dam or sire) presenting greater risk*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.'' The certificate accompanying all semen imported under options 1 or 2, except semen transferred to a female in a flock or herd at the Certifiable Class C level, would have to state that: ''The semen identified on this certificate has been collected from a sire that has been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of the semen to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

The Administrator would determine, in advance of the importation, whether a country from which the germ plasm is to be imported has a scrapie control program equivalent to our Voluntary Scrapie Flock Certification Program. The Administrator would also determine, in advance of the importation, the participation status of the flock or herd. Prospective importers who wish to import sheep or goat germ plasm into flocks or herds in the United States would have to supply certain information to APHIS at the time they apply for an import permit. We intend to recommend that prospective importers apply for permits no less than 1 month prior to the anticipated date of importation.

The information provided would have to include the name, title, and address of a knowledgeable official in the veterinary services of the country of origin, and the details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time that these activities have been in effect. We would also require information concerning additions to the herd or flock of the embryos' sire and dam, and the flock or herd of the semen donor, during the 5 years preceding collection of the germ plasm. Additionally, we would require any available data concerning disease incidence during the 5 years preceding collection of the germ plasm in the flock or herd of the embryos' sire and dam, and the flock or herd of the semen donor, including, but not limited to, the results of any diagnostic tests, especially histopathology tests, conducted on any animals in the flock or herd. The prospective importer would also be asked to include information concerning the health of other ruminants, flocks, and herds with which the embryos' sire and dam, the semen donor, the animals in the flock or herd of the embryos' sire and dam, and the animals in the flock or herd of the semen donor, might have had physical contact over the 5 years preceding collection of the germ plasm, and a description of the type and frequency of the physical contact. This information appears necessary to make a determination of the disease status of the flock or herd of the embryos' sire and dam, and the flock or herd of the semen donor. The Administrator could require additional information as needed in specific cases to make a final determination.

The Administrator would determine that a program was equivalent only if the requirements of the program equalled or exceeded the management practices required under our Voluntary Scrapie Flock Certification Program. We have determined, based on experience, that if these practices are followed, they effectively ensure that flocks and herds remain free of scrapie. Germ plasm from animals in flocks or herds that meet equivalent standards is unlikely to present a risk of transmitting scrapie.

Any violations of the requirements set forth above for the importation of sheep or goat germ plasm would be a basis for an enforcement action, including, but not limited to, the removal from the United States of the imported germ plasm and any resulting animals.

These amendments are all consistent with amendments we are proposing to part 92, as explained above. We believe our proposed requirements are necessary to help ensure that imported sheep and goat germ plasm and animals resulting from the imported germ plasm, are not affected with scrapie.

Miscellaneous

We are proposing to add a definition of ''flock'' to part 98, subparts A and C. As explained earlier, ''flock'' is used in the industry in connection with sheep, and ''herd'' is used in connection with goats. The regulations in part 98 do not include a definition of ''flock.''

We are also proposing to make minor nonsubstantive, editorial amendments to the regulations in both parts 92 and 98.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Our economic analysis indicates that the proposed amendments would have a positive economic impact on U.S. importers of sheep, goats and their germ plasm, since importation into the United States would be easier. The current requirements surrounding the importation of sheep, goats, and their germ plasm are confusing and considered by many interested parties to be too restrictive.

In 1993, there were 98,230 operations with sheep in the United States. Under Small Business Administration criteria, 99 percent of them are believed to be small entities (having less than $0.5 million in gross annual receipts for domestic producers and fewer than 100 employees for importers). No information is available on the number or U.S. operations with goats.

If the proposed amendments are adopted, additional certification information would be required under the new rules for sheep, goats, and germ plasm. However, no direct charges or user fees would be assessed by APHIS. The cost impact would be minimal.

We anticipate that participation in the Voluntary Scrapie Flock Certification Program will increase if these amendments are adopted, as germ plasm and breeding stock from countries other than Australia, Canada, and New Zealand, would be allowed to be introduced only into Program flocks and herds. Because of the termination by the U.S. government of the subsidy to wool and mohair growers, the expected shift from wool and mohair production to meat production in sheep and goats should create additional demand for breeding stock and germ plasm imports. Wider participation in the Program would better safeguard the U.S. sheep and goat industry against a scrapie outbreak. Participation requires operations to maintain records on their animals, although it is likely that potential importers of breeding animals or germ plasm are already keeping such records. There would be no increase in costs for sheep and goat operations if they participate in the Voluntary Scrapie Flock Certification Program.

In addition, if the proposed rule is adopted: (1) Sheep and goat imports from New Zealand would no longer be required to meet special health certification requirements, and (2) regulations governing privately operated quarantine facilities for imported sheep would apply to privately operated quarantine facilities for imported goats as well. These changes would not have a significant impact on importers or producers. We believe any impact would be positive, in that the changes would facilitate importation of sheep and goats.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94–085–2, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, 9 CFR parts 92 and 98 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.400 would be amended by revising the definition of *herd* and by adding a definition for *flock*, in alphabetical order, to read as follows:

§ 92.400 Definitions.

* * * * *

Flock. A herd.

Herd. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

* * * * *

3. Section 92.405 would be amended as follows:

a. In paragraph (a), by revising the first sentence, up to and including the words ''stating that'', to read as set forth below.

b. By revising paragraph (b) to read as set forth below.

§ 92.405 Certificate for ruminants.

(a) All ruminants intended for importation from any part of the world, except as provided in §§ 92.418(a), 92.419(a), 92.423(c), and 92.428(d) of this part, shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, thereby representing that the veterinarian issuing the certificate was authorized to do so. The certificate shall state that * * *

(b) The certificate accompanying sheep and goats intended for importation from any part of the world shall, in addition to the statements required by paragraph (a) of this section, state that:

(1) The sheep or goats have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years immediately prior to shipment;

(2) None of the female sheep or goats in the flock or herd from which the sheep or goats will be imported was impregnated, during the 5 years immediately preceding shipment of the sheep or goats to the United States, with embryos or semen from another country other than the United States or from a flock or herd of unknown scrapie status;

(3) The veterinarian issuing the certificate has inspected the sheep or goats in the flock or herd from which the sheep or goats will be imported and found the flock or herd to be free of clinical symptoms of scrapie, and of any other infectious or contagious disease;

(4) None of the sheep or goats in the flock or herd from which the sheep or goats will be imported is the progeny of a sire or dam that has been affected with scrapie or that has produced offspring that have been affected with scrapie; and

(5) As far as it is possible for the veterinarian who inspects the animals to determine, none of the sheep or goats in the flock or herd from which the sheep or goats will be imported has been exposed to scrapie or any other infectious or contagious disease during the 60 days immediately preceding shipment to the United States.

* * * * *

4. Section 92.411 would be revised to read as follows:

§ 92.411 Quarantine requirements.

(a) Except for cattle from Central America and the West Indies, and except for ruminants from Canada and Mexico, all ruminants imported into the United States shall be quarantined for not less than 30 days counting from the date of arrival at the port of entry.

(b) Wild ruminants shall be subject, during their quarantine, to such inspections, disinfection, blood tests, or other tests as may be required by the Administrator to determine their freedom from disease.

5. In § 92.418, paragraph (a) would be revised to read as follows:

§ 92.418 Cattle from Canada.

(a) *Health certificates.* Except for cattle imported for immediate slaughter in accordance with § 92.420, cattle intended for importation from Canada shall be accompanied by a certificate issued in accordance with § 92.405(a). The certificate shall state that the cattle have been inspected and found to be free from any evidence of communicable disease and that, as far as can be determined, they have not been exposed to any such disease during the preceding 60 days. Cattle found unqualified upon inspection at the port of entry will be refused entry into the United States.

* * * * *

6. Section 92.419 would be amended by revising paragraph (a) to read as follows:

§ 92.419 Sheep and goats from Canada.

(a) Except for sheep and goats imported for immediate slaughter in accordance with § 92.420, sheep and goats intended for importation from Canada shall be accompanied by a certificate issued in accordance with § 92.405 (a) and (b).

* * * * *

7. Section 92.423 would be amended as follows:

a. In paragraph (a), by revising the first sentence, up to and including the words ''country of origin'', to read as set forth below.

b. By revising paragraph (b) to read as set forth below.

§ 92.423 Ruminants from Central America and the West Indies.

(a) Ruminants intended for importation from Central America and the West Indies, except as provided in paragraph (c) of this section, must be accompanied by a certificate issued in accordance with § 92.405(a) * * *

(b) The certificate accompanying sheep and goats intended for importation from Central America and the West Indies must, in addition to the statements required by paragraph (a) of this section, meet all the requirements of § 92.405(b).

* * * * *

§ 92.427 [Amended]

8. Section 92.427 would be amended as follows:

a. In paragraph (b)(1), by revising the first sentence, up to and including the words ''inspected the said cattle'', to read as set forth below.

b. By revising paragraph (b)(2)(i), up to and including the words ''inspected the cattle'', to read as set forth below.

c. By revising paragraph (b)(2)(ii) to read as set forth below.

d. In paragraph (c)(1), the last sentence, by removing the words '', issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to so do,'' and adding in their place ''issued in accordance with § 92.405(a) and''.

e. By revising paragraph (d)(1), introductory text, to read as set forth below.

f. In paragraph (e)(2), by removing the words ''by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so,'' and adding in their place ''in accordance with § 92.405(a) and''.

§ 92.427 Cattle from Mexico.

* * * * *

(b) *Fever ticks.* (1) Except as provided in paragraph (b)(2), all cattle intended for importation from Mexico, for purposes other than immediate slaughter, shall be accompanied by a certificate issued in accordance with § 92.405(a), and showing that the veterinarian issuing the certificate inspected the cattle * * *

(2) * * *

(i) The cattle shall be accompanied by a certificate issued in accordance with § 92.405(a), and showing that the veterinarian issuing the certificate has inspected the cattle * * *

(ii) The cattle shall be shown by a certificate issued in accordance with § 92.405(a) to have been dipped in a tickicidal dip within 7 to 12 days before being offered for entry.

* * * * *

(d) * * *

(1) Are accompanied by a certificate issued in accordance with § 92.405(a) stating:

* * * * *

9. Section 92.428 would be amended by revising paragraph (a) to read as follows:

§ 92.428 Sheep and goats and wild ruminants from Mexico.

(a) Sheep and goats intended for importation from Mexico shall be accompanied by a certificate issued in accordance with § 92.405 (a) and (b) and stating, if such sheep or goats are shipped by rail or truck, that such animals were loaded into cleaned and disinfected cars or trucks for transportation direct to the port of entry. Notwithstanding such certificate, such sheep and goats shall be detained as provided in § 92.427(a) and shall be dipped at least once in a permitted scabies dip under supervision of an inspector.

* * * * *

§ 92.429 [Amended]

10. In § 92.429, the first sentence would be amended by removing the words ''issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so, stating'' and adding in their place the words ''issued in accordance with § 92.405 (a) and (b) and stating that the veterinarian who issued the certificate has inspected the animals in the herd from which the ruminants will be imported,''.

§ 92.433 [Removed and Reserved]

11. Section 92.433, *Sheep from New Zealand,* would be removed and reserved.

§ 92.434 [Amended]

12. Section 92.434 would be amended as follows:

a. By revising the heading to read ''*Standards for approval of privately operated quarantine facilities for sheep or goats, and handling procedures for the importation of sheep or goats.*''

b. In paragraph (b), introductory text, by redesignating footnote 20 and the reference to it as footnote 16.

c. In paragraph (d)(1), by redesignating footnote 21 and the reference to it as footnote 17.

d. By adding the words ''or goats'' after the word ''sheep'' in the following places:

1. In paragraph (a).
2. In paragraph (b)(2)(i)(B).
3. In paragraph (b)(2)(ii)(A).
4. In paragraph (b)(2)(ii)(B).
5. In paragraph (b)(2)(ii)(D).
6. In paragraph (b)(2)(ii)(E).
7. In paragraph (b)(2)(ii)(F).
8. In paragraph (b)(2)(iii)(G), after only the third time ''sheep'' appears.
9. In paragraph (b)(2)(iii)(K).
10. In paragraph (b)(2)(iii)(L).
11. In paragraph (b)(3)(i)(A)(*5*).
12. In paragraph (b)(3)(ii).
13. In paragraph (b)(3)(iv), in the heading and text.
14. In paragraph (b)(3)(iv)(A), in the first sentence.
15. In paragraph (b)(3)(iv)(B).
16. In paragraph (b)(3)(v).
17. In paragraph (b)(5).
18. In paragraph (c).
19. In paragraph (d)(2).
20. In paragraph (d)(2)(iv).
21. In paragraph (d)(4).

e. by adding the words ''or goat'' after the word ''sheep'' in the following places:

1. In paragraph (b)(2)(iii)(G), after the first and second time ''sheep'' appears.
2. In paragraph (b)(3)(iv)(A), in the second sentence.

f. By removing the word ''sheep-holding'' and adding the words ''sheep- or goat-holding'' in the following places:

1. In paragraph (b)(2)(ii)(K).
2. In paragraph (b)(2)(iii)(J).
3. In paragraph (b)(3)(i)(A).
4. In paragraph (b)(3)(i)(A)(*1*).
5. In paragraph (b)(3)(i)(A)(*3*).
6. In paragraph (b)(3)(ii).

13. A new § 92.435 would be added to read as follows:

§ 92.435 Sheep and goats from countries other than Australia, Canada, and New Zealand.

(a) Except for sheep and goats from Australia, Canada, or New Zealand, sheep and goats may only be imported into the United States if they meet all applicable provisions of this subpart and one of the following conditions:

(1) The animals are wethers, or sheep or goats imported for immediate slaughter, or wild sheep or goats imported for exhibition purposes to an approved zoological park in accordance with § 92.404(c); or

(2) The animals are placed in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and qualifies as a ''Certified'' flock or herd; or

(3) The animals are placed in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B), and the flock or herd owner must agree, in writing, to maintain the flock or herd in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock or herd would qualify as a ''Certified'' flock or herd.

(b) Sheep or goats may be imported under paragraphs (a)(2) or (a)(3) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock or herd as part of the application for an import permit.

(c) Sheep and goats may be imported under paragraph (a)(2) of this section only if they come from a flock or herd in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flock or herd has been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(d) Sheep and goats may be imported under paragraph (a)(3) of this section only if they are placed in a Certifiable Class C flock or herd participating in the Voluntary Scrapie Flock Certification Program; *Except,* that if the sheep and goats come from a flock or herd in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the sheep and goats may be placed in a herd or flock in the United States which would be classified at a level equivalent to or lower (i.e., at a greater risk) than the certification level, as determined by the Administrator, of the flock or herd from which the sheep or goats are to be imported.

(e) Sheep and goats imported under paragraph (a)(3) of this section must be monitored for scrapie disease until the flock or herd qualifies as a ''Certified'' flock or herd.

(f) Except for imported sheep and goats being placed in Certifiable Class C flocks or herds, the certificate accompanying sheep or goats imported under paragraphs (a)(2) or (a)(3) of this section must contain the following statement: ''The animals identified on this certificate have been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of these animals to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the flock or herd from which the animals are to be imported participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at what level the source flock or herd should be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time such activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding shipment to the United States, to the flock or herd from which the sheep and goats will be imported;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding shipment to the United States, in the flock or herd from which the sheep or goats are to be imported, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock or herd;

(v) Information concerning the health, within the 5 years immediately preceding shipment to the United States, of other ruminants, flocks, and herds with which the imported sheep and goats, and with which animals in the sheep or goats' flock or herd might have had physical contact, and a description of the type and frequency of such physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

14. The authority citation for part 98 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

15. Section 98.2 would be amended by adding definitions for *flock* and *herd*, in alphabetical order, to read as follows:

§ 98.2 Definitions.

* * * * *

Flock. A herd.

Herd. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

* * * * *

16. In § 98.5, paragraphs (a), (b), (c), (d), and (e) would be redesignated as paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5); the introductory text would be designated as paragraph (a) and revised to read as follows; and a new paragraph (b) would be added to read as follows:

§ 98.5 Health certificate.

(a) Except as provided in subpart B of this part, an animal embryo shall not be imported into the United States unless it is accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, thereby representing that the veterinarian issuing the certificate was authorized to do so. The certificate shall state:

* * * * *

(b) The certificate accompanying sheep or goat embryos intended for importation from any part of the world shall, in addition to the statements required by paragraph (a) of this section, state that:

(1) The embryos' sire and dam have not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years prior to the date of collection of the embryos;

(2) The embryos' sire and dam showed no evidence of scrapie at the time the embryos were collected;

(3) Scrapie has not been suspected nor confirmed in any progeny of the embryos' donor dam; and

(4) The parents of the embryos' sire and dam are not, nor were not, affected with scrapie.

17. In part 98, subpart A, a new § 98.10a would be added to read as follows:

§ 98.10a Embryos from sheep and goats in countries other than Australia, Canada, and New Zealand.

(a) Except for embryos from sheep and goats in Australia, Canada, or New Zealand, embryos from sheep and goats may only be imported into the United States if they comply with all applicable provisions of this subpart and one of the following conditions:

(1) The embryos are transferred to females in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and qualifies as a ''Certified'' flock or herd; or

(2) The embryos are transferred to females in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and the flock or herd owner must agree, in writing, to maintain the flock or herd, and all progeny resulting from embryos imported in accordance with this section, in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock or herd, including all progeny resulting from embryos imported in accordance with this section, would qualify as a ''Certified'' flock or herd.

(b) Sheep or goat embryos may be imported under paragraphs (a)(1) or (a)(2) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock or herd as part of the application for an import permit.

(c) Sheep and goat embryos may be imported under paragraph (a)(1) of this section only if they are the progeny of a dam and sire that are part of flocks or herds in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flocks or herds have been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(d) Sheep and goat embryos may be imported under paragraph (a)(2) of this section only if they are transferred to animals in a Certifiable Class C flock or herd participating in the Voluntary Scrapie Flock Certification Program: *Except*, that if the embryos are the progeny of a dam and sire whose flock or herd in the country of origin participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the embryos may be placed in a herd or flock in the United States which would be classified at a level equivalent to or lower (i.e., at a greater risk) than the certification level, as determined by the Administrator, of either the flock or herd of the dam or the flock or herd of the sire, whichever one presents the greater risk.

(e) The flock or herd to which the sheep and goat embryos are transferred pursuant to paragraph (a)(2) of this section, must be monitored for scrapie disease until the flock or herd, and all progeny resulting from the embryos imported in accordance with this section, qualifies as a ''Certified'' flock or herd.

(f) Except for sheep and goat embryos being placed in Certifiable Class C flocks or herds, the certificate accompanying sheep or goat embryos imported under paragraphs (a)(1) or (a)(2) of this section must contain the following statement: ''The embryos identified on this certificate are the progeny of a dam and sire that have been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of these embryos to the United States, to be equivalent to [*certification level (of dam or sire) presenting greater risk*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the flock or herd of the embryos' dam and sire participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at what level the source flock or herd would be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit, no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time such activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding collection of the embryos, to the flock or herd of the embryos' sire and dam;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding collection of the embryos, in the flock or herd of the

embryos' sire and dam, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock(s) or herd(s);

(v) Information concerning the health, within the 5 years immediately preceding collection of the embryos, of other ruminants, flocks, and herds with which the embryos' sire and dam and the flock or herd of the embryos' sire and dam might have had physical contact, and a description of the type and frequency of the physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

(g) All progeny resulting from embryos imported under this section are subject to the requirements of 9 CFR part 54 and all other applicable regulations.

18. In part 98, subpart C, § 98.30 would be amended by adding definitions for *flock* and *herd*, in alphabetical order, to read as follows:

§ 98.30 Definitions.

* * * * *

Flock. A herd.

Herd. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

* * * * *

19. In § 98.35, paragraph (c) would be revised and a new paragraph (e) would be added to read as follows:

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(c) All animal semen intended for importation into the United States shall be accompanied by a health certificate issued by a full-time salaried veterinary officer of the national government of the country of origin, or issued by a veterinarian designated or accredited by the national government of the country of origin and endorsed by a full-time salaried veterinary officer of the national government of the country of origin, thereby representing that the veterinarian issuing the certificate was authorized to do so.

* * * * *

(e) The certificate accompanying sheep or goat semen intended for importation from any part of the world shall, in addition to the statements required by paragraph (d) of this section, state that:

(1) The semen donor has not been in any flock or herd nor had contact with sheep or goats which have been in any flock or herd where scrapie has been diagnosed or suspected during the 5 years prior to the date of collection of the semen;

(2) The semen donor showed no evidence of scrapie at the time the semen was collected; and

(3) The parents of the semen donor are not, nor were not, affected with scrapie.

§ 98.36 [Amended]

20. In § 98.36, paragraph (a), introductory text, would be amended by adding the words ''is not a sheep or goat and'' immediately before the colon.

21. A new § 98.37 would be added to read as follows:

§ 98.37 Semen from sheep and goats in countries other than Australia, Canada, and New Zealand.

(a) Except for semen from sheep and goats in Australia, Canada, and New Zealand, semen from sheep and goats may only be imported into the United States if it complies with all applicable provisions of this subpart and one of the following conditions:

(1) The semen is transferred to females in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B) and qualifies as a ''Certified'' flock or herd; or

(2) The semen is transferred to females in a flock or herd in the United States that participates in the Voluntary Scrapie Flock Certification Program (see 9 CFR part 54, subpart B), and the flock or herd owner must agree, in writing, to maintain the flock or herd, and all progeny resulting from semen imported in accordance with this section, in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock or herd, including all progeny resulting from semen imported in accordance with this section, would qualify as a ''Certified'' flock or herd.

(b) Sheep or goat semen may be imported under paragraphs (a)(1) or (a)(2) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock or herd as part of the application for an import permit.

(c) Sheep or goat semen may be imported under paragraph (a)(1) of this section only if it comes from a donor animal in a flock or herd in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flock or herd has been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(d) Sheep or goat semen may be imported under paragraph (a)(2) of this section only if it is transferred to animals in a Certifiable Class C flock or herd participating in the Voluntary Scrapie Flock Certification Program; *Except*, that if the semen comes from a donor animal whose flock or herd in the country of origin participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the semen may be used in a herd or flock in the United States which would be classified at a level equivalent to or lower (i.e., at greater risk) than the certification level, as determined by the Administrator, of the flock or herd of the donor animal.

(e) The flock or her to which the sheep and goat semen is transferred pursuant to paragraph (a)(2) of this section, must be monitored for scrapie disease until the flock or herd, and all progeny resulting from the semen imported in accordance with this section, qualifies as a ''Certified'' flock or herd.

(f) Except for sheep and goat semen being placed in Certifiable Class C flocks or herds, the certificate accompanying the sheep or goat semen imported under paragraphs (a)(1) or (a)(2) of this section must contain the following statement: ''The semen identified on this certificate has been collected from a sire that has been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock or herd which had been determined by the Administrator, APHIS, prior to the exportation of the semen to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the donor animal's flock or herd participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at what level the source flock or herd would be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit, no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time these activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding collection of the semen, to the flock or herd of the semen donor;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding collection of the semen in the donor animal's flock or herd, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock or herd;

(v) Information concerning the health, within the 5 years immediately preceding collection of the semen, of other ruminants, flocks, and herds with which the donor animal and the donor animal's flock or herd might have had physical contact, and a description of the type and frequency of the physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

(g) All progeny resulting from semen imported under this section are subject to the requirements of 9 CFR part 54 and all other applicable regulations.

Done in Washington, DC, this 3rd day of May 1995.

George O. Winegar,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–11561 Filed 5–10–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA01

Releasing Information

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a proposed rule to set forth the basic policies of OFHEO regarding information it maintains and the procedures for obtaining access to such information. The rule contains regulations of OFHEO implementing the Freedom of Information Act (FOIA) and establishes a schedule of fees which will be charged for the processing of document requests under the FOIA. In addition, the proposed rule sets forth procedures to be followed with respect to testimony and the production of documents in legal proceedings in which OFHEO is not a named party as well as procedures for service of process upon OFHEO in any legal proceeding.

DATES: Written comments on the proposed rule must be received by July 10, 1995.

ADDRESSES: All comments concerning the proposed rule should be addressed to Anne E. Dewey, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the same location.

FOR FURTHER INFORMATION CONTACT: Christine C. Dion, Associate General Counsel, 1700 G Street NW., Fourth Floor, Washington, DC 20552 (202/414–3800) (not a toll-free number).

SUPPLEMENTARY INFORMATION: Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*, established OFHEO as an independent office within the Department of Housing and Urban Development. The primary function of OFHEO is to ensure the financial safety and soundness and the capital adequacy of the nation's two largest housing finance institutions—the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). OFHEO proposes to adopt this rule to explain matters relating to the availability of information generated and maintained by OFHEO and to set forth procedures for accessing such information. The proposed rule, among other things, implements the Freedom of Information Act. The rule establishes procedures by which the public may inspect OFHEO records, request and obtain copies of materials, and appeal denials of such requests. This rule includes a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule conforms to guidelines published in the **Federal Register** by the Office of Management and Budget on March 27, 1987 (52 FR 10012). The proposed rule also implements Executive Order 12600 by providing predisclosure notification procedures for confidential commercial or financial information.

In addition, the proposed rule sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of OFHEO in legal proceedings in which OFHEO is not a named party. The proposed rule establishes the procedures for effecting service upon OFHEO in any legal process, including service of process by litigants seeking access to OFHEO records.

SECTION-BY-SECTION ANALYSIS

I. Information and Records Generally

Subpart A of the proposed rule contains general provisions relating to disclosure of information and records in the possession of OFHEO. Section 1710.1 sets forth procedures for disclosure of such materials by OFHEO employees. Section 1710.2 provides that the disclosure requirements of the FOIA and the proposed rule apply to all OFHEO records. It also provides that if another statute sets forth procedures for the disclosure of specific types of records, OFHEO will process a request for those records in accordance with the procedures that apply to those specific records. However, in cases where the record is not required to be released under the specific procedures set forth in another statute, OFHEO will consider the request under the FOIA. In addition, section 1710.2 describes the relationship between the FOIA and the Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, and explains that records that are available through an established distribution system should preferably be obtained through that system, rather than pursuant to the provisions of the FOIA.

Section 1710.3 of subpart A contains a general provision providing that reports of examinations prepared by OFHEO are the property of OFHEO and may only be disclosed in accordance with this section or with the prior written consent of the Director of OFHEO. The section further provides that any unauthorized use or disclosure of such reports may be subject to penalties under federal law. Section 1710.3 explains that the Director will make available to each Enterprise a copy of the examination report of that Enterprise and that the Enterprise may not disclose or use such reports except as expressly permitted by the Director. The section also explains that the Director has discretion to make the examination reports available for the confidential use of governmental

agencies responsible for investigating and enforcing applicable laws.

II. Availability of OFHEO Records

Subpart B implements the FOIA, 5 U.S.C. 552, and describes (1) The types of OFHEO records available to the public upon request, (2) the kinds of information exempt from disclosure, (3) the indexing procedures for OFHEO records that are available to the public, (4) the format for requesting records under the FOIA, (5) the procedures for responding to FOIA requests, (6) the format of the responses, (7) the procedures for appealing denials of requests, and (8) the time limits to which OFHEO will adhere in processing FOIA requests and appeals. Subpart B also contains OFHEO's procedures for disclosure of business information provided to OFHEO.

Section 1710.11 describes OFHEO records that are available pursuant to 5 U.S.C. 552(a) for public inspection and copying at the offices of OFHEO. These records include any final orders and agreements made in adjudication of cases, which are enumerated in section 1710.41 of the proposed rule. Section 1710.11 also describes the classes of OFHEO records that are exempt from disclosure. These exemptions follow the exemptions provided in the FOIA. These exemptions permit OFHEO's Freedom of Information Officer to withhold a requested record in certain circumstances. In deciding whether to withhold material, consideration will be given as to whether another statute, Executive order, or regulation prohibits release or, if not, whether it would be in the public interest to withhold it.

Section 1710.12 sets forth the indexing requirements as to any records OFHEO maintains which are required to be indexed under 5 U.S.C. 552(a)(2). The section contains the Director's determination that, because of the lack of requests to date for records required to be indexed, such indexes do not need to be published quarterly.

Section 1710.13 contains rules of procedure for requesting records under the FOIA. Requests for OFHEO records should be in writing and addressed to OFHEO's Freedom of Information Officer. Each request should contain sufficient detail to allow the Freedom of Information Officer to locate the record with a reasonable amount of effort. If a request is too broad or too vague to allow the record to be located with a reasonable amount of effort, OFHEO will assist the requester in revising the request as appropriate.

Procedures for OFHEO's response to FOIA requests are explained in sections 1710.14 and 1710.15. OFHEO's Freedom of Information Officer has been designated responsibility in proposed section 1710.14 to grant or deny such requests and to determine fees. Paragraph (b) of the section also provides that OFHEO will ordinarily refer FOIA requests for records that originated in another government agency to that agency for response. In such cases, the requester will be notified of the referral. As specified in paragraph (c) of section 1710.14, in cases where a requester asks for a record in a format that does not currently exist, OFHEO will provide whatever records reasonably respond to the request, but will not create a new record in order to respond. Moreover, under paragraph (d) of section 1710.14, if a record cannot be located from the information supplied, the Freedom of Information Officer will so inform the requester.

Proposed section 1710.15 requires the Freedom of Information Officer to notify a requester in writing of the determination to grant a request in whole or in part. The response must describe the manner in which the record will be disclosed and inform the requester of any fees that will be charged. Similarly, the Freedom of Information Officer's determination to deny a request in whole or in part must be made in writing and signed by OFHEO's Freedom of Information Officer. Consistent with section 1710.15(b) as proposed, any denial is to contain a brief statement describing the basis of the denial, including the FOIA exemption(s) that is relied upon. Moreover, the denial must state that the requester has a right to appeal and must explain OFHEO's appeal procedures.

OFHEO's appeal procedures are set forth in section 1710.16 of the proposed rule. Denials may be appealed to OFHEO's Freedom of Information Appeals Officer within 30 days after receipt of a denial letter. Appeals must be in writing and must contain reasons for, or arguments in support of, disclosure. OFHEO will respond to appeals in writing and will specify the reason for affirming any original denial. When a denial is reversed in whole or in part, the request for disclosure will be processed promptly. The decision on appeal is OFHEO's final action on a request. Requesters have a right to seek judicial review of the final action under 5 U.S.C. 552(a)(4).

Section 1710.17 of the proposed rule describes the time limits to which OFHEO will adhere in responding to initial requests and appeals of denials of requests. The time limits applicable to either may be extended up to a total of ten days (excluding weekends and legal holidays) in unusual circumstances, *i.e.*, when the records are in a location other than the main office of OFHEO, the request is for a large number of records, or OFHEO must consult with another agency or with various offices within OFHEO.

Proposed section 1710.18 contains OFHEO's procedures for disclosure of business information provided to OFHEO. Generally, the section would require submitters of business information to designate those portions of their submissions they believe may be exempt from disclosure under Exemption 4 of the FOIA. If records so designated are subsequently requested under the FOIA, in most cases the submitter will have an opportunity to provide a written objection to disclosure. The written objection must demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential and why disclosure would cause competitive harm. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter for the purpose of objecting to disclosure may itself be subject to disclosure under the FOIA.

III. Fees for Provision of Information

Subpart C of the proposed rule contains provisions relating to the fees which will be assessed for services rendered in responding to and processing requests for records under the FOIA. Fees are to be based on the type of service provided, *e.g.*, search, review, and duplication, as well as the category of person making the request, *e.g.*, commercial user, educational institution, and news media. Generally, commercial requesters will pay the full amount of permissible fees relating to record search, review and duplication. Educational and noncommercial scientific institutions and the news media will pay only duplication costs, excluding charges for the first 100 pages. All other requesters will be assessed fees for search and duplication, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. As a matter of policy, OFHEO will not charge fees for any individual request if the cost of collecting a fee would equal or exceed the fee itself.

Additionally, under the proposal, OFHEO may furnish records without charge or at a reduced charge where disclosure of the requested information is in the public interest because it is likely to contribute significantly to

public understanding of the operations or activities of the federal government and is not primarily in the commercial interest of the requester. In making this determination, OFHEO will apply the six analytical factors set out by the Department of Justice in its advisory memorandum on making FOIA fee waiver determinations. The memorandum, titled ''New FOIA Fee Waiver Policy Guidance,'' was issued by the Assistant Attorney General for Legal Policy to the heads of all federal agencies on April 2, 1987. The factors enumerated in the memorandum have been incorporated in proposed section 1710.24.

Section 1710.25 as proposed contains a number of miscellaneous provisions concerning fees, including a requirement that requesters pay in advance fees likely to exceed $250.00. However, advance payment may not be required in the case of a requester who has a history of prompt payment. This section also includes a provision permitting interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim.

IV. Testimony and Production of Documents in Legal Proceedings in Which OFHEO Is Not a Named Party

Subpart D prescribes the policies and procedures of OFHEO with respect to the testimony of official matters and production of official documents of OFHEO in legal proceedings in which OFHEO is not a named party. The subpart does not affect the rights and procedures governing public access to OFHEO documents pursuant to the FOIA or the Privacy Act.

Section 1710.31 sets forth the purpose of subpart D which is to (1) ensure the confidentiality of OFHEO documents and information, (2) maintain the impartial position of OFHEO in litigation in which OFHEO is not a named party, (3) conserve the time of OFHEO employees for their official duties, and (4) enable the Director to determine when to authorize testimony and the release of documents in legal proceedings in which OFHEO is not a named party.

Section 1710.32 contains the definitions applicable to the subpart. Section 1710.33 provides the general policy of OFHEO with respect to testimony and production of documents in any legal proceeding in which OFHEO is not a named party, i.e., OFHEO employees, including former OFHEO employees, are prohibited from disclosing any information obtained in or resulting from their official capacities unless the Director determines in writing that disclosure would be in the best interest of OFHEO or in the public interest. Section 1710.33 further provides that, prior to any authorized testimony or release of official documents, the requesting party must obtain a protective order from the court before which the action is pending to preserve the confidentiality of the testimony or documents subsequently produced.

Section 1710.34 describes the procedures to which OFHEO will adhere to enable the Director to determine whether to grant requests for testimony concerning official matters or disclosure of official documents. Section 1710.35 provides that the scope of permissible testimony by an OFHEO employee is limited to that set forth in the written authorization granted that employee by the Director. The section also prohibits OFHEO employees from giving opinion testimony in any legal proceeding to which OFHEO is not a party. OFHEO believes that the use of OFHEO employees to give opinion testimony would hamper OFHEO's ability to carry out its statutory responsibilities and would impose an administrative burden on OFHEO's staff.

Section 1710.36 describes the manner in which authorized testimony of OFHEO employees will be made available. The section provides that the testimony will be available only through depositions or written interrogatories. A party requesting authorized testimony must serve a subpoena on the OFHEO employee in accordance with applicable federal or state rules of procedure, with a copy of the subpoena sent by registered mail to OFHEO's General Counsel. Upon completion of an authorized deposition at OFHEO's office, a copy of the transcript of the testimony shall be furnished at the requesting party's expense to OFHEO's General Counsel.

Section 1710.37 describes the manner in which official documents authorized for release by the Director will be produced. Certified or authenticated copies of OFHEO documents authorized by the Director to be released under subpart D will be provided upon request.

Section 1710.38 describes the fees charged for documents produced by OFHEO in connection with requests under subpart D. Unless waived or reduced, OFHEO will charge for searches for documents, duplication of documents, and certification or authentication of documents as detailed in the section.

Section 1710.39 provides that an OFHEO employee served with a demand in a legal proceeding, which requires his or her attendance as a witness concerning OFHEO or the production of official documents or information, must notify OFHEO's General Counsel of such service. The notification would assist the General Counsel in determining whether the individual should be authorized to testify or the material requested should be made available. When authorization to testify or produce documents is not granted by the Director, OFHEO's General Counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in subpart D and also shall advise the party or the court that the OFHEO employee upon whom the demand has been made is prohibited from testifying or producing the documents without the Director's prior approval.

Proposed section 1710.39 also provides that any OFHEO employee who has official information that has not been approved for disclosure must respond to a legal process by attending at the time and place required. The individual shall respectfully decline to disclose the information on the basis of subpart D of the proposed rule. If a court orders disclosure contrary to the Director's instructions, the OFHEO employee shall continue to decline to disclose the information and shall advise OFHEO of the order for such action as OFHEO may deem appropriate. Notably, a determination by OFHEO to comply or not to comply with any demand shall not constitute any ground for noncompliance and OFHEO may oppose any demand on any legal basis independent of its determination under subpart D of the proposed rule.

Section 1710.40 pertains to persons who are not employees or former employees of OFHEO. Non-OFHEO persons may not disclose reports generated by OFHEO, or any related documents, to any person without the Director's prior written consent. Moreover, any non-OFHEO person served with a demand in a legal proceeding requiring that person to produce OFHEO documents or to testify with respect thereto, must (1) notify OFHEO's General Counsel regarding the service, (2) object to production of such documents or information contained therein on the basis that the documents are the property of OFHEO and cannot be released without OFHEO's consent, and (3) note that the documents' production must be sought from OFHEO following procedures set forth in proposed sections 1710.34(b) and (c)

and 1710.37(b) of subpart D of the proposed rule.

Section 1710.41 of the proposed rule enumerates documents that OFHEO shall make available to the public. The records include any final orders or agreements made in adjudication of cases and transcripts of public hearings on the record with respect to any action of the Director or notice of charges issued by the Director. The section does not authorize the withholding of any information from, or prohibit the disclosure of any information to, Congress.

V. Rules and Procedures for Service Upon OFHEO

Section 1710.51 provides that, with limited exceptions, any legal process on OFHEO must be issued and served upon OFHEO's General Counsel and any OFHEO personnel named in the caption of the documents. Service may be effected by either personal delivery or by registered or certified mail to the General Counsel at OFHEO's office.

Regulatory Impact

Executive Order 12606, The Family

The General Counsel, as the designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under Executive Order 12606.

Executive Order 12612, Federalism

The General Counsel, as Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

In promulgating this proposed rule, the Office of Federal Housing Enterprise Oversight has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has been reviewed by the Office of Management and Budget under that Executive Order.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel has certified that this proposed rule will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Confidential business information, Freedom of information.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight proposes to amend Chapter XVII of Title 12 of the Code of Federal Regulations by adding Part 1710 to read as follows:

PART 1710—RELEASING INFORMATION

Subpart A—Information and Records Generally

Sec.

Subpart B—Availability of Records of the Office of Federal Housing Enterprise Oversight

Subpart C—Fees for Provision of Information

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which the Office of Federal Housing Enterprise Oversight is Not a Named Party

Subpart E—Rules and Procedures for Service Upon the Office of Federal Housing Enterprise Oversight

Authority: 5 U.S.C. 552; 12 U.S.C. 4513, 4526, 4639; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

Subpart A—Information and Records Generally

§ 1710.1 General rule.

Except as necessary in performing official duties or as authorized by §§ 1710.11 through 1710.39 of this part, no employee of the Office of Federal Housing Enterprise Oversight (OFHEO) shall in any manner disclose or permit disclosure of any information in the possession of OFHEO that is confidential or otherwise of a non-public nature, including information regarding OFHEO or the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).

§ 1710.2 Applicability.

(a) *General.* The Freedom of Information Act (FOIA) and the regulations in this part apply to all OFHEO records. However, if another law sets forth procedures for the disclosure of specific types of records, OFHEO will process a request for those records in accordance with the procedures that apply to those specific records. If there is any record which is not required to be released under those provisions, OFHEO will consider the request under the FOIA and the regulations in this part.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OFHEO system of records will be processed under the provisions of the Privacy Act as well as the FOIA. OFHEO will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to

that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale, *e.g.*, by the Superintendent of Documents or the Government Printing Office, or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OFHEO will first refer the requester to those sources. Nevertheless, if the requester is not satisfied with the alternative sources, OFHEO will process the request under the FOIA.

§ 1710.3 Office of Federal Housing Enterprise Oversight examination reports.

(a) *General.* Reports of examinations prepared by OFHEO may be disclosed only in accordance with this part or with the prior written consent of the Director of OFHEO. No person, agency, or authority, or director, officer, employee, or agent thereof, shall disclose any such report or information contained therein in any manner except as authorized in accordance with this subpart. The report of examination is the property of OFHEO and any unauthorized use or disclosure of such report may be subject to the penalties provided in 18 U.S.C. 641.

(b) *Enterprises.* The Director makes available to each Enterprise a copy of OFHEO's report of examination of such Enterprise. The report of examination is the property of OFHEO and is loaned to the Enterprise for its confidential use only. Under no circumstance shall the Enterprise or any director, officer, employee, or agent thereof, make public or disclose in any manner the report of examination or any portion of the contents thereof to any person or organization not officially connected with the Enterprise as director, officer, employee, attorney, auditor, or independent auditor. Any other disclosure or use of this report except as expressly permitted by the Director may be subject to the penalties of 18 U.S.C. 641.

(c) *Government agencies.* The Director of OFHEO may make available reports of examination for the confidential use of federal agencies responsible for investigating or enforcing applicable federal laws.

Subpart B—Availability of Records of the Office of Federal Housing Enterprise Oversight

§ 1710.11 Official records of the Office of Federal Housing Enterprise Oversight.

(a) OFHEO shall, upon a written request for records which reasonably describes the information or records and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person for inspection and/or copying, except as provided in paragraph (d) of this section.

(b) *Records available.* OFHEO records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying are maintained at OFHEO's offices located at 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The records include—

(1) Any final opinions, as well as orders made in adjudication of cases as set forth in § 1710.41 of this part;

(2) Any statements of policy and interpretation that have been adopted by OFHEO and are not published in the **Federal Register**;

(3) Any administrative staff manuals and instructions to staff that affect a member of the public, and which are not exempt from disclosure under 5 U.S.C. 552(b); and

(4) Any current indexes providing identifying information for the public as to any matter which OFHEO has issued, adopted or promulgated, and is required by 5 U.S.C. 552(a)(2) to be made available or published.

(c) *Copying.* The cost of copying information available in the offices of OFHEO shall be imposed on a requester in accordance with the provisions of subpart C of this part.

(d) *Records not available.* Except as otherwise provided in this part, or as may be specifically authorized by the Director of OFHEO, the following information and records, or portions thereof, are not available to the public—

(1) Any record, or portion thereof, which is

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Is in fact properly classified pursuant to such Executive order;

(2) Any record, or portion thereof, related solely to the internal personnel rules and practices of OFHEO;

(3) Any record, or portion thereof, which is specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential;

(5) Any matter contained in inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with OFHEO;

(6) Any information contained in personnel and medical files and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Any records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an Enterprise regulated and examined by OFHEO which furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Any matter that is contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of OFHEO; or

(9) Any geological and geophysical information and data, including maps, concerning wells.

(e) Even if an exemption described in paragraph (d) of this section may be reasonably applicable to a requested record, or portion thereof, OFHEO may

elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof. The fact that the exemption is not applied by OFHEO to any requested record, or portion thereof, has no precedential significance as to the application or nonapplication of the exemption to any other requested record, or portion thereof, no matter when the request is received.

(f) Any reasonably segregable portion of a record shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subpart.

(g) To the extent necessary to prevent an invasion of personal privacy, the Director may delete identifying details from a document described in paragraph (b) of this section. In each case of such deletion, the justification therefore will be clearly explained in writing.

(h) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

§ 1710.12 Index identifying information for the public.

(a) OFHEO will maintain and make available for public inspection and copying a current index of materials available at the office of OFHEO which are required to be indexed under 5 U.S.C. 552(a)(2).

(b) Because of the lack of requests to date for material required to be indexed, the Director of OFHEO has determined that it is unnecessary and impracticable to publish quarterly, or more frequently, and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). However, OFHEO will provide a copy of such indexes to a member of the public upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

§ 1710.13 Requests for records.

(a) *Addressing requests.* Requests for records in the possession of OFHEO shall be made in writing. The envelope and the request both should be clearly marked ''FOIA Request,'' and addressed to: Freedom of Information Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. A request improperly addressed will be deemed not to have been received for purposes of the ten-day time period set forth in § 1710.17(a) of this subpart until it is received, or would have been received with the exercise of due diligence by OFHEO personnel, by the Freedom of Information Officer. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in the office of OFHEO.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable OFHEO personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of OFHEO operations.

(1) Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the Freedom of Information Officer determines that a request does not reasonably describe the records sought, he or she will either advise the requester what additional information is needed to locate the record, or otherwise state why the request is insufficient. The Freedom of Information Officer will also extend to the requester an opportunity to confer with OFHEO personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

§ 1710.14 Responses to requests.

(a) *Response to initial request.* The Freedom of Information Officer of OFHEO is authorized to grant or deny any request for a record and to determine appropriate fees.

(b) *Referral to another agency.* When a requester seeks records that originated in another federal government agency, OFHEO will normally refer the request to the other agency for response. If OFHEO refers the request to another agency, it will notify the requester of the referral. A request for any records classified by some other agency will be referred to that agency for response.

(c) *Creating records.* If a person seeks information from OFHEO in a format that does not currently exist, OFHEO will not ordinarily reformat the information for the purpose of responding to the request. OFHEO's Freedom of Information Officer will advise the requester that OFHEO does not have the record in the format sought, but will provide records in existing formats that would reasonably respond to the request. Additionally, OFHEO will not develop a new record of information to satisfy a request.

(d) *Record cannot be located.* If a requested record cannot be located from the information supplied, the Freedom of Information Officer will so notify the requester in writing.

§ 1710.15 Form and content of responses.

(a) *Form of notice granting a request.* After the Freedom of Information Officer has made a determination to grant a request in whole or in part, the requester will be notified in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt the operation of OFHEO. The response letter will also inform the requester of any fees to be charged in accordance with the provisions of subpart C of this part.

(b) *Form of notice denying a request.* When the Freedom of Information Officer denies a request in whole or in part, he or she will so notify the requester in writing. The response will be signed by the Freedom of Information Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the Freedom of Information Officer has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 1710.16 of this subpart, and a description of the requirements of that section.

§ 1710.16 Appeals of denials.

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial to: Freedom of Information Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington, DC 20552.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 30 days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the requested record. Both the envelope and the letter of appeal must be clearly marked ''FOIA Appeal.'' An appeal improperly addressed shall be deemed not to have

been received for purposes of the 20-day time period set forth in paragraph (b) of § 1710.17 until it is received, or would have been received with the exercise of due diligence by OFHEO personnel, by the Freedom of Information Appeals Officer.

(c) *Action on appeal.* The disposition of an appeal will be in writing and will constitute the final action of OFHEO on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted his or her administrative remedies, giving rise to a right of judicial review under 5 U.S.C. 552(a)(4).

§ 1710.17 Time limits.

(a) *Initial request.* Following receipt of a request for records, the Freedom of Information Officer will determine whether to comply with the request and will notify the requester in writing of his or her determination within ten days (excluding Saturdays, Sundays, and legal holidays) after receipt of the request.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 1710.16 of this subpart will be issued within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the appeal. When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances up to a total of ten days (excluding Saturdays, Sundays, and legal holidays) after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. As used in this paragraph, *unusual circumstances* means that there is a need to—

(1) Search for and collect the requested records from facilities that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various offices within OFHEO that have a substantial interest in the records requested.

§ 1710.18 Business Information.

(a) *In general.* Business information provided to OFHEO by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Business information* means trade secrets or other commercial or financial information, provided to OFHEO by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(2) *Business submitter* means any person or entity which provides business information, directly or indirectly, to OFHEO and who has a proprietary interest in the information.

(3) *Freedom of Information Officer* means the Freedom of Information Officer of OFHEO.

(4) *Freedom of Information Appeals Officer* means the Freedom of Information Appeals Officer of OFHEO.

(5) *Requester* means the person or entity making the FOIA request.

(c) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). Any such designation will expire ten years after the records were submitted to the government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(d) *Predisclosure notification.* (1) Except as is provided for in paragraph (i) of this section, the Freedom of Information Officer shall, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its business information whenever required under paragraph (e) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to the submitter.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (e)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to OFHEO has been given the opportunity to comment on the proposed disclosure of information.

(e) *When notice is required.* OFHEO shall provide a business submitter with notice of a request whenever:

(1) The business submitter has in good faith designated the information as commercially or financially sensitive information deemed protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) OFHEO has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (d) of this section, OFHEO shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide OFHEO with a detailed written statement of any objection to disclosure. Such statement shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential and why disclosure would cause competitive harm. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* (1) The Freedom of Information Officer shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Freedom of Information Officer decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice at least ten days (excluding Saturdays,

Sundays, and legal holidays) before the date of disclosure containing—

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained,

(ii) A description of the business information to be disclosed, and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the Freedom of Information Officer shall promptly notify the business submitter of such action.

(i) *Exceptions to predisclosure notification.* The requirements of this section shall not apply if—

(1) The Freedom of Information Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, the Freedom of Information Officer will provide the submitter with written notice of any final administrative decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Subpart C—Fees for Provision of Information

§ 1710.21 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Commercial use request* means a request for information that is from, or on behalf of, a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, OFHEO shall determine the purpose for which the requested documents shall be used. If OFHEO has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, OFHEO shall seek additional clarification before assigning the request to a specified category.

(b) *Direct costs* means the expenditures actually incurred by OFHEO in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures OFHEO actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(d) *Non-commercial scientific institution* refers to an institution that is not operated on a commercial, trade, or profit basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances in which the periodicals can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve, *e.g.*, electronic dissemination of newspapers through telecommunication services, such alternative media would be included in this category. ''Freelance'' journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but OFHEO may look to the requester's past publication record to determine whether a journalist is working for a news organization.

(f) *Reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation, *e.g.*, magnetic tape or disk. The copy provided shall be in a form that is reasonably usable by requesters.

(g) *Review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to prepare the documents for release. The term *review* does not include the time spent resolving general legal or policy issues regarding the application of exemptions. OFHEO shall only charge fees for reviewing documents in response to a commercial use request.

(h) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. The term *search* includes the extraction of information from a computer using existing programming. Searching for materials shall be done in the most efficient and least expensive manner so as to minimize the costs of OFHEO and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be less expensive and the faster method of complying with the request for information. A *search* for material that is responsive to a request should be distinguished from a *review* of material to determine whether the material is exempt from disclosure.

§ 1710.22 Fees to be charged—general.

(a) *Policy.* Generally, the fees charged for requests for records pursuant to 5 U.S.C. 552 shall cover the full allowable direct costs of searching for, reproducing, and reviewing documents that are responsive to a request for information. Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1710.23 of this subpart for services rendered by OFHEO staff in responding to, and processing requests for, records under this part. Fees assessed will be paid by check or money order payable to the Office of Federal Housing Enterprise Oversight.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.* (i) *Manual searches for records.* Whenever feasible, OFHEO will charge at the salary rate(s), *i.e.,* basic pay plus 16 percent, of the employee(s) making the search. Charges for search time will be billed by 15-minute segments.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary, *i.e.,* basic pay plus 16 percent, apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to OFHEO for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart. OFHEO will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* OFHEO will charge search fees even if no records are found which are responsive to the request, or if the records found are exempt from disclosure.

(2) *Duplication.* Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the document(s) shall be charged.

(3) *Review.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.,* the review undertaken the first time OFHEO analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are properly assessable.

(4) *Other services and materials.* Where OFHEO elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

§ 1710.23 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* Paragraphs (b) through (e) of this section state, for each category of requester, the types of fees generally charged by OFHEO. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in paragraph (c) of § 1710.24. If OFHEO has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, OFHEO will seek clarification before assigning the request a specific category.

(b) *Commercial use requester.* OFHEO shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 1710.22, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(c) *Educational and noncommercial scientific institutions.* OFHEO shall charge fees for records requested by, or on behalf of, educational institutions and non-commercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the cost of reproducing the first 100 pages. No search fee shall be charged with respect to requests by educational and noncommercial scientific institutions. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(d) *News media.* OFHEO shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. No search fee shall be charged with respect to requests by representatives of the news media. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(e) *All other requesters.* OFHEO shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (b), (c), or (d) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first two hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1710.22, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first two hours of search time.

(f) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of ''8½×11'' or ''11×14.'' Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meets the terms of the exception.

(g) For purposes of paragraph (e) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, OFHEO will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary plus 16 percent of the person performing the search, *i.e.,* the operator, OFHEO will begin assessing charges for the computer.

§ 1710.24 Limitations on charging fees.

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 1710.23(b), OFHEO will provide, without charge, the first 100 pages of duplication and the first two

hours of search time, or their cost equivalent.

(b) *No fee charged.* OFHEO will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the ''cost of collecting a fee'' are the administrative costs of receiving and recording a requester's remittance, and processing the fee.

(c) *Waiver or reduction of fees.* OFHEO may grant a waiver or reduction of fees if OFHEO determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal government, and the disclosure of the information is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) The following factors will be considered by OFHEO in determining whether a waiver or reduction of fees is in the public interest:

(i) *The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government.''* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the general public: Whether disclosure of the requested information will contribute to the ''public understanding.''* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications, *e.g.*, expertise in the subject area and ability and intention to convey information to the general public, will be considered.

(iv) *The significance of the contribution in public understanding: Whether the disclosure is likely to ''significantly enhance'' the public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Freedom of Information Officer shall not make a separate value judgment as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is ''important'' enough to be made public.

(2) In order to determine whether the second fee waiver requirement is met, *i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester, OFHEO shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester, or any person on whose behalf the requester may be acting, has a commercial interest that would be furthered by the requested disclosure.* In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''* A fee waiver or reduction is warranted only where, once the ''public interest'' standard set out in paragraph (c)(1) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. OFHEO will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be serviced primarily by disclosure to that requester. Disclosure to requesters who compile and market Federal government information for direct economic return will not be presumed to primarily serve the ''public interest.''

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include—

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 1710.16.

§ 1710.25 Miscellaneous fee provisions.

(a) *Notice of anticipated fees in excess of $25.00.* Where OFHEO determines or estimates that the fees chargeable will amount to more than $25.00, OFHEO shall promptly notify the requester of the actual or estimated amount of fees or such portion thereof that can be readily estimated, unless the requester has indicated his or her willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with OFHEO personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid the payment of fees. When OFHEO reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, OFHEO may aggregate such requests and charge accordingly. One

element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred. OFHEO will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, OFHEO shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payment of fees.* OFHEO does not require an advance payment before work is commenced or continued, unless:

(1) OFHEO estimates or determines that the fees are likely to exceed $250.00. If it appears that the fees will exceed $250.00, OFHEO will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees. In the case of requesters with no history of payment, OFHEO may require an advance payment of fees in an amount up to the full estimated charge that will be incurred; or

(2) The requester has previously failed to pay a fee in a timely fashion, *i.e.*, within 30 days of the date of a billing. In such cases, OFHEO may require the requester to pay the full amount owed plus any applicable interest, as provided in paragraph (d) of this section, or demonstrate that the fee owed has been paid, prior to processing any further record request. Under these circumstances, OFHEO may require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request from that requester.

(3) A request for an advance deposit shall include an offer to the requester to confer with identified OFHEO personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

(4) When OFHEO requests an advance payment of fees, the administrative time limits described in 5 U.S.C. 552(a)(6) begin only after OFHEO has received the advance payment.

(d) *Interest.* OFHEO may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Once a fee payment has been received by OFHEO, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which the Office of Federal Housing Enterprise Oversight is Not a Named Party

§ 1710.31 General purposes.

The purposes of this subpart are to maintain the confidentiality of official documents and information of OFHEO, conserve the time of OFHEO employees for their official duties, maintain the impartial position of OFHEO in litigation in which OFHEO is not a named party, and enable the Director to determine when to authorize testimony and to produce documents in legal proceedings in which OFHEO is not a named party. This subpart sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of OFHEO in legal proceedings in which OFHEO is not a named party. This subpart in no way affects the rights and procedures governing public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

§ 1710.32 Definitions.

For the purpose of this subpart:

(a) *Court* means any entity conducting a legal proceeding.

(b) *Demand* means any order, subpoena, or other legal process for testimony or documents.

(c) *Director* means the Director of OFHEO or his or her designee.

(d) *Document* means any record or paper, including but not limited to a report, credit review, audit, examination, letter, telegram, memorandum, study, calendar and diary entry, log, graph, pamphlet, note, chart, tabulation, analysis, statistical or information accumulation, any kind of record of meetings and conversations, film impression, magnetic tape, or any electronic media, disk, film, or mechanical reproduction that is generated, obtained, or adopted by OFHEO in connection with the conduct of its official business.

(e) *Employee* means any officer, former officer, employee, or former employee of OFHEO; any conservator appointed by OFHEO; or any agent or independent contractor acting on behalf of OFHEO, even though the appointment or contract has terminated.

(f) *General Counsel* means the General Counsel of OFHEO or his or her designee.

(g) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a discovery proceeding therein, before a court of law, administrative board or commission, hearing officer, or other body in which OFHEO is not a named party or in which OFHEO has not instituted the administrative investigation or administrative hearing.

(h) *Official* means concerning the authorized business of OFHEO.

(i) *OFHEO Counsel* means the General Counsel or his or her designee, a Department of Justice attorney, or counsel authorized by OFHEO to act on behalf of OFHEO or an employee.

(j) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(k) *Person* means any individual, or any agency, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein but does not include OFHEO or any OFHEO employee.

§ 1710.33 General policy.

It is the policy of OFHEO that in any legal proceeding in which OFHEO is not a named party, no employee of OFHEO shall, in response to a demand, produce any material contained in the files of OFHEO, or disclose any information relating to, or based upon, material contained in the files of OFHEO, or disclose or produce any material acquired as part of the performance of that employee's official duties or because of that employee's official status. Under appropriate circumstances, the Director may grant exceptions in writing to this policy when the Director determines that the testimony of OFHEO employees or disclosure of official documents would be in the best interest of OFHEO or in the public interest. Prior to any authorized testimony or release of official documents, the requesting party shall obtain a protective order from the court before which the action is pending to preserve the confidentiality of the testimony or documents subsequently produced. The protective order shall be in a form satisfactory to OFHEO.

§ 1710.34 Request for testimony or production of documents.

(a) No OFHEO employee shall give testimony concerning official matters or produce any official documents in any legal proceeding to which OFHEO is not a named party without the prior written authorization of the Director.

(b) If testimony by an OFHEO employee concerning official matters or the production of official documents is desired, the requesting party, or his or her attorney, shall submit a letter to the Director setting forth the title of the case, the forum, the requesting party's interest in the case, a summary of the

issues in the litigation, the reasons for the request, and a showing that the desired testimony, documents, or information are not reasonably available from any other source. If an appearance or testimony is requested, the letter shall also set forth the intended use of the testimony, a general summary of the scope of the testimony requested, and a showing that no document could be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her attorney to refine and limit the request so that compliance is less burdensome, or obtain information necessary to make the determination described in § 1710.33 of this part. Failure of the requesting party, or his or her attorney, to cooperate in good faith with the General Counsel to enable the Director to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

§ 1710.35 Scope of permissible testimony.

(a) The scope of permissible testimony by an OFHEO employee is limited to that set forth in the written authorization granted that employee by the Director.

(b) OFHEO employees are not authorized to give opinion testimony. OFHEO, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the financial safety and soundness and capital adequacy of the Enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*, relies on the ability of its employees to gather full and complete information in order to carry out its statutory responsibilities. The use of OFHEO employees to give opinion testimony would hamper OFHEO's ability to carry out its statutory responsibilities and would cause a serious administrative burden on OFHEO's staff.

§ 1710.36 Manner in which testimony is given.

(a) Authorized testimony of OFHEO employees will be made available only through depositions or written interrogatories.

(b) Where, in response to a request, the Director determines that circumstances warrant authorizing testimony by an OFHEO employee, the requesting party shall cause a subpoena to be served on the employee in accordance with applicable Federal or State rules of procedure, with a copy of the subpoena sent by registered or certified mail to the General Counsel.

(c) Normally, authorized depositions will be taken at OFHEO's office, and at a time arranged with the employee that is reasonably fixed to avoid substantial interference with the performance of the employee's duties.

(d) Upon completion of the deposition of an OFHEO employee, a copy of the transcript of the testimony shall be furnished, at the expense of the party requesting the deposition, to the General Counsel for OFHEO's files.

§ 1710.37 Manner in which documents will be produced.

(a) An OFHEO employee's authorization to produce official documents is limited to the authority granted that employee by the Director.

(b) Certified or authenticated copies of official OFHEO documents authorized by the Director to be released under this subpart will be provided upon request.

§ 1710.38 Fees.

Unless waived or reduced, the following fees shall be charged for documents produced by OFHEO in connection with requests subject to this subpart:

(a) *Searches for documents.* OFHEO will charge at the salary rate(s), *i.e.*, basic pay plus 16 percent, of the employee(s) making the search. Charges for search time will be billed by 15 minute segments.

(b) *Copying of documents.* The standard copying charge for documents in paper copy is $.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and disks, OFHEO will assess the direct costs of the tape, disk, or whatever medium is used to produce the information, as well as any related reproduction costs. Normally, only one copy will be provided. Additional copies will be provided only upon a showing of demonstrated need.

(c) *Certification or authentication of documents.* OFHEO will charge $3.00 for each certification or authentication of documents.

(d) *Computer searches.* Services of personnel in the nature of a computer search shall be charged at rates prescribed in paragraph (a) of this section. A charge shall be made for the computer time involved, based upon the prevailing level of costs to OFHEO and upon the particular types of computer and associated equipment and the amount of time that such equipment is utilized. A charge shall also be made for any substantial amount of special supplies or materials used to contain, present, or make available the output of computers, based upon prevailing levels of costs to OFHEO and upon the type and amount of such supplies or materials that are used.

(e) *Other costs.* When other services and materials not specifically identified in this section are requested and provided, their actual cost to OFHEO shall be charged.

(f) *Payments of fees.* A bill will be forwarded to the requesting party upon completion of the production. Payment shall be made by check or money order payable to the Office of Federal Housing Enterprise Oversight.

§ 1710.39 Response to demands served on OFHEO employees.

(a) *Advice by person served.* Any OFHEO employee who is served with a demand in a legal proceeding requiring his or her personal attendance as a witness or requiring the production of documents or information in any proceeding, shall immediately notify OFHEO's General Counsel of such service, of the testimony and documents described in the demand, and of all relevant facts which may be of assistance to the General Counsel in determining whether the individual in question should be authorized to testify or the material requested should be made available.

(b) When authorization to testify or to produce documents has not been granted by the Director, OFHEO Counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Director.

(c) *Appearance by person served.* Unless OFHEO has authorized disclosure of the information requested, any OFHEO employee who has OFHEO information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and respectfully decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this subpart. If the court nevertheless orders the disclosure of the information or the giving of testimony irrespective of instructions from the Director not to produce the documents or disclose the information sought, the OFHEO employee upon whom the demand has been made shall continue to decline respectfully to disclose the information and shall report promptly the facts to OFHEO for

such action as OFHEO may deem appropriate.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. OFHEO reserves the right to oppose any demand on any legal ground independent of its determination under this subpart.

§ 1710.40 Responses to demands served on non-OFHEO employees or entities for OFHEO documents.

(a) OFHEO reports of examinations, or any documents related thereto, are the property of OFHEO and are not to be disclosed to any person without the Director's prior written consent.

(b) If any person who has possession of an OFHEO report of examination, or any documents related thereto, is served with a demand in a legal proceeding directing that person to produce such OFHEO documents or to testify with respect thereto, such person shall immediately notify OFHEO's General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of OFHEO and cannot be released without OFHEO's consent and that their production must be sought from OFHEO following the procedures set forth in § 1710.33, § 1710.34 (b) and (c), and § 1710.37(b) of this part.

§ 1710.41 Orders and agreements available to the public.

(a) *General.* OFHEO shall make the following documents available to the public:

(1) Any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued with respect to any administrative enforcement proceeding initiated by the Director that has become final in accordance with 12 U.S.C. 4633 and 4634; and

(3) Any modification to or termination of any final order made public pursuant to this section.

(4) Transcripts of any public enforcement hearing on the record with respect to any action of the Director or notice of charges issued by the Director shall be available to the public.

(b) *Delay of public disclosure under exceptional circumstances.* If the Director makes a determination in writing that the public disclosure of any final order pursuant to paragraph (a) of this section would seriously threaten the financial health or security of the Enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(c) *Documents filed under seal in public enforcement hearings.* The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Director shall keep and maintain a record, for not less than six years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceedings initiated by the Director under 12 U.S.C. 4631–4641.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

Subpart E—Rules and Procedures for Service Upon the Office of Federal Housing Enterprise Oversight

§ 1710.51 Service of process.

(a) Except as otherwise provided by OFHEO regulations, the Federal Rules of Civil Procedure, or order of a court with jurisdiction over OFHEO, any legal process upon OFHEO, including a legal process served on OFHEO demanding access to its records under the FOIA, shall be duly issued and served upon the General Counsel and any OFHEO personnel named in the caption of the documents.

(b) Service of process upon the General Counsel to OFHEO may be effected by personally delivering a copy of the documents to the General Counsel or by sending a copy of the documents to the General Counsel by registered or certified mail, postage prepaid, to the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

Dated: May 5, 1995.

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 95–11546 Filed 5–10–95; 8:45 am]

BILLING CODE 4220–01–P

12 CFR Chapter XVII

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Extension of Public Comment Period for Advance Notice of Proposed Rulemaking.

SUMMARY: On February 8, 1995 (60 FR 7468), the Office of Federal Housing Enterprise Oversight (OFHEO) published an advance notice of proposed rulemaking (ANPR) entitled ''Risk-Based Capital.'' This ANPR is a significant step in the process of developing a regulation to establish risk-based capital standards for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. To ensure that the public has ample opportunity to participate in the rulemaking process by commenting on a variety of technical and policy issues involved in the development of the risk-based regulation and the risk-based capital stress test, today's notice extends the public comment period from May 9, 1995 through June 8, 1995.

DATES: The comment period is extended until June 8, 1995.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: David J. Pearl, Director, Research, Analysis and Capital Standards; or Gary L. Norton, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number).

Dated: May 8, 1995.

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 95–11687 Filed 5–8–95; 3:13 pm]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASO–21]

Proposed Modification of Jet Routes; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify several existing jet routes in the Miami, FL, area. This proposed action is necessary because of the proposed decommissioning of the Miami, FL, Very High Frequency Omnidirectional Range and Tactical Air Navigation (VORTAC) and the commissioning of the Dolphin, FL, VORTAC.

DATES: Comments must be received on or before June 27, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 94–ASO–21, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 94–ASO–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify various jet routes in the Miami, FL, area. Amending the existing jet routes is necessary because of the commissioning of a new navigational aid, Dolphin VORTAC, to replace the Miami VORTAC. The Dolphin VORTAC will serve the south Florida area once the Miami VORTAC has been decommissioned. Jet routes are published in paragraph 2004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Rules and Procedures Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–43 (Revised)

From Dolphin, FL; LaBelle, FL; St. Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

* * * * *

J–53 (Revised)

From Dolphin, FL; INT Dolphin 354°T(358°M) and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

* * * * *

J–55 (Revised)

From Dolphin, FL; INT Dolphin 331°T(335°M) and Gainesville, FL, 157° radials; INT Gainesville 157° and Craig, FL, 192° radials; Craig; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

J–58 (Revised)

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Dallas-Fort Worth, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 105° and Crestview, FL, 201° radials; INT of Grand Isle 105° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 120°T(122°M) and Dolphin, FL, 293°T(297°M) radials; Dolphin.

* * * * *

J–73 (Revised)

From Dolphin, FL; LaBelle, FL; Lakeland, FL; Tallahassee, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

* * * * *

J–75 (Revised)

From Dolphin, FL; INT Dolphin 293°T(297°M) and Lee County, FL, 120°T(122°M) radials; Lee County; INT Lee County 340° and Taylor, FL, 176° radials; Taylor; INT Taylor 019° and Columbia, SC, 203° radials; Columbia; Greensboro, NC; Gordonsville, VA; INT Gordonsville 040° and Modena, PA, 231° radials; Modena; Solberg, NJ; Carmel, NY; INT Carmel 045° and Boston, MA, 252° radials; to Boston.

* * * * *

J–79 (Revised)

From Key West, FL; INT Key West 038°T(037°M) and Dolphin, FL, 244°T(248°M) radials; Dolphin; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 356° and Savannah, GA, 184° radials; INT Savannah 184° and Charleston, SC, 212° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Marconi, MA, 205° radials; Marconi; INT Marconi 006° and Bangor, ME, 206° radials; Bangor.

* * * * *

J–81 (Revised)

From Dolphin, FL; INT Dolphin 354°T(358°M) and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Cecil; INT Cecil 007° and Craig, FL, 347° radials; INT Craig 347° and Colliers, SC, 174° radials; Colliers.

* * * * *

J–85 (Revised)

From Dolphin, FL; INT Dolphin 331°T(335°M) and Gainesville, FL, 157° radials; Gainesville; Taylor, FL; Alma, GA; Colliers, SC; Spartanburg, SC; Charleston, WV; INT of the Charleston 357° and the Dryer, OH, 172° radials; Dryer. The portion within Canada is excluded.

J–86 (Revised)

From Boulder City, NV, via Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT of Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 103° and La Belle, FL, 313° radials; La Belle; Dolphin, FL.

* * * * *

Issued in Washington, DC, on May 4, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–11673 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Service Field Organization-San Jose, California

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Customs Service by designating San Jose as a port of entry in the Customs District of San Francisco, California, of the Pacific Region. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the general public.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC, on regular business days between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control (202–927–0192).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3 and 101.4) by designating a four county area surrounding San Jose, California, as a port of entry for Customs

purposes in the Customs District of San Francisco, California, within the Pacific Region. Part of this four county area, Monterey, is presently listed in § 101.4(c), Customs Regulations, as a Customs station within the San Francisco District. San Jose is presently part of the port of entry of San Francisco.

The city of San Jose, California, has requested designation of the four county area surrounding San Jose as a port of entry and has stated that the efficiency in having a port of entry located in San Jose would represent a considerable saving of time and cost for the business community. The city states that firms in the South Bay Area will benefit from the advantages of having their cargo cleared at the San Jose port of entry. It also anticipates that more cargo will be shipped to the area and that the result will be additional Customs revenue and increased Federal benefits.

The request for designation has been concurred with by the Immigration and Naturalization Service of the Department of Justice and by the Animal and Plant Health Inspection Service of the Department of Agriculture. Various elected officials, local corporations and associations also support the request.

The criteria used by Customs in determining whether to establish a port of entry are found in T.D. 82–37 (47 FR 10137), as revised by T. D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, a community requesting a port of entry designation must: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); (3) have a minimum population of 300,000 within the immediate service area (approximately a 70 mile radius); and (4) make a commitment to make optimal use of electronic data transfer capabilities to permit integration with Customs Automated Commercial System (ACS), which provides a means for the electronic processing of entries of imported merchandise. Further, the actual or potential Customs workload (*i.e.*, number of transactions per year) at the proposed port of entry must meet one of several alternative minimum requirements, among which are 15,000 passenger arrivals and 2500 consumption entries per year. Finally, facilities at the proposed port of entry must include cargo and passenger facilities, warehousing space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

San Jose International Airport is currently staffed by Customs on a rotational basis. If the port of entry is approved, the rotational positions currently assigned to San Jose will be converted to permanent positions. Any relocation costs will be paid out of COBRA funds.

The request for port of entry status states that there will be several Federal Government benefits if the port of entry is approved. Approval will support the national goal of United States competitiveness by strengthening the economic competitiveness of one of the nation's most critical high technology areas. It will increase the efficiency of the regional Customs service by improving the distribution of entries which must be cleared through the San Francisco-Oakland port and the San Jose port. It will decrease congestion on the Bay Area's freeways due to shipments going directly to San Jose International Airport. Finally, it will further the Customs goal of increased automation, since San Jose International Airport has provided the equipment necessary to supply a fully automated, highly efficient Customs port.

The proposed port of entry will be served by three major modes of transportation (air, rail and highway).

The proposed port of entry has a population of 2,167,000.

The City of San Jose has committed to the optimal use of electronic data input equipment and software to permit integration with any Customs system for electronic processing of commercial entries. San Jose International Airport has provided, at no cost to the Federal Government, computer equipment and systems which are needed to comply with the goals of the National Customs Automation Program.

According to recent statistics, San Jose International Airport has an annual workload of 92,246 arriving international passengers and 4854 formal entry releases, plus 2066 informal entry releases.

Cargo and passenger facilities have been provided for Customs operations at San Jose International Airport. The Customs facility is a 23,000 square foot modular facility in a secure portion of the airport. This facility provides the necessary administrative office space, inspection rooms and other space required for performing regular Customs operations.

Based on the information provided above, Customs believes that San Jose meets the current standards for port of entry designations set forth in T. D. 82–37, as revised by T. D. 86–14 and T. D. 87–65.

Proposed Limits of Port of Entry

The geographical limits of the proposed port of entry of San Jose would be as follows:

All of Santa Clara, Santa Cruz, Monterey and San Benito Counties in the State of California.

If the proposed port of entry designation is adopted, the lists of Customs regions, districts, ports of entry and stations in 19 CFR 101.3(b) and 101.4(c) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Suite 4000, 1099 14th St. NW., Washington, D.C.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Approved: April 10, 1995.

William F. Riley,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–11669 Filed 5–10–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Mineral Management Service

30 CFR Part 250

RIN 1010–AB50

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises requirements for preventing hydrogen sulfide (H_2S releases and protecting human safety. Requirements for visual and audible warning systems, personnel protection, training, H_2S and sulphur dioxide (SO_2) detection and monitoring, and H_2S flaring are proposed.

DATES: Comments must be received or postmarked no later than July 10, 1995 to be considered in this rulemaking.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: E.P. Danenberger, telephone (703) 787–1598, or John Mirabella, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1989 (54 FR 2332), the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** to amend requirements contained in 29 CFR 1910.1000. The requirements concerned permissible exposure limits (PEL) for 164 toxic substances that included H_2S and SO_2. The Minerals Management Service (MMS) determined that its regulations at § 250.67 should be revised to be consistent with OSHA's PEL's and published proposed revisions in the **Federal Register** on August 15, 1990 (55 FR 33326). Requirements for training, signs, SO_2 sensors, mud sensors, and materials were also revised or added, and additional information was requested regarding the calibration frequency of H_2S sensors.

A Circuit Court Appeals Action invalidated OSHA's final rule. As a consequence, OSHA resumed enforcing contaminant exposure limits that were in effect prior to the issuance of new limits on January 19, 1989. Because of the extensive revisions resulting from comments to the proposed rule (published on August 15, 1990), and because of the court decision on OSHA's 1989 final rule, MMS is re-proposing the rule and requesting additional comments.

The MMS proposes to retain the H_2S concentration level thresholds similar to those in the current rule. Also, new sections concerning H_2S flaring and SO_2 concentration levels have been added.

The MMS proposes to incorporate the latest editions of the American National Standards Institute's (ANSI) American National Standard Practices for Respiratory Protection (ANSI Z88.2–1980) and the National Association of Corrosion Engineers' (NACE) Standard (MR–01–75), Recommended Practice (RP), Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment.

Discussion of Specific Comments

The following comments and responses are grouped by specific section or paragraph title.

Subpart D—Oil and Gas Drilling Operations

§ 250.67(b) Definitions.

Comment: The term ''potentially result in atmospheric concentrations of 15 ppm or more of H_2S'' is vague and the definition for ''Zones known to contain H_2S'' should be limited to facilities known to contain H_2S where atmospheric concentrations of 10 parts per million (ppm) or more of H_2S have been verified.

Response: Because human safety is dependent upon advance preparation, the definition for zones known to contain H_2S must be based on the potential for a high volume release. Gas with an H_2S concentration of only 20 ppm, if released at a rate of 1,000,000 cubic feet per day (1,000 MCFD), exposes all personnel within 24 feet to concentrations of 20 ppm (Pasquill-Gifford dispersion equation using wind speed of 1 mile per hour). Therefore, the definition encompasses most H_2S-bearing zones which could flow in volumes of 1,000 MCFD or more.

The 15-ppm concentration mentioned in the above comment has been changed to 20 ppm, as currently required in the regulations.

§ 250.67(c) Request for classification of probability of encountering H_2S during operations.

Comment: The definition of ''Zones where the absence of H_2S has been confirmed,'' should recognize the possibility of H_2S being generated as a result of water flooding.

Response: The MMS agrees that H_2S could be generated during production operations in the initial stages of a new water flood project. Paragraph (c) is amended to require a reclassification when new data indicate the presence of H_2S.

§ 250.67(e) Drilling and well-completion operations in zones where the presence of H_2S is unknown.

Comment: The first sentence of § 250.67(e) should be revised to require compliance with well-control fluid provisions in zones where the presence of H_2S is unknown.

Response: The MMS agrees with this suggestion. Compliance with the fluid program requirements of paragraph (i) in an unknown area would enable the operator to safely continue operations if H_2S is encountered. The title and text of paragraph (e) have been revised accordingly.

§ 250.67(h)(1) H_2S Contingency Plan.

Comment: Two commenters suggested a requirement for H_2S-detection, monitoring, and alarm systems on vessels attendant to a facility. Hydrogen sulfide is heavier than air and tends to settle and accumulate in lower areas. The commenters are concerned that horns and lights from a production platform may be insufficient to warn a vessel tied up below the platform or that gas might accumulate at the vessel rather than the producing facility.

Response: The MMS agrees that a low volume, low-concentration release of H_2S might migrate down to a vessel moored on the leeward side of the facility and be detected on the vessel before the platform. The need for H_2S sensors on attendant vessels depends on the positioning procedures described in the Contingency Plan. Requirements for sensors are specified in § 250.67(h)(6) H_2S-detection and H_2S-monitoring equipment (formerly paragraph (h)(5)). A new paragraph (h)(6)(v) has been added to require H_2S-detection systems on certain vessels attendant to facilitates.

During a recent drilling operation, it was necessary to divert gas containing H_2S. Personnel from platforms as far away as 12 miles had to be evacuated. This incident identified the importance of notifying nearby manned facilities. The MMS has proposed to require lists

of facilities to be notified in case of a release of H_2S.

Comment: Six organizations commented on the proposed new paragraph (h)(1) (viii) and (ix) that addresses the toxic hazard of SO_2, a gas produced when H_2S is ignited. The commenters suggested clarification of the term ''portable monitors'' and the monitoring procedures.

Response: The proposed rule allows the use of portable equipment to monitor personnel exposure to SO_2 when H_2S is intentionally or accidentally burned. The MMS recognizes that operators may choose the use permanent SO_2 detectors to monitor flares.

Other commenters suggested that the rule might be interpreted to require continuous monitoring of the SO_2. The MMS recognizes that the irritating odor of SO_2 warns personnel about its presence. The purpose of the requirement is to have a means of measuring the concentration to determine if PEL's are exceeded. The MMS has clarified the requirement in new paragraphs (h)(1)(xi) (C) and (D).

New paragraph (h)(1)(xi).

The MMS has determined that the current regulations at 30 CFR 250.67 and 250.175 do not clearly address the flaring of gas containing H_2S. Therefore, a new paragraph has been added to require that the H_2S Contingency Plan described the operational conditions during which gas containing H_2S could be flared, estimate the maximum gas flow rate, H_2S concentration and duration of flaring, assess the risks to personnel, and identify the precautionary measures to be taken.

§ 250.67(h)(2) Training Program.

Comment: New training requirements are not needed unless there is some specific reason for increased training.

Response: The proposed requirements do not include additional training requirements. In fact, the requirement for training has been reduced from a training session upon arrival and every subsequent 7-day period, to an initial training session repeated annually.

Comment: The proposed definition of a ''visitor'' implies that anyone remaining onboard overnight would be subject to annual H_2S training certification requirements. The commenter's opinion was that the proposed briefing is adequate for all visitors whether or not they depart the day of arrival.

Response: Any person who remains at a facility for an extended period (i.e., overnight) should be fully trained in the hazards of H_2S and the provisions for personnel protection.

Comment: Visitors should be properly trained in the use of the type of respirator available on the facility.

Response: The MMS agrees. Language has been added to require that visitors be given a hands-on demonstration and practice in donning and adjusting the assigned respirator.

Comment: Visitors not temporarily or permanently employed at the facility should not be required to receive the full H_2S training required for operator and contract personnel.

Response: This paragraph was received to clarify that visitors who do not remain overnight need only receive abbreviated training outlined in the paragraph. However, visitors who do remain overnight will be required to receive full H_2S training.

Comment: Commenters on § 250.67(h)(2)(iv) stated that OSHA plans to withdraw the restriction on wearing contact lenses with a respirator (29 CFR 1910.134(e)(5)(ii)) and recommended investigating this proposed change and amending MMS requirement for consistency with the OSHA requirement.

Response: The MMS is aware that OSHA has considered withdrawing the restriction on wearing contact lenses with a respirator. If OSHA publishes final revisions of this requirement, MMS will consider revising its requirement accordingly.

Comment: The requirement of § 250.67(h)(2)(v)(B) for three resuscitators could be reduced for platforms having fewer than three people onboard.

Response: Facilities that are manned for 24 hours per day will normally have more than three people onboard, and visits to unmanned facilities usually involve several people. Therefore, the proposed requirement was not changed.

§ 250.67(h)(3) Drills.

Comment: The requirement for a drill within 24 hours after duty begins and once during every subsequent 7-day period is excessive and should be reduced.

Response: This is an existing requirement that has been successfully implemented in the field. Contract personnel may only be on the platform for a few days. The proposed requirement ensures that they receive the benefit of regular drills. Further, the weekly training requirement was eliminated with the understanding that each employee would be participating in a weekly drill.

§ 250.67(h)(4) Visual warning system (formerly paragraph (h)(3)).

Comment: This paragraph was not initially proposed for revision, but two commenters recommended that operators be allowed to display colored lights as visual warning signs for H_2S.

Response: The revised rule permits electronic systems that alert vessels and clearly explain the danger.

Comment: Four organizations claimed that it is not possible to put the wording ''Danger-Poisonous Gas-Hydrogen Sulfide'' in 12-inch-high letters on a 4-foot x 8-foot sign and still have room for the wording about the red warning flags.

Response: The MMS now proposes wording painted in the following format on a sign 14.5 feet wide and 6 feet high:

In 12-inch-high letters:

DANGER

POISONOUS GAS

HYDROGEN SULFIDE

and in 7-inch-high letters:

DO NOT APPROACH IF RED FLAG IS FLYING.

According to the Virginia Department of Transportation's highway sign standard, 1 inch of letter height is required for each 50 feet of safe reading distance; therefore, the 12-inch-high letters could be safely read from a distance of 200 yards, and the 7-inch-high letters could be safely read from a distance of 116 yards. The MMS considers these distances to be sufficient for helicopter and vessel pilots to read, heed, and change course.

The revised paragraph also provides the option of supplementing existing signs, thereby saving the operator the expense of replacement or repainting.

Comment: Exceptions to paragraph (h)(4)(ii)(D) should be allowed for the U.S. Coast Guard (USCG) approved safety zones since the signs would be unreadable from vessels outside these safety zones.

Response: The intent of the proposed sign requirement is to warn all types of craft, including private and commercial fishing boats and vessels attendant to the facility, of the potentially toxic hazards. The USCG approved safety zones are designed to prevent collisions of large vessels with platforms and are not usually applicable to vessels attendant to the facility or vessels under 100 feet in length.

§ 250.67(h)(5) Audible warning system (formerly paragraph (h)(4)).

Comment: Seven commenters suggested working changes to make it clear that the monitoring equipment shall be capable of activating alarms.

Response: The MMS agrees and has revised paragraph (h)(5) accordingly.

§ 250.67(h)(6) H_2S-detection and H_2S-monitoring equipment (formerly paragraph (h)(5)).

Comment: Add the mud-return receiver tank (possum belly) and pipe-trip tank to the list of specified areas where atmospheric H_2S sensors are required (paragraph (h)(6)(i)) because the potential for the release of H_2S is high at both of these places during drilling, well-completion, or well-workover operations.

Response: The MMS agrees and has added those areas to the list of H_2S sensing points.

Comment: Five commenters disagreed with the provision in (h)(6)(i) that allows the substitution of an in-the-mud sensor for the air sensor required at the bell nipple. Two commenters supported the supplemental use of in-the-mud sensors. One commenter suggested the deletion of the provision that allows the District Supervisor discretion to require an in-the-mud sensor at the bell nipple if the air sensor at that location is habitually inoperative.

Response: The purpose of an in-the-mud sensor in the mud-return line receiver tank is to detect the potential for H_2S release, so that corrective action can be taken. Further, an in-the-mud sensor may be necessary if the air sensors at the nipple are subject to contamination by splashed mud and rig floor washwater.

However, the air sensor at the bell nipple is necessary when the mud-return line receiver tank is bypassed. This is a common occurrence when tripping drill pipe. Therefore, proposed paragraph (h)(6)(i) only provides for the supplementary use of in-the-mud sensors and authorizes the District Supervisor to require such devices where the performance of ambient air sensors has not been satisfactory.

§ 250.67(h)(6)(ii) (new paragraph).

Comment: Requirements for H_2S sensors on production facilities in proposed paragraph (h)(6)(i) are vague, and MMS should incorporate the sensor location guidelines contained in the latest draft of the American petroleum Institute's (API) RP for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, API RP 14C.

Response: The MMS agrees. A new paragraph (h)(1)(x) provides for a drawing (in the H_2S Contingency Plan) showing vessels, wellheads, and other H_2S handling equipment. New paragraph (h)(6)(ii) lists the locations for the sensors required on production facilities.

§ 250.67(h)(6)(iii) (formerly (h)(5)(ii)).

Comment: Twelve commenters suggested a reduction in the calibration frequency and the use of functional tests to determine when re-calibration is required. None presented any data to support their contention. One commenter suggested that daily functional testing begin when the drill bit is 1,500 feet above the potential H_2S zone.

Response: The proposed rule combines the suggestions of H_2S specialists and a functional test requirement specified in the Instrument Society of America's (ISA) RP, Installation, Operation, and Maintenance of Hydrogen Sulfide Detection Instruments, ISA–RP 12.15, Part II–1990. The revision proposes a reduction in function testing and calibration frequencies while authorizing the District Supervisor to require more frequent testing when warranted.

§ 250.67(h)(6)(iv) (formerly (h)(5)(iii)).

Comment: The term ''H_2S-detection ampoules'' is ambiguous and trade restrictive.

Response: The MMS agrees and has revised the proposal to require ''portable H_2S-detection devices.''

Because employees entering an area will be exposed to danger before they can use a portable device, the proposed rule does not allow operators to use portable devices to monitor poorly ventilated areas. Proposed paragraphs (h)(6) (i) and (ii) address areas where H_2S may accumulate and requires fixed sensors. Portable devices may be used in other instances such as when the lessee needs to monitor H_2S in nearby facilities.

§ 250.67(h)(7) SO_2-detection and SO_2-monitoring equipment (new paragraph (h)(7)).

Comment: Operators should have the option to use portable or fixed SO_2 monitors to monitor air quality while burning gas containing H_2S.

Another commenter recommended that monitors be capable of detecting a minimum of 2 ppm of SO_2, and that, in lieu of prescribed emergency actions, personnel protection measures should follow the operator's approved Contingency Plan.

Response: These comments were adopted.

§ 250.67(h)(8)(i) (formerly paragraph (h)(6)(i)).

Comment: Require pressure-demand-type respirators with hoseline capability and a specified self-contained breathing time.

Response: The MMS agrees. The proposal requires compliance with ANSI's Z88.2, Practices for Respiratory Protection, which allows use of several types of respirators. The first sentence has been revised to require that all respirators have hoseline capability and nominal breathing time of at least 15 minutes.

Comment: A specified number of spectacle kits and voice-transmission devices suitable for use with breathing apparatus should be required.

Response: The MMS agrees and proposes that at least two voice transmission devices be available. The requirement for spectacle kits remains ''as needed'' depending on the number of crew members and potential visitors wearing glasses.

§ 250.67(h)(11) Notification of regulatory agencies (formerly paragraph (h)(9)).

Comment: Clarify reporting for releases of H_2S to the USCG and MMS so that routine releases associated with testing, repair, or maintenance of equipment need not be reported.

Response: The MMS has revised paragraph (h)(11) to limit reporting requirements for low-level releases. We have also deleted the requirement for reporting to the USCG because a Memorandum of Understanding between MMS and USCG assigns MMS lead responsibility for H_2S control equipment, gas detection systems, and personnel protection. The MMS will notify the USCG as soon as a potentially hazardous H_2S release has been reported.

§ 250.67(l) Metallurgical properties of equipment for use in a zone known to contain H_2S—(1) General provisions.

Comment: Analyses of failure modes should be done for all materials—not only ones requiring approval under the NACE Standard MR–01–75.

Response: The MMS agrees and has revised paragraph (l)(1) in § 250.67.

§ 250.67(1)(6) Welding.

Comment: Clarify that the welding requirement is applicable to production facilities.

Response: The MMS agrees and has revised and retitled paragraph (l)(6).

Subpart K—Oil and Gas Production Rates

§ 250.175 Flaring and venting of gas.

New paragraph (d).

For safety and emission control purposes, the Regional Supervisor is authorized to restrict the routine flaring of H_2S. A monthly report of volumes flared and H_2S concentrations is required.

Authors

The principal authors of this proposed rule are E.P. Danenberger and Lloyd M. Tracey, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12866

This rule was reviewed under E.O. 12866. The rule was determined not to be a significant rule under the criteria of E.O. 12866 and was, therefore, not reviewed by the Office of Management and Budget. (OMB).

Regulatory Flexibility Act

The Department of the Interior (DOI) has also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

This proposed rule adds new information collection requirements to subparts D and K. The information collection requirements contained in this rule have been submitted to OMB for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The collection of this information will not be required until it has been approved by OMB. Public reporting burden for the H_2S information collection requirements contained in subparts D and K are estimated to average 12 hours and 1 hour per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053, 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget; Paperwork Reduction Project (1010–0053) for subpart D and (1010–0041) for subpart K; Washington, DC 20503, telephone (202) 395–7340.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 250 is proposed to be amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. In § 250.1, paragraphs (c)(7) and (g)(1) are revised as follows:

§ 250.1 Documents incorporated by reference.

* * * * *

(c) * * *

(7) ANSI Z88.2–1992, Practices for Respiratory Protection, Incorporated by Reference at: § 250.67(h)(2)(iv) and (h)(6)(i).

* * * * *

(g) * * *

(1) NACE Standard MR–01–92, Recommended Practice, Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment, January 1992, Incorporated by Reference at: § 250.67(1)(3).

* * * * *

3. In § 250.2, *Definitions,* revise the definition *Zones known to contain (H_2S)* and in the definition *Zones where the absence of H_2S* has been confirmed, revise paragraph (1), remove paragraph (2), and redesignate paragraph (3) as paragraph (2) to read as follows:

§ 250.2 Definitions.

* * * * *

Zones known to contain H_2S means geologic formations where prior drilling, logging, coring, testing, or producing operations have confirmed the presence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 parts per million (ppm) or more of H_2S.

Zones where the absence of H_2S has been confirmed means one of the following: (1) Geologic formations where prior drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S,

* * * * *

4. In § 250.67(b), revise the definition *Zones known to contain H_2S* and in the definition *Zones where the absence of H_2S has been confirmed* revise paragraph (1), remove paragraph (2), and redesignate paragraph (3) as paragraph (2) to read as follows:

§ 250.67 Hydrogen sulfide.

* * * * *

(b) * * *

Zones known to contain H_2S means geologic formations where prior drilling, logging, coring, testing, or producing operations have confirmed the presence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S.

Zones where the absence of H_2S has been confirmed means one of the following: (1) Geologic formations where prior drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S;

* * * * *

5–8. In § 250.67, revise paragraphs (c) through (f) to read as follows:

(c) *Requirement for classification or reclassification of probability of encountering H_2S* during operations. The lessee shall:

(1) Obtain an approved classification for the area from the Regional Supervisor before beginning operations. Classifications are:

(i) ''Zones known to contain H_2S'';

(ii) ''Zones where the presence of H_2S is unknown''; or

(iii) ''Zones where the absence of H_2S has been confirmed.''

(2) Submit a request for reclassification of a zone when additional data indicate a different classification is needed.

(d) *Requirements for drilling, well-completion, and well-workover operations in zones known to contain H_2S.* The lessee shall comply with paragraphs (d), (h), (i), (j), (k), (l) (1) through (5), and (m) (1) through (13) of this section.

(e) *Requirements for drilling and well-completion operations in zones where the presence of H_2S* is unknown. The lessee shall comply with paragraphs (h) and (i) of this section. If H_2S is encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, the lessee shall follow requirements of paragraph (d) of this section.

(f) *Requirements for production operations in zones known to contain H_2S.* Lessee shall comply with the requirements in paragraphs (h), (l) (1) through (6), and (m) (7) through (15) of this section.

* * * * *

9. In § 250.67(h), revise paragraphs (h)(1) (iii) through (v), redesignate paragraph (h)(1)(vi) as paragraph (h)(1)(viii), and revise redesignated paragraph (h)(1)(viii); redesignate (h)(1)(vii) as paragraph (h)(1)(ix) and add new paragraphs (h)(1) (vi), (vii), (x), and (xi); revise paragraph (h)(2); redesignate paragraph (h)(3) as paragraph (h)(4) and revise redesignated paragraphs (h)(4)(ii) (A), (D), and (E); add new paragraph (h)(3); redesignate paragraph (h)(4) as paragraph (h)(5) and revise redesignated paragraph (h)(5); redesignate paragraph (h)(5) as paragraph (h)(6) and revise redesignated paragraph (h)(6); redesignate paragraph (h)(6) as paragraph (h)(8) and revise redesignated paragraphs (h)(8) (i) and (v); redesignate paragraph (h)(7) as paragraph (h)(9) and revise redesignated paragraph (h)(9)(v); add new paragraph (h)(7); redesignate paragraph (h)(8) as paragraph (h)(10); redesignate paragraph (h)(9) as paragraph (h)(11) and revise it.

§ 250.67 Hydrogen sulfide.

* * * * *

(h) * * *

(1) * * *

(iii) Duties, responsibilities, and operating procedures to be initiated when the concentration of H_2S in the atmosphere reaches 20 ppm. Include a description of the audible and visual alarms to be activated.

(iv) Designation of briefing areas for assembly of personnel during an H_2S alert. At least two briefing areas shall be established on each facility. The briefing area that is upwind of the H_2S source at any given time shall be the designated briefing area.

(v) Procedures for the deboarding and safe evacuation of all personnel from the facility by vessel, capsule, or lifeboat. If helicopters are to be used during H_2S alerts, include a description of the types of H_2S emergencies during which the risk of helicopter activity is deemed acceptable and the precautions during such flights.

(vi) Procedures for the safe positioning of all vessels attendant to the facility (including their location with respect to wind direction and distance from the facility) and for emergency relocation.

(vii) Procedures for providing protective-breathing equipment for all personnel, including contractors and visitors.

(viii) A list of agencies and facilities to be notified in case of a release of H_2S and the procedure for notification. Include the identification and telephone numbers of all facilities that might be exposed to atmospheric concentrations of 20 ppm or more of H_2S.

* * * * *

(x) For production facilities producing gas containing 20 ppm or more of H_2S, an ''H_2S Detector Location Drawing'' showing the following:

(A) All vessels, flare outlets, wellheads, and other equipment handling production containing H_2S;

(B) The approximate maximum concentration of H_2S in the gas stream; and

(C) The location of all H_2S sensors required by paragraph (h)(6)(ii) of this section.

(xi) The H_2S Contingency Plan shall describe the operational conditions during which gas containing H_2S would be flared, estimate the maximum gas flow rates, H_2S concentrations and duration of flaring, assess the risks to personnel, and identify the precautionary measures to be taken. The precautions shall include:

(A) Primary and alternate methods for igniting the flare and procedures for sustaining ignition and monitoring the status of the flare (i.e., ignited or extinguished).

(B) Procedures for shutting off flow to the flare in the event the flare is accidentally or intentionally extinguished.

(C) A complete description of portable or fixed sulphur dioxide (SO_2)-detection system(s) to be used to determine the SO_2 concentration and personnel exposure hazard when gas containing H_2S is burned.

(D) A description of the increased monitoring and warning procedures to be taken when the SO_2 concentration in the atmosphere reaches 2 ppm and personnel protection measures or evacuation procedures to be initiated when the SO_2 concentration in the atmosphere reaches 5 ppm.

(2) *Training program.* All operator and contract personnel shall complete an H_2S training program, as described in the operator's approved H_2S Contingency Plan, before beginning work at an Outer Continental Shelf facility. Maintain written documentation of this training at the facility where the individual is employed. Alternatively, the employee may carry a training completion card. The H_2S training program described below shall be repeated within 1 year after completion of the previous class. Employees or contractors transferred to another facility shall attend a supplemental briefing on H_2S equipment and procedures at that facility before beginning duty. Visitors who will remain on the facility overnight shall receive the training described in this paragraph. Visitors who will depart on the day of arrival are exempt from the training described in this paragraph, but they shall, upon arrival, complete an abbreviated training program that includes the following: Information on the location and use of an assigned respirator; practice in donning and adjusting the assigned respirator; information on the safe briefing areas, alarm system, and hazards of H_2S and SO_2; and instructions on their responsibilities in the event of an H_2S release. Safety information shall be prominently posted on the facility and on vessels serving the facility. The training program shall include the following:

(i) Instruction on the hazards of H_2S and SO_2 and the provisions for personnel safety contained in the H_2S Contingency Plan.

(ii) Instruction in the proper use of safety equipment which the employee may be required to use.

(iii) Information on the location of protective-breathing equipment, H_2S detectors and alarms, ventilation equipment, briefing areas, warning systems, evacuation procedures, and the direction of the prevailing winds.

(iv) Restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with ANSI's Practices for Respiratory Protection (ANSI Z88.2).

(v) Instruction in basic first-aid procedures applicable to victims of H_2S exposure. During all drills and training sessions, the lessee shall address procedures for rescue and first aid for H_2S victims. Lessee shall have readily

available on each facility, and instruct personnel as to the location and use of, the following equipment:

(A) A first-aid kit of appropriate size and content for the number of personnel on the facility;

(B) At least three resuscitators complete with face masks, oxygen bottles, and spare oxygen bottles; and

(C) At least one litter or an equivalent device.

(vi) Information on the meaning of all warning signals.

(3) *Drills.* Conduct a drill for each person at the facility within 24 hours after duty begins and at least once during every subsequent 7-day period. At least monthly, a discussion of drill performance, new H_2S considerations at the facility, and other updated H_2S information shall be topics at facility safety meetings. Keep records of attendance for drilling, well-completion, and well-workover operations at the facility until operations are completed. Keep records of attendance for production operations at the facility or at the nearest field office for 1 year.

(4) * * *

(ii) * * *

(A) Each sign shall be a high-visibility yellow color with black lettering of a minimum of 12 inches in height reading as follows:

DANGER

POISONOUS GAS

HYDROGEN SULFIDE

and in lettering of a minimum of 7 inches in height:

DO NOT APPROACH IF RED FLAG IS FLYING

Existing signs containing the words ''Danger-Hydrogen Sulfide-H_2S'' are acceptable provided the words ''POISONOUS GAS'' and ''DO NOT APPROACH IF RED FLAG IS FLYING'' in lettering of a minimum of 7 inches in height are displayed on a sign immediately adjacent to the existing sign.

* * * * *

(D) When the atmospheric concentration of H_2S reaches 20 ppm, display signs and flags and activate visual and audible alarms.

(E) Display warning signs required under paragraph (h)(4)(ii)(A) of this section at all times on facilities with wells capable of producing H_2S and on facilities which process gas containing H_2S.

* * * * *

(5) *Audible warning system.* Install a public address system and a siren, horn, or other similar warning devices with a unique sound used only for H_2S warnings. The warning devices (audible and visual) shall be suitable for the electrical classification of the area and shall be activated by the H_2S-detection system when the concentration of H_2S in the atmosphere reaches 20 ppm. When the warning devices are activated, the designated responsible persons shall inform personnel of the level of danger and issue instructions on the initiation of appropriate protective measures.

(6) *H_2S-detection and H_2S-monitoring equipment.* (1) Each facility shall have an H_2S-detection system that activates audible and visual alarms when the concentration of H_2S in the atmosphere reaches 20 ppm. The detection systems shall be capable of sensing a minimum of 10 ppm of H_2S in the atmosphere. For drilling, well-completion, and well-workover operations, sensors shall be located at the bell nipple, mud-return line receiver tank (possum belly), pipe-trip tank, shale shaker, well-control fluid pit area, driller's station, living quarters, and all other areas where H_2S may accumulate. H_2S-detection systems that measure hydrogen-ion (pH) and hydrosulfide-ion (HS) and sulfide-ion ($S^=$) concentrations in the mud and calculate and display the theoretical concentration of H_2S that could exist in the air above the mud may be used in water-based muds to supplement the required in-the-air sensors. The District Supervisor may require such a mud sensor to be utilized in the mud-return line receiver tank (possum belly) in cases where the ambient air sensors in the mud-return system do not consistently and accurately detect the presence of H_2S.

(ii) On production facilities, locate H_2S detection sensors as follows:

(A) At least one sensor per 400 square feet of deck area or fractional part thereof, in rooms, buildings, or deck areas where atmospheric concentrations of H_2S could reach 20 ppm or more.

(B) In buildings where personnel regularly or occasionally sleep and on a platform where gas containing H_2S of 20 ppm or greater is produced, processed, or otherwise handled.

(C) Within 10 feet of all vessels, compressors, wellheads, manifolds, and pumps that could release H_2S in volumes and concentrations sufficient to result in atmospheric concentrations of 20 ppm of H_2S at a distance of 10 feet. These sensor locations shall be depicted in the ''H_2S Detector Location Drawing'' required by paragraph (h)(1)(x) of this section. One sensor may be utilized to detect H_2S around multiple pieces of equipment, provided the sensor is located no more than 10 feet from each piece. Monitor compressors exceeding 50 horse power with at least two sensors. Wells shut in at the master valve and sealed closed are exempt. Consider the location of piping system fittings, flanges, valves, and other devices subject to leaks to the atmosphere in determining the placement of sensors. Also consider design factors, such as the type of decking and the location of fire walls, in the placement of sensors.

(iii)(A) Functionally test the H_2S-detection and H_2S-monitoring equipment with a known concentration in the range of 10 to 30 ppm of H_2S at least once every 24 hours when conducting drilling, drill stem testing, well-completion, and/or well-workover operations in wells in areas classified as zones where the presence of H_2S is unknown or known. When drilling, begin functional testing before the bit is 1,500 feet (vertically) above a potential H_2S zone.

(B) Functionally test the H_2S detectors and monitors for production operations with a known concentration in the range of 10 to 30 ppm of H_2S at a frequency such that no more than 14 days shall elapse between functional tests.

(C) If the results of any functional test are not within 2 ppm or 10 percent, whichever is greater, of the applied concentration, recalibrate the instrument. The functional tests and calibrations shall be conducted by personnel trained to calibrate the particular H_2S-detector and H_2S-monitoring equipment being used. Maintain records of testing and calibration results at the facility to show the present status and history of each device, including dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation. Record dates of testing and calibrations in the drilling or production operations report, as applicable. Records shall be available for inspection by MMS personnel. When equipment requires recalibration as a result of two consecutive functional tests, the District Supervisor may require the H_2S-detection and H_2S-monitoring equipment to be functionally tested and calibrated more frequently.

(iv) Portable H_2S-detection devices capable of detecting a 10-ppm concentration of H_2S in the air shall be available for use by all personnel.

(v) Lessee shall equip attendant vessels that are stationed overnight alongside facilities where the presence of H_2S is known or unknown with an H_2S-detection system that activates audible and visual alarms when the concentration of H_2S in the atmosphere reaches 20 ppm. The detection system shall be capable of sensing a minimum 10 ppm of H_2S in the atmosphere with at least one sensing point in the crew

quarters. This requirement is not applicable to attendant vessels that, in accordance with the positioning procedure described in the approved H_2S Contingency Plan required by paragraph (h)(1)(vi) of this section, are positioned upwind and at a safe distance from the facility.

(vi) The District Supervisor may require the lessee to equip nearby facilities with portable or fixed H_2S detector(s). These detectors shall be tested and calibrated in accordance with paragraph (h)(6)(iii) of this section.

(7) *SO_2-detection and SO_2-monitoring equipment.* If gas containing H_2S is accidentally or intentionally burned, the operator shall monitor the SO_2 concentration in the air with portable or strategically placed fixed devices capable of detecting a minimum of 2 ppm of SO_2. Reading shall be taken at least hourly and at any time personnel detect SO_2 odor or nasal irritation. The District Supervisory may waive the monitoring requirements of this paragraph provided sufficient engineering controls, such as ventilation systems and multiple flare booms or elevated flare booms, are utilized to effectively minimize or eliminate the hazards associated with SO_2. If the SO_2 concentration in the work areas reaches 2 ppm, the personnel protective measures specified in the H_2S Contingency Plan shall be implemented. If fixed or portable electronic sensing devices are used, these devices shall be calibrated every 3 months. If length of stain gas detector tub type detectors are sued, the sensing date shall not exceed the expiration dates for the tubes used.

(8) * * *

(i) Personnel, including contractors and visitors on a facility operating in a zone known to contain H_2S or a zone where the presence of H_2S of unknown, shall have immediate access to self-contained pressure-demand-type respirators with hoseline capability and a nominal breathing time of at least 15 minutes, The design, selection, use, and maintenance of these respirators shall conform to ANSI Z88.2, Practices for Respiratory Protection. At least two voice-transmission devices, which can be used while wearing a respirator, shall be available for use by designated key personnel. Spectacle kits shall be made available as needed.

* * * * *

(v) Helicopter flights to and from facilities during H_2S alerts shall be limited to the conditions specified in the H_2S Contingency Plan. During authorized flights, pressure-demand-type respirators shall be utilized as required by the plan. All members of flight crews shall be trained in the use of the particular type(s) of respirator equipment made available.

* * * * *

(9) * * *

(v) At least three resuscitators.

* * * * *

(11) *Notification of regulatory agencies.* The lessee shall notify MMS without delay in the event of a gas release which results in a 15-minute time weighted average (TWA) atmospheric concentration of H_2S anywhere on the facility of 20 ppm or more.

10. In § 250.67(i), revise the title of paragraph (i) and revise paragraphs (i)(1), (i)(2), and (i)(3)(i) to read as follows:

§ 250.67 Hydrogen sulfide.

* * * * *

(i) *Drilling, completion, and workover fluids program when operating in a zone known to contain H_2S or a zone where the presence of H_2S is unknown.*—(1) *Well-control fluid base*. Lessee may use either water- or oil-base muds in accordance with § 250.40(b)(1).

(2) *Well-control fluid testing.* If water-base, well-control fluids are used, and if H_2S is detected by ambient air sensors, either the Garrett-Gas-Train test or a comparable test for soluble sulfides shall be conducted immediately to confirm the presence of H_2S. If the concentration detected by air sensors is in excess of 20 ppm, personnel conducting the test shall don protective-breathing equipment conforming to paragraph (h)(8)(i) of this section.

(3) * * *

(i) *Scavengers.* Scavengers for control of H_2S shall be available on the facility. When H_2S is detected, scavengers shall be added as needed. Drilling shall be suspended until the scavenger is circulated throughout the system.

* * * * *

11. In § 250.67(k), revise paragraph (k)(3) to read as follows:

§ 250.67 Hydrogen sulfide.

* * * * *

(k) * * *

(3) All produced gases shall be burned through a flare which meets the requirements of paragraph (m)(7) of this section. Prior to flaring gas containing H_2S, the lessee shall activate SO_2 monitoring equipment in accordance with paragraph (h)(7) of this section. If SO_2 in excess of 2 ppm is detected, the lessee shall implement the personnel protective measures required by the H_2S Contingency Plan specifications of paragraph (h)(1)(xi)(D) of this section. The flaring of well test gas is also subject to the requirement of § 250.175. Gases from stored test fluids shall be piped into the flare outlet and burned.

* * * * *

12. In § 250.67(1), revise paragraphs (l)(1) and (l) (2) and the title and text of paragraph (l)(6) to read as follows:

§ 250.67 Hydrogen sulfide.

* * * * *

(l) *Metallurgical properties of equipment for use in a zone known to contain H_2S*—(1) *General provisions.* Equipment used in H_2S environments shall be constructed of materials with metallurgical properties that resist or prevent sulfide stress cracking (also known as hydrogen embrittlement, stress corrosion cracking, or H_2S embrittlement) chloride-stress cracking, hydrogen-induced cracking, and other failure modes.

(2) *Tubulars and other equipment.* Tubulars and other equipment, casing, tubing, drill pipe, couplings, flanges, and related equipment shall be designed for H_2S service.

* * * * *

(6) *Welding.* The lessee shall keep the use of welding to a minimum during the installation or modification of a production facility. Welding shall be done in a manner that ensures resistance to sulfide stress cracking.

* * * * *

13. In § 250.67(m), revise paragraphs (m) (1), (4), and (13) to read as follows:

§ 250.67 Hydrogen sulfide.

* * * * *

(m) * * *

(1) *Additional precautions after penetration of an H_2S-bearing zone.* In addition to the monitoring requirements in paragraph (h)(6)(i) of this section, continuously observe the H_2S levels indicated by the monitors in the work areas during the following operations:

* * * * *

(4) *Stripping operations.* Personnel shall monitor displaced well-control fluid returns and wear protective-breathing equipment in the working area when the atmospheric concentration of the H_2S reaches 20 ppm or if the well is under pressure.

* * * * *

(13) *Water disposal.* For produced water disposed of by means other than subsurface injection, the lessee shall submit to the District Supervisor an analysis of the anticipated H_2S content of the water at the final treatment vessel and at the discharge point. The District Supervisor may require that the water be treated for the removal of H_2S. The District Supervisor may require the submittal of an updated analysis if the

water disposal rate or the potential H_2S content increases.

* * * * *

14. In § 250.175, *Flaring and venting of gas,* add new paragraph (d) as follows:

§ 250.175 Flaring and venting of gas.

* * * * *

(d) *Requirements for flaring and venting of gas containing H_2S*—(1) *Flaring of gas containing H_2S.* (i) The Regional Supervisor may, for safety and air pollution prevention purposes, further restrict the flaring of gas containing H_2S. Information provided in the lessee's H_2S Contingency Plan (§ 250.67(h)(1)(xi)), Exploration Plan, or Development and Production Plan, and associated documents will be used in determining the need for such restrictions.

(ii) If the Regional Supervisor determines that flaring at a facility or group of facilities may significantly affect the air quality of an onshore area, the Regional Supervisor may require the operator(s) to conduct an air quality modeling analysis to determine the potential effect of facility emissions on onshore ambient concentrations of SO_2. The Regional Supervisor may require monitoring and reporting or may restrict or prohibit flaring pursuant to §§ 250.45 and 250.46.

(2) *Venting of gas containing H_2S.* The lessee shall not vent gas containing H_2S except for minor releases during maintenance and repair activities that do not result in a 15-minute TWA atmospheric concentration of H_2S of 20 ppm or higher anywhere on the platform.

(3) *Reporting of flared gas containing H^2S.* In addition to the recordkeeping requirements of paragraphs (c) and (d) of this section, the operator shall submit to the Regional Supervisor a monthly report of flared and vented gas containing H_2S. The report shall contain the following information:

(i) On a daily basis, the volume and duration of each flaring episode.

(ii) H_2S concentration in the flared gas.

(iii) Calculated amount of SO_2 emitted.

[FR Doc. 95–11538 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of reopening of public comment period and opportunity for public hearing.

SUMMARY: OSM is reopening a public comment period until May 26, 1995, and is requesting public comment that would be considered in deciding how to implement in Virginia underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Virginia regulatory program (hereinafter referred to as the ''Virginia program'') currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Virginia and consideration of public comments, OSM will decide whether initial enforcement in Virginia will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.D.T. on May 26, 1995. If requested, OSM will hold a public hearing on May 22, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Virginia. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T. on May 18, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

Copies of the applicable parts of the Virginia program, SMCRA, the implementing Federal regulations, information provided by Virginia concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance

standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsistence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsistence-related complaints has been thorough and complete so as to assure prompt remedial action, the OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), the OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that were not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the state statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provision of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specific angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the premittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Virginia

By letter to Virginia dated December 14, 1994, OSM requested information from Virginia that would help OSM decide which approach to take in Virginia to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. VA–850. By letter dated January 13, 1995, Virginia responded to this OSM request (Administrative Record No. VA–851).

Virginia indicated that existing State program provisions at Sections 45.1–243 and 45.1–258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA. Virginia explained that it will enforce these State program provisions effective October 24, 1992. Section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations concerning subsidence control has been used by Virginia since December 26, 1990. OSM

records show that approximately 325 underground coal mines have been classified as active in Virginia since October 24, 1992. Between October 24, 1992, and January 13, 1995, Virginia investigated 262 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations. As of January 13, 1995, Virginia had found that no violation of the Act existed on 202 of the complaints, violations existed on 35 of the complaints, and technical reports and a final decision were pending on 25 complaints.

By letter dated April 30, 1995, a person requested that the comment period be reopened because previous commitments prevented a timely reply to OSM's request for public comment. In response to this request, OSM is reopening the public comment period until May 26, 1995.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Virginia to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on May 18, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact that individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Virginia should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: May 4, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–11647 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–051]

Special Local Regulation: Stonington Lobster Boat Races, Deer Island Thoroughfare, Stonington, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for the Stonington Lobster Boat Race. The event will be held on Saturday, July 22, 1995, from 10 a.m. to 4 p.m., and thereafter annually on the third or fourth Saturday in July in the waters of Deer Island Thoroughfare, Stonington, ME. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant(jg) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–051), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The shortened comment period for this regulation was caused by a delay in receiving necessary information from the event sponsor. The Coast Guard considers this shortened comment period to be adequate because considerable promotional efforts undertaken by the sponsor have effectively publicized the event throughout the local area. The shortened comment period will allow sufficient time for the public to make substantive comments on the proposed rule.

Drafting Information. The drafters of this notice are Lieutenant(jg) B.M. Algeo, Project Manager, First Coast Guard District Boating Affairs Branch, and Lieutenant Commander S.R. Watkins, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

On March 29, 1995, the sponsor, Deer Island-Stonington Chamber of Commerce, submitted a request to hold a powerboat race in Deer Island Thoroughfare, Stonington, ME. The Coast Guard is considering establishing a permanent regulation in Deer Island Thoroughfare for this event known as the ''Stonington Lobster Boat Races.'' The proposed regulation would establish a regulated area in Deer Island Thoroughfare and would provide specific guidance to control vessel movement during the race.

This event will include up to 100 power-driven lobster boats competing on a rectangular course at speeds approaching 20 m.p.h. Due to the inherent dangers of racing in a confined area and the large wakes produced, vessel traffic will be temporarily restricted to provide for the safety of the spectators and participants.

The sponsor will provide five committee boats to augment the Coast Guard patrol assigned to the event. The race course will be well marked and patrolled, but due to the speed and proximity of the participating vessels, it is necessary to establish a special local regulation to control spectator and commercial vessel movement within this confined area.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a special local regulation on specified waters of Deer Island Thoroughfare, Stonington, Maine. The regulated area will be closed to all traffic from 10 a.m. to 4 p.m. on July 22, and thereafter annually on the third or fourth Saturday in July, at the same prescribed times. In emergency situations, provisions will be made to establish safe escort by a Coast Guard or designated Coast Guard vessel for mariners requiring transit through the regulated area. This regulation is needed to protect spectators and participants from the hazards that accompany a high speed power boat race in a confined area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a fully Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the event is taking place in an area where there is little commercial interest.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is considering the environmental impacts of both the proposed special regulations and the World's Fastest Lobster Boat Race. It is anticipated that an Environmental Assessment (EA) will be written and included in the docket concerning the potential environmental impacts resulting from this powerboat race for which the Coast Guard has received an ''Application for Marine Event Permit.'' Comments in this regard should be forwarded to the address listed under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.111, is added to read as follows:

§ 100.111 Stonington Lobster Boat Races, Jonesport, ME.

(a) *Regulated area.* The regulated area includes all waters within the following points:

Latitude	Longitude
44°08.57″ N	68° 40.12″ W
44°09.05″ N	68° 40.12″ W
44°09.15″ N	68° 39.05″ W
44°09.05″ N	68° 39.00″ W

(b) *Special local regulations.* (1) Commander, U.S. Coast Guard Group Southwest Harbor reserves the right to delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels desiring to transit Deer Island Thoroughfare may do so without Coat Guard approval as long as the vessel remains outside the regulated area at specified times. No vessel will be allowed to transit through any portions of the regulated area during the actual race. Provisions will be made to allow vessels to transit the regulated area between race heats. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort. Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16.

(4) Spectator craft are authorized to watch the race from any area as long as they remain outside the designated regulated area. Spectator craft are expected to remain outside the regulated area from 10 a.m. to 4 p.m. unless permission has been granted by the patrol commander.

(5) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group Southwest Harbor or the designated on-

scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately, then proceed as directed. Members of the Coast Guard Auxiliary will also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period*. This section will be effective from 10 a.m. to 4 p.m. on Saturday, July 22, 1995, and thereafter annually on the third or fourth Saturday in July, at the same prescribed times, unless otherwise specified in the Coast Guard Local Notice to Mariners and a notice in the **Federal Register**.

Dated: May 1, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District

[FR Doc. 95–11660 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–031]

RIN 2115–AA97

Safety Zone: Macy's 1995 Fourth of July Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for the annual Macy's Fourth of July Fireworks program in New York Harbor. The event will take place on Tuesday, July 4, 1995, from 6 p.m. until 11 p.m., on the East River. With the exception of certain vessels, which may enter designated portions of the safety zone, the East River will be temporarily closed to vessel transits. This safety zone is needed to protect mariners from the hazards associated with fireworks exploding in the area, and from the dangers associated with vessels operating with limited maneuverability in confined waters.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Planning and Readiness Division, Bldg. 108, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Planning and Readiness Division at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Chief, Planning and Readiness Division, Coast Guard Group/Captain of the Port New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule will effectively cancel this annual event. cancellation of this annual event will be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–031) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Planning and Readiness Division at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information: The drafters of this notice are LT R. Trabocchi, Project Manager, Coast Guard Group/Captain of the Port New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

Macy's has notified the Coast Guard that it intends to sponsor a fireworks program on the East River, New York, on July 4, 1995. This proposed regulation would establish a safety zone that will temporarily close the East River to vessel transits from 6 p.m. until 11 p.m. on July 4, 1995. This safety zone includes all waters of the East River, shore to shore, east of a line drawn from the Fireboat Station, at Battery Park, Manhattan, New York (40°42′16″N latitude 074°01′07″W longitude) to the Governors Island Light at the northwest point of Governors Island, New York (40°41′35″N latitude 074°01′11″W longitude); north of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, to the northwest corner of Pier 6, Brooklyn, New York; south of a line drawn from Lawrence Point to Stony Point, and south of the Harlem River Footbridge. This safety zone also includes all waters of Newtown Creek, Brooklyn, New York, west of 073°57′37″W longitude; and, within the boundaries of the safety zone, all waters inward of the pierheads and bulkheads south of Roosevelt Island. There will be seven (7) fireworks barges between the southern tip of Roosevelt Island and the southern boundaries of this safety zone. No vessel may enter the safety zone without permission of the Captain of the Port New York. Certain designated vessels may enter this safety zone. These designated vessels are defined as follows: (1) Vessels less than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks may enter the zone north of the southern tip of Roosevelt Island. (2) Vessels greater than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display, may enter the zone and take position at least 200 yards off the west bank of the East River between the Williamsburg Bridge and the charted position of Buoy 18 (LLNR 27335). These vessels may enter the zone and proceed to this area between 6:30 p.m. and 8 p.m., and must remain in position until released by the Captain of the Port New York. (3) The Staten Island and Coast Guard ferries may continue services to their ferry slips at the Battery, Manhattan, New York, but will not be permitted to transit east of the Coast Guard ferry slip, also known as Slip 6, at the Battery, Manhattan, New York. On scene patrol personnel will monitor the number of designated vessels entering into the viewing areas of the zone. If it becomes apparent that any additional spectator vessels in a specific viewing area will create a safety hazard, the Patrol Commander may prevent additional vessels from entering into that viewing area.

Vessels not meeting this criteria have a significant potential to create a hazardous condition in this area of the East River, due in great part, to the extremely strong currents. Restricting vessels in the safety zone as described above will minimize the threat posed by vessels with limited maneuverability. Continuing ferry services in the

southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Service New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Governors Island, New York, and those persons traveling to and from Manhattan at the end of the business holiday.

This safety zone covers the minimum area needed to ensure the protection of all vessels and fireworks handlers aboard the barges.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(E) of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone will temporarily close the East River to vessel traffic. There is a regular flow of traffic through this area; however, due to the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the fact that the event is taking place at a late hour on a Federal holiday, and that vessel traffic is expected to be somewhat reduced due to this Federal holiday falling on weekday not immediately preceeding or following a weekend, the impact of this regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M164475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–031 is added to read as follows:

§ 165.T01–031 Safety Zone; Macy's 1995 Fourth of July Fireworks, East River, New York.

(a) *Location.* This safety zone includes all waters of the East River, shore to shore, east of a line drawn from the Fireboat Station, at Battery Park, Manhattan, New York (40°42′16″ N latitude 074°01′07″ W longitude) to the Governors Island Light at the northwest point of Governors Island, New York (40°41′35″ N latitude 074′01′11′ W longitude); north of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, to the northwest corner of Pier 5, Brooklyn, New York, to the northwest corner of Pier 6, Brooklyn, New York; south of a line drawn from Lawrence Point to Stony Point, and south of the Harlem River Footbridge. This safety zone also includes all waters of Newtown Creek, Brooklyn, New York, west of 073°57′37″ W longitude; and, within the boundaries of the safety zone, all waters inward of the pierheads and bulkheads south of Roosevelt Island.

(b) *Effective period.* This safety zone is effective from 6 p.m. until 11 p.m. on July 4, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations. (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.*

(2) No vessels will be allowed to enter the safety zone without permission of the Captain of the Port New York.

(3) The following vessels may enter the safety zone:

(i) Vessels less than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks may enter the zone north of the southern tip of Roosevelt Island.

(ii) Vessels greater than 20 meters (65.6 feet) in length, carrying persons for the sole purposes of viewing the fireworks display may enter the zone and take positions at least 200 yards off the west bank of the East River between 6:30 p.m. and 8 p.m., and must remain in position until released by the Captain of the Port New York.

(iii) The Staten Island and Coast Guard ferries may continue services to their ferry slips at the Battery, Manhattan, New York, but may not be permitted to transit east of the Coast Guard ferry slip, also known as Slip 6, at the Battery, Manhattan, New York.

(4) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 2, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 95–11659 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 183

[CGD 95–041]

Propeller Accidents Involving Houseboats and Other Displacement Type Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: Boating accidents involving propeller strikes often generate a great deal of interest and concern. As a result of a serious accident involving a rented houseboat which occurred in 1993, for example, the Coast Guard has received considerable correspondence seeking the initiation of a rulemaking project to establish mandatory requirements for propeller guards on recreational houseboats and other displacement-type (non-planing) vessels, including those leased by livery operations. The Coast Guard wants to get an understanding of the public's present feelings about the use of propeller guards or possible alternatives to propeller guards on these vessels. In order to identify and consider the potential impacts such a requirement may have on the boating public, boat owners, boat operators, manufacturers, and livery companies leasing such vessels, the Coast Guard is requesting comments from interested parties.

DATES: Comments are requested by July 10, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Project Manager, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this request for comments by submitting written data, views or arguments. Persons submitting comments should include their names and addresses and identify this notice (CGD 95–041). Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background and Purpose

The Federal statutes in 46 U.S.C. 4302 which authorize the Coast Guard to develop boating safety standards specify that such standards must be based upon a demonstrated need. In establishing a need, the Coast Guard must:

(1) Consider the extent to which the regulations or standards will contribute to boating safety;

(2) Consider relevant available boating safety standards, statistics and data, including public and private research and development, testing and evaluation;

(3) Not compel substantial alteration of a recreational vessel or equipment that is in existence, or the construction or manufacture of which is begun before the effective date of the regulation, but subject to that limitation may require compliance or performance, to avoid a substantial risk of injury to the public, that the Secretary considers appropriate in relation to the degree of hazard that the compliance will correct; and

(4) Consult with the National Boating Safety Advisory Council.

Current regulations in 33 CFR 173 and 174 require the operator of any vessel numbered or used for recreational purposes to file a Boating Accident Report (BAR) if the vessel is involved in an accident that results in: (1) Loss of life; (2) personal injury which requires medical treatment beyond first aid; (3) damage to the vessel and other property exceeding $500; or (4) complete loss of the vessel. Boat operators are required to report their accidents to authorities in the State where the accident occurred, or directly to the Coast Guard if the accident occurred in Alaska. However, ongoing research indicates only a small percentage of reportable non-fatal boating accidents are reported each year.

Currently available data does not support a need for Federal regulations to require propeller guards on houseboats. Over 31,000 boating accidents were reported to the Coast Guard for the years 1989 to 1993. The BAR data base indicates that 17 ''Struck By Boat or Propeller'' accidents involving houseboats were reported, with 16 injuries and one fatality. Three accidents resulting in three injuries were of the category, ''Struck by Boat,'' and 14 were of the category, ''Struck by Propeller,'' and resulted in 13 injuries and one fatality.

Solicitation of Views

The Coast Guard solicits comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance, including: (1) The economic and other impacts of establishing a requirement for propeller guards on recreational houseboats and other displacement vessels; (2) suggestions on alternatives to propeller guards which should also be considered; (3) recommendations on the applicability of regulations; and (4) the concerns of the recreational vessel livery and charter industries.

Persons submitting comments should do so as directed under *Request for Comments* above, and specify the area(s) of concern on which comments are being submitted, state what impacts may result from one or more alternatives identified, suggest other alternatives, and provide reasons to support the information provided on potential impact or suggested alternatives.

The Coast Guard will consider all relevant comments in determining what action may be necessary to address propeller accidents involving houseboats and other displacement-type recreational vessels.

Dated: May 3, 1995.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–11661 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG58

Contract Program for Veterans With Alcohol and Drug Dependence Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: In a document published in the **Federal Register** on October 5, 1993 (58 FR 51799), the Department of Veterans Affairs proposed to amend its medical regulations concerning the Contract Program for Veterans with Alcohol and Drug Dependence Disorders to incorporate by reference the 1991 edition of the Life Safety Code. This document hereby withdraws the proposal. The 1991 edition of the Life Safety Code has been superseded by a

1994 edition. Accordingly, in the near future the Department will publish a new proposal to incorporate by reference the 1994 edition.

FOR FURTHER INFORMATION CONTACT: Karen Boies, Ph.D., Deputy Associate Director for Addictive Disorders and Psychiatric Rehabilitation, Veterans Health Administration, Department of Veterans Affairs, (202) 535–7316.

Approved: May 2, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–11574 Filed 5–10–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5205–8]

Ocean Dumping; Proposed Site Modifications and Site Dedesignation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to modify the designation of an Ocean Dredged Material Disposal Site (ODMDS) and to dedesignate another ODMDS in the Atlantic Ocean offshore Charleston, South Carolina. The proposed modifications are to extend the period of use and to provide for improved management of the Charleston Harbor Deepening Project ODMDS. The proposed dedesignation is for the smaller Charleston ODMDS. These proposed actions are necessary to provide an environmentally acceptable ocean disposal site for projects in the Charleston area.

DATES: Comments must be received on or before June 26, 1995.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/347–1740 ext. 4286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that use of disposal sites may be modified.

The Charleston Harbor Deepening Project ODMDS was designated on August 3, 1987 along with a smaller Charleston ODMDS. A decision to designate a small site for permanent use at Charleston was based on projected future disposal volumes and the ease of monitoring. The larger Harbor Deepening Project site, which was the interim site, was designated for a seven-year period and restricted to use for Harbor Deepening material only. The smaller, permanent Charleston ODMDS lies within the boundaries of, and completely in the western portion of, the larger Charleston Harbor Deepening Project ODMDS. The sites are defined by the following coordinates:

Charleston Harbor Deepening Project ODMDS;
32°38′06″ N, 79°41′57″ W;
32°40′42″ N, 79°47′30″ W;
32°39′04″ N, 79°49′21″ W;
32°36′28″ N, 79°43′48″ W.

Charleston ODMDS;
32°40′27″ N, 79°47′22″ W;
32°39′04″ N, 79°44′25″ W;
32°38′07″ N, 79°45′03″ W;
32°39′30″ N, 79°48′00″ W.

Recent on-site investigations have revealed the presence of significant live bottom resources within and around both Charleston ODMDSs. These resources are located primarily in the western half of the smaller site and along the southern boundary of the larger site. While the effects of burial by dredged material disposal are apparent, the effects of nearby disposal (particularly of fine material) on these resources is yet to be determined. Ongoing studies are being conducted to determine whether recently disposed fine materials are impacting these resources. Until these studies are complete, further disposal of all fine material will be limited to the eastern portion of the Charleston Harbor Deepening Project ODMDS to prevent interference with these studies and to minimize further potential impacts.

On March 5, 1991 final rulemaking was issued to modify the Charleston Harbor Deepening ODMDS to allow non-harbor deepening projects access to this site. Since the smaller ODMDS was the only site available at that time for such projects, and the resources of concern were located within that site, it was determined that such a modification was necessary for continued disposal of Charleston Harbor area projects in an environmentally-acceptable manner.

In March 1993, the EPA and the Charleston District of the U.S. Army Corps of Engineers (COE) entered into an agreement concerning the management and monitoring of the Charleston Harbor Deepening ODMDS. This Site Management Plan (the Plan) was the result of partnering of the federal, state and local authorities who have an interest in ocean disposal and the protection of marine resources. The Site Management and Monitoring Team (the Team) jointly developed the Plan which outlines specific management and monitoring objectives for the Charleston ODMDS. The Team meets regularly to review the progress and results of monitoring and makes recommendations to EPA and the COE on the management and regulation of ocean disposal at the site. The current five year monitoring effort has entered its third year. Copies of the Plan, which is scheduled for review in 1997, may be obtained for review and comment from either the EPA regional office or the COE District office.

B. EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites (39 FR 16186 (May 7, 1974)). The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The continued use of the Charleston Harbor Deepening ODMDS is vital to the management goals of the Plan. The existence of natural resources within the smaller ODMDS, by itself, should preclude any further use of that site. By allowing the larger ODMDS to receive material on a continued basis, the need for the smaller ODMDS no longer exists, thereby allowing for disposal to occur in a more environmentally acceptable location. In addition, disposal within the larger site will have to proceed in accordance with the Plan. Strict adherence to the disposal placement as specified in the Plan is necessary to prevent wasted monitoring efforts, which were designed based on the disposal of fine-grained materials within a specific location. Because monitoring results may cause management objectives to change, the Plan was designed so that appropriate changes could be made with the concurrence of EPA and the COE. EPA believes these changes do not warrant the preparation of an Environmental Impact Statement (EIS).

Once studies are complete, EPA may redefine the boundaries of the Charleston Harbor Deepening Project ODMDS through further rulemaking. Such rulemaking could modify disposal activities in the vicinity of the area's resources and reduce the potential for adverse impacts or allowing greater utilization of the site. EPA's primary concern is to provide an environmentally acceptable ocean disposal site for Charleston Harbor area dredging projects on a continued basis.

C. Proposed Site Modifications

The proposed site modifications for the Charleston Harbor Deepening Project ODMDS are the extension of the period of use and to adjust certain restrictions on site use. The present period of use on the site is for seven years from the initiation of the Charleston Harbor deepening project. EPA proposes to change the period of use to ''continued use.'' EPA also proposes to add to the present restriction of site use the following language: ''and in accordance with all provisions of disposal placement as specified by the Site Management Plan.''

D. Proposed Site Dedesignation

The proposed dedesignation of the smaller Charleston ODMDS is due to the presence of natural resources within its boundaries. Disposal of material within this site, particularly fine-grained materials, could directly and indirectly affect the survival of these resources. The proposed modification on the larger ODMDS to allow for continued use will provide a suitable location for the disposal of all materials from the Charleston area that meet the ocean disposal criteria. Additionally, the boundaries of the smaller ODMDS lie totally within the larger ODMDS. Therefore, the proposed action does not, at this time, actually remove any ocean bottom from potentially being used, if appropriate.

E. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the modifications and dedesignation will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a ''major'' rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Patrick M. Tobin,

Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is proposed to be amended by revising the ''Period of Use'' and ''Restriction'' in paragraph (h)(5) and by removing and reserving paragraph (h)(4) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(4) (Reserved)

(5) * * *

* * * * *

Period of Use: Continued use.

Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged materials, except entrance channel materials, shall be limited to that part of the site east of the line between coordinates 32°39′04″N, 79°44′25″W and 32°37′24″N, 79°45′30″W unless the material can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074 mm) by weight and shown to be suitable for ocean disposal. Additionally, all disposals shall be in accordance with all provisions of disposal placement as specified by the Site Management Plan.

* * * * *

[FR Doc. 95–11679 Filed 5–10–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 95–47; FCC 95–158]

Allow Interactive Video and Data Service (IVDS) Licensees To Provide Mobile Service on an Ancillary Basis

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rules to allow Interactive Video and Data Service (IVDS) licensees to provide mobile service to subscribers on an ancillary basis. This action is in response to a petition for rule making from EON Corporation. Allowing mobile operation would enhance the marketability and usefulness of IVDS as well as ensure flexible and efficient use of the IVDS spectrum.

DATES: Comments must be submitted on or before June 26, 1995 and reply comments must be filed on or before July 11, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna Kanin or William Cross at (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* WT Docket 95–47, FCC 95–158, adopted April 13, 1995, and released May 5, 1995. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rulemaking

1. EON Corporation filed a petition for rule making (RM–8476), Public Notice No. 2011, requesting that the Commission amend Part 95 of the Rules, 47 CFR Part 95, to allow Interactive Video and Data Service (IVDS) licensees to provide mobile service to subscribers on an ancillary basis. The primary objective of the IVDS service rules, promulgated in 1992, was to satisfy demands for interactive communications between subscribers at fixed locations and video, data, or other

service providers. The Commission believes that the mobility feature will enhance the marketability and usefulness of IVDS and ensure that the IVDS spectrum will be fully utilized, without impairing the purpose of the service.

2. The Commission proposes to amend Section 95.803(b) of the rules to permit IVDS licensees to provide ancillary mobile services to fixed service subscribers within their service area. This change in the rule would allow transmissions from a cell transmitter station (CTS) to a fixed or mobile response transmitter unit (RTU) and vice versa at any location within the service area. The primary use of the IVDS system, however, must be to provide subscribers at fixed locations with the capability to interact with video, data, or other service providers. The offering to subscribers of mobile service only, such as paging or dispatch services, would not be permitted. As suggested by EON, we propose to limit the ERP of RTUs designed to operate as portables to 100 milliwatts.

3. The Commission seeks specific comments concerning the proposed rule amendments, power limitations, and whether restrictions should be placed on the types of ancillary mobile services that IVDS licensees would be permitted to offer.

4. Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to amend Part 95 of its rules to allow ancillary portable operation in the Interactive Video and Data Service (IVDS). This change will allow IVDS licensees to provide new and innovative communication services and promote more efficient and flexible use of IVDS spectrum.

Objectives

The proposed rules will encourage rapid deployment and growth of IVDS systems and enhance telecommunications offerings for consumers, producers and new entrants.

Legal Basis

The proposed action is authorized under Sections 4(i), 303(r) and 307(c) of the Communications Act, 47 U.S.C. § § 154(i), 303(r) and 307(c).

Report, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Small Entities Involved

The proposed rule change would benefit IVDS licensees by allowing them to provide new services. Most IVDS licensees are expected to be small entities.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

None.

List of Subjects in 47 CFR Part 95

Interactive video and data service (IVDS), Radio.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–11621 Filed 5–10–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 97

[PR Docket No. 93–267; FCC 95–165]

Temporary Operating Authority for New Amateur Operators

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the proposal published at 58 FR 59701, November 10, 1993 to amend the Commission's Rules to provide temporary operating authority to a person who passes the examination for a new amateur operator license and terminates the proceeding. The implementation of the electronic filing of applications in the amateur service has made the proposed temporary operating authority unnecessary.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Wireless Telecommunications Bureau, Washington DC 20554, (202) 418–0690.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* adopted April 19, 1995, and released May 2, 1995. The complete text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this *Memorandum Opinion and Order* may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Memorandum Opinion and Order

1. The commenters generally opposed the concept of a temporary operating authority for new amateur operators because they feared that it would be abused by persons who would fabricate false call signs and operate without any license.

2. Subsequent to the issuance of the proposal in this proceeding, the amateur service rules were amended to permit electronic filing of applications by the volunteer-examiner coordinators. This recent development has made the proposed temporary operating authority unnecessary. Hence, the proposal is withdrawn and the proceeding is terminated.

3. This *Memorandum Opinion and Order* is issued pursuant to the authority contained in 47 U.S.C. 154(i).

List of Subjects in 47 CFR Part 97

Radio, Temporary operating authority.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–11622 Filed 5–10–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 050395A]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, May 17, 1995, at 10 a.m. and on Thursday, May 18, 1995, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Inn, Route 6, Eastham, MA 02642; telephone: (508) 255–5000 or (800) 533–3986. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The May 17, 1995, session will begin with a Monkfish Committee report on the status of development of the fishery management plan (FMP) for Atlantic Monkfish. This will include a discussion of limited entry criteria and bycatch trip limits. The Gear Conflict Committee report will follow with a review of their work on management of gear conflicts, possibly through FMP amendments.

During the afternoon session, the Groundfish Committee will report on their progress to develop management alternatives for Amendment 7 to the Northeast Multispecies FMP. The Council hopes to finalize several proposals to address severely overfished stocks in the Northeast. Additionally, the Council will finalize proposed framework adjustment 11 to the Northeast Multispecies FMP and framework adjustment 6 to the Sea Scallop FMP to correct the baseline used by Vessel Tracking Systems (VTS) to calculate days at sea (see below).

On May 18, 1995, the Council will hear reports from the Chairman, Council Executive Director, NMFS Acting Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Coast Guard and the Atlantic States Marine Fisheries Commission. The Lobster Committee will ask the Council to approve a stock rebuilding/effort reduction program for review at public hearings.

Following reports, the Council will review the current structure and role of its advisory committees. The Sea Scallop Committee will review public comments compiled after coastwide scoping hearings on the consolidation of fishing days now allocated to individual vessels. The Herring Committee chairman will report on a May 11, 1995, meeting held with U.S. and Canadian herring industry representatives and management officials. The meeting will conclude after other relevant business has been addressed.

Abbreviated Rulemaking Action—Northeast Multispecies and Atlantic Sea Scallops

The Council may take final action on proposed framework adjustment 11 to the Northeast Multispecies FMP and framework adjustment 6 to the Sea Scallop FMP under the provisions for abbreviated rulemaking contained in 50 CFR 651.40 and 50 CFR 650.40 to correct the baseline used by VTS to monitor and count individual vessel days at sea. Copies of proposed framework adjustments 11 and 6 are available at the Council office (see **ADDRESSES**). The current regulations indicate the COLREGS demarcation line as the baseline which the VTS uses to determine when a vessel is at sea for the purpose of counting that day against the vessel's total allocation of fishing days. In the process of implementing this system, the NMFS Enforcement Division determined that the COLREGS line is inappropriate and has drafted an alternative line. This issue was discussed previously at the March 29 and 30, 1995, meeting.

The Council will consider public comments in making its recommendations to the Acting Director, Northeast Region, NMFS (Regional Director), under the provisions for abbreviated rulemaking cited above. If the Regional Director concurs with the measures proposed by the Council, he will publish them as a final rule in the **Federal Register**.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 5, 1995.

Richard W. Surdi,

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

[FR Doc. 95–11684 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 91

Thursday, May 11, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 95–030–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for agenda topics.

SUMMARY: This is to notify producers of veterinary biological products and other interested persons that we are holding a sixth annual public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. The agenda for this year's meeting is being planned and suggestions for topics of general interest to producers and other interested persons are requested.

PLACE, DATES AND TIMES OF MEETING: The sixth annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, Iowa, on Tuesday, August 1, and Wednesday, August 2, 1995, from 8 a.m. to approximately 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Y. Tang, Biotechnologist, Biotechnology Coordination and Technical Assistance Staff, BBEP, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1237, Telephone (301) 734–4833, FAX (301) 734–8669.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) holds an annual public meeting on veterinary biologics in Ames, Iowa. The meeting provides an opportunity for the exchange of information between APHIS representatives, producers of veterinary biological products, and interested persons on issues of common concern. APHIS is in the process of planning the agenda for a sixth annual public meeting on veterinary biological products to be held in Ames, Iowa, on August 1–2, 1995.

As yet, the agenda for the sixth annual meeting is not complete. APHIS is seeking suggestions for meeting topics from producers and the interested public before finalizing the agenda. Topics that have been suggested include: (1) Program updates; (2) repackaging; (3) in vitro potency testing; and (4) total quality management.

Consistent with efforts to reinvent government and to improve how programs are delivered, we would like to invite licensed producers of veterinary biological products and other interested persons to present their ideas and suggestions concerning new approaches to quality assurance for veterinary biologics. We are interested in getting your ideas on how the veterinary biologics program could be changed using concepts of quality assurance to enhance our ability to ensure the purity, safety, potency, and efficacy of biological products.

Please submit, on or before May 31, 1995, proposed titles for such presentations, the name(s) of the presenter(s), the approximate amount of time that will be needed for presentation(s), and any additional suggested meeting topics (for both breakout and general sessions) to the person listed under

FOR FURTHER INFORMATION CONTACT.

After the agenda is finalized, APHIS will announce the schedule and registration information for the sixth annual public meeting on veterinary biologics in a notice in the **Federal Register**.

Done in Washington, DC, this 3d day of May 1995.

George O. Winegar,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–11563 Filed 5–10–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Newspapers Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR Parts 215 and 217 and to publish notice for public comment and notice of decisions subject to the provisions of 36 CFR Part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish the legal notice for public comment or decision. This allows the public to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeal process.

DATES: Publication of legal notices in the listed newspapers will begin with proposals for public comment or decisions subject to appeal that are made on or after April 30, 1995. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jim L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Pacific Northwest Region will give legal notice of decisions that may be subject to appeal under 36 CFR Part 215 and 217 in the following newspapers which are listed by Forest Service administrative units. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper, which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. The timeframe for appeal shall be based on the date of publication of a notice of decision in the principal newspaper.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:

The Oregonian, Portland, Oregon

Pacific Northwest Regional Forester decisions on Washington National Forests:

The Seattle Post-Intelligence, Seattle,

Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery Managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice of Forest Supervisor decisions:
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner Lakeview, Oregon
Silver Lake District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle, John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Burns Times Herald, Burns, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt Hood National Forest

Mt Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry Country Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspaper providing additional notice of Powers decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newsport News Times, Newport, Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Unpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District Ranger decisions:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Baker City Herald, Baker City, Oregon
Baker District Ranger decisions:

Baker City Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Hells Canyon National Recreation Area Ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occuring in Idaho—
Lewiston Morning Tribune, Lewiston, Idaho
La Grande District Ranger decision:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Baker City Herald, Baker City, Oregon
Unity District Ranger decisions:
Baker City Herald, Baker City, Oregon
Wallawa Valley District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of McKenzie decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Oakridge District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of Oakridge decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of Ridgon decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of Sweet Home decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Kamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Kamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Kamath Falls, Oregon
Klamath District Ranger decisions:
Herald and News, Kamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Coleville, Washington
Colville District Ranger decisions:
Statesman-Examiner, Colville, Washington
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, Washington
Newport District Ranger decisions:
Newport Miner, Newport, Washington
Republic District Ranger decisions:
Republic News Miner, Republic, Washington
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, Washington

Gifford Pinchot National Forest

Gifford Pinchot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mount St. Helens National Volcanic Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
Packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelligencer, Seattle, Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington
North Band District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Hearal, Enumclaw, Washington

Okanagon National Forest

Okanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions
Methow Valley News, Twisp, Washington

Olympic National Forest

Olympic Forest Supervisor decisions:
The Olympian, Olympia, Washington
Newspapers providing additional notice of Forest Supervisor decisions:
Mason County Journal, Shelton, Washington,
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilcene District Ranger decisions:
Pennisula Daily News, Port Angeles, Washington
Newspaper providing additional notice of Quilicense decisions.
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberdeen, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice of Forest Supervisor decisions:
The Yakima Herald-Republic,

Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wentachee, Washington
Newspaper providing additional notice of Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice of Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice of Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice of Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice of Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice of Naches decisions:
The Yakima Herald-Republic, Yakima, Washington

Dated: May 5, 1995.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 95–11623 Filed 5–10–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–0003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to James W. Smith (D.B.A. Premier International). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Export Trade Facilitation Services (as they relate to the Export of Products and Services)

All export trade facilitation services including, but not limited to, consulting; foreign market research; marketing and trade promotion; financing; insurance; licensing; services related to compliance with customs documentation and procedures; transportation and shipping; warehousing and other services to facilitate the transfer of ownership and/or distribution; and communication and processing of export orders.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

James W. Smith (D.B.A. Premier International), acting as an Export Intermediary, may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotional and marketing activities as they relate to exporting Products and/or Services to the Export Markets;

3. Enter into exclusive sales agreements with Suppliers regarding sales of Products and/or Services in the Export Markets; such agreement may prohibit suppliers from exporting independently of James W. Smith (D.B.A. Premier International);

4. Enter into exclusive sales and/or territorial agreements with distributors in the Export Markets;

5. Establish the price of Products and/or Services for sale in the Export Markets;

6. Allocate export orders among his Suppliers; and,

7. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in the above Export Trade Activities and Methods of Operation, James W. Smith (D.B.A. Premier International) will not intentionally disclose directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. James W. Smith (D.B.A. Premier International) will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Protection Provided by the Certificate

This Certificate protects James W. Smith (D.B.A. Premier International) and his employees acting on his behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits James W. Smith (D.B.A. Premier International) from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to James W. Smith (D.B.A. Premier International) by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of James W. Smith (D.B.A. Premier International) or its Members or (b) the legality of such business plans of James W. Smith (D.B.A. Premier International) under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)'', 50 Fed. Reg. 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: July 13, 1994.

Dated: May 5, 1995.

W. Dawn Busby,

Director, Office of Trading Company.

[FR Doc. 95–11615 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review, Application No. 90–4A006.

SUMMARY: The Department of Commerce has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to determining whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 30 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 90–4A006.''

The Forging Industry Associations's (FIA) original Certificate was issued on July 9, 1990 (55 FR 28801, July 13, 1990). Previous amendments to the Certificate were issued on April 30, 1991 (56 FR 21128, May 7, 1991), May 29, 1992 (57 FR 24022, June 5, 1992) and on April 1, 1994 (67 FR 16619, April 7, 1994).

Summary of the Application

Applicant: Forging Industry Association, 25 Prospect Avenue West, Suite 300, Cleveland, Ohio 44115.

Contact: Donald J. Farley, Staff Executive, Telephone: (216) 781–6260.

Application No.: 90–4A006.

Date Deemed Submitted: May 3, 1995.

Proposed Amendment: FIA seeks to amend its Certificate to:

1. Add the following company as a ''Member'' within the meaning of Section 325.2 (1) of the Regulations (15 CFR 325.2(1)): National Forge Company, Irvine, Pennsylvania;

2. Delete the following three companies as ''Members'' within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): FMC Corporation, Anniston, Alabama; McWilliams Forge Company, Inc., Rockaway, New Jersey; and Union Forging Co., Endicott, New York.

3. Reflect that Cameron Forge Company, Cypress, Texas is now a division of Wyman-Gordon Company, Worcester, Massachusetts. Since Wyman-Gordon is a current member, Cameron Forge Company will be deleted as a ''Member''.

4. Reflect a change in the names of the following current Members: Airfoil Forging Textron, Inc., Cleveland, Ohio is now Turbine Engine Components, Textron (a subsidiary of Textron, Inc.).

Dated: May 5, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–11614 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DR–P

President's Export Council Meeting of the Subcommittee on Foreign Market Development, Asia-Africa-Middle East

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Subcommittee on Foreign Market Development, Asia-Africa-Middle East, of the President's Export Council will hold an open meeting to discuss topics related to the ''blueprint'' for Asia-Pacific Economic Cooperation, and trade facilitation in Asia, Africa and the Middle East. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most

recently renewed on September 30, 1993, by Executive Order 12689.

DATES: May 17, 1995, from 2 p.m. - 5 p.m.

ADDRESSES: White House Conference Center, Lincoln Room, 726 Jackson Place, Washington D.C. 20503. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Linda Breslau, President's Export Council, Room 2015B, Washington D.C. 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Linda Breslau, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: May 5, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–11613 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DR–P

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a Partially Closed Meeting.

SUMMARY: The President's Export Council (PEC) will hold a Full Council meeting to discuss topics related to export expansion. The meeting must be closed to the public due to the discussion of classified material including issues regarding relations with our trading partners, export controls and other sensitive matters properly classified under Executive Order 12356. Topics will include the changing relationship between trade and monetary policy, the changes in the dollar vis-a-vis the Japanese yen, Mexican peso, and other currencies, and U.S. commercial engagement with areas of the world experiencing economic instability. The portion of the meeting that will be open to the public will address the progress of the Council's five subcommittees, export expansion, Congressional views of U.S. export practices, and trade in the global economy.

The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689. A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 5522b (c) (1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6204, U.S. Department of Commerce, 202–482–4115.

Dates: May 18, 1995.

Time: 10:00 a.m. to 1:05 p.m. Closed Meeting; 1:15 p.m. to 4:00 p.m. Open Meeting.

Place: Atrium Ballroom.

Address: The Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington, D.C. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel or Rebecca Collins, President's Export Council, Room 2015B, Washington D.C. 20230. Seating is limited and will be on a first come, first serve basis.

For Further Information Contact: Jane Siegel or Rebecca Collins at (202) 482–1124, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: May 8, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–11693 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DR–P

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a Closed Meeting.

SUMMARY: The President's Export Council (Council) is holding an Executive Committee meeting. The meeting must be closed to the public due to the discussion of classified material including issues regarding relations with our trading partners, export controls and other sensitive matters properly classified under Executive Order 12356. The Executive Committee will discuss the work of its five subcommittees, its communications task force and the progress made toward the goals agreed to at the inaugural meeting of the Council on February 13. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 5522b (c) (1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6204, U.S. Department of Commerce, 202–482–4115.

Dates: May 18, 1995.

Time: 8:30 a.m. - 10:00 a.m.

Place: The Montpeller Room.

Address: The Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington, D.C.

For Further Information Contact: Jane Siegel or Rebecca Collins at (202) 482–1124, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: May 5, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–11692 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[Docket No. 950428122–5122–01; I.D. 042195D]

RIN 0648–XX18

Listing of Endangered and Threatened Species; Petition To Delist the Snake River Sockeye Salmon

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

ACTION: Notice of finding.

SUMMARY: NMFS has received a petition to delist Snake River sockeye salmon (*Oncorhynchus nerka*) from the endangered species list. NMFS has determined the petition does not contain any new, substantial scientific or commercial information, not previously considered by NMFS in the original listing process, indicating that the petitioned action may be warranted.

DATES: The finding made in this document was made on May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, 503–231-2005, or Gregory Miller, Endangered Species Division, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1995, NMFS received a petition from Mr. Delbert L. Lathim to delist Snake River sockeye salmon from the endangered species list. Section 4(b)(3)(A) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) requires NMFS to make a finding on whether a petition to list, delist, or

reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, NMFS is required to commence a status review of the involved species. The criteria considered in determining whether or not a petition is substantial are outlined in 50 CFR 424.14(b)(2).

The petitioner argued that Snake River sockeye salmon no longer exist, and therefore, no longer need protection. However, the petitioner presented data from the U.S. Army Corps of Engineers, Department of Defense, that indicated that 11 adult sockeye salmon were counted at three Snake River Dams (Lower Monumental Dam, Little Goose Dam, and Lower Granite Dam, ID) in 1994. This information is neither new nor substantial; NMFS records show that large sockeye salmon (approximately 18 inches (45.7 cm) in length or greater) were counted at these dams on the dates indicated in the petition. During the past 3 years, these dam counts, coupled with the actual return of 10 adult sockeye salmon to Redfish Lake, ID, provide evidence that Snake River sockeye salmon are, in fact, not extinct.

Because the petition to delist Snake River sockeye salmon does not contain any new, substantial scientific or commercial information indicating that the petitioned action may be warranted, NMFS is not initiating a status review.

Dated: May 4, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–11535 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 950503126–5126–01; I.D. 040695C]

RIN 0648–XX20

Northeast Fishing Industry Grants (FIG) Program; Amendment and Clarification

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

ACTION: Notice of funding authorization amendment and clarification of project evaluation criteria.

SUMMARY: NMFS amends the funding authorization for projects to be considered under the Northeast Fishing Industry Grants (FIG) Program. Clarification is also provided to specify project evaluation criteria associated with the tendering of multispecies harvesting privileges.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead (301) 713–2358 or Harold Mears (508) 281–9243.

SUPPLEMENTARY INFORMATION:

I. Background

The FIG Program was described in the following notice: Notice of availability of Federal assistance (60 FR 12199, March 6, 1995).

II. Change to the FIG Funding Authorization

The previous description of funding authority for the second round of FIG project applications, through which $4.5 million will be provided, indicated that the total funding source was accommodated by Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994. This notice clarifies that only $2.5 million for the FIG second round is funded through Public Law 103–211, whereas the remaining $2.0 million is supported by the Northwest Atlantic Ocean Fisheries Reinvestment Program (NAOFRP), as authorized by Public Law 102–567. This change is being made so that $2.0 million available under Public Law 103–211 can be used to fund a fishing capacity reduction demonstration program in the Northeast. Information concerning this program will be published in the **Federal Register** at a later date. The total amount of funds available for the FIG Program (i.e., $4.5 million) is not changed. However, no NAOFRP funds will be used to support projects under FIG Program Priority C; ''Develop methods for eliminating or reducing the inadvertent take, capture, or destruction of nontargeted, protected, or prohibited species (e.g., juvenile or sublegal-sized fish and shellfish) in fishing operations through the technical development, demonstration, or evaluation of fishing gear or harvesting strategies.'', as such activities are not authorized for the NAOFRP under Public Law 102–567. This change in funding source does not otherwise affect the FIG Federal assistance program.

III. Clarification of Project Evaluation Criteria

Several public inquiries have arisen that show the need for clarification of the provisions for tendering of multispecies harvesting privileges and the relevance of these provisions to the technical evaluation of proposals. Accordingly, this notice clarifies that 10 points will be added to the technical scores of applications involving participation by individuals who own vessels that have been issued a multispecies limited access permit, and who agree to tender their privilege to fish for, possess, or land regulated multispecies finfish for the duration of the project or longer. This provision applies to limited access multispecies permit holders only, because the intent of providing this bonus is to encourage the reduction of effort in the multispecies fishery to the maximum extent possible. Applications requesting this consideration must include information, attached to the Project Summary (NOAA Form 88–204), which explains how effort would be reduced during the project period, as compared to recent fishing years. This description may include details, such as the number of days at sea (DAS) directed on regulated multispecies that would be foregone during the permit year(s) in which the harvesting privilege is tendered, to substantiate the associated impact.

The tendering of the privilege to fish for, possess, or land regulated multispecies finfish during the duration of the project, if applicable, will be formally incorporated as a Special Award Condition in approved grants. However, this tendering of the privilege to fish for, possess, or land regulated multispecies finfish during the duration of the project period does not relieve the permit holder from fulfilling other requirements for limited access multispecies permit holders, such as filing monthly reports under the mandatory reporting provisions of the multispecies regulations.

Finally, several questions have been raised relative to the potential impact of tendering the privilege to fish for, possess, or land regulated multispecies for the duration of the project, or longer, upon resource allocation decisions associated with future regulatory requirements of the Multispecies Fishery Management Plan (FMP). Since future FMP regulations are uncertain, this impact is unknown, and the tendering of the privilege to fish for, possess, or land regulated multispecies must be assumed as a risk of the involved vessel owners.

Potential applicants for financial assistance under the FIG solicitation are reminded that the tendering provision is a voluntary one, and not a prerequisite for an application to be considered for funding.

Classification

This action amends funding authority and clarifies project evaluation criteria for a financial assistance program that will contain collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under Control Number 0648–0135.

This action has been determined to be not significant for purposes of E.O. 12866.

Authority: 15 U.S.C. 713c–3(d).

Dated: May 5, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–11579 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050195C]

Marine Mammals and Endangered Species; Permits

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

ACTION: Receipt of application for a scientific research permit (P771#73).

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, has applied in due form for a permit to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before June 12, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg 1, Seattle, WA 99115–0070 (206/526–6150);

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gary Barone, (301/713–2289).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to satellite tag 75 harbor porpoise (*Phocoena phocoena*) in the wild, and up to 25 captive rehabilitated animals including harbor porpoise, Dall's porpoise (*Phocoenoides dalli*) and Pacific white-sided dolphins (*Lagenorhynchus obliquidens*). The applicant seeks authorization to take by harassment up to 750 harbor porpoise incidental to the tagging. The work will be conducted over a 5-year period. Proposed taking will be by small boat. Field work will start in July, 1995 and continue through October, 1999 in Washington and Oregon. The results of the research will provide information on stock boundaries.

Dated: May 5, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–11685 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Joint Military Intelligence College; Notice of Closed Meeting

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Thursday, 27 July 1995, 0915 to 1630; and Friday, 28 July 1995, 0900 to 1130.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/373–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11566 Filed 5–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are DoD Civilian Personnel Regionalization, partnership successes within DoD and action items related to the Defense Partnership Council Plan of Action.

DATES: The meeting is to be held Wednesday, June 7, 1995, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by June 2, 1995, in order to be considered at the June 7 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11567 Filed 5–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues; Meetings

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on June 14, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issues dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Defense of Defense.

[FR Doc. 95–11569 Filed 5–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team; Notice of Meetings

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team will meet in closed session on May 19, 1995 at Science Applications International Corporation, McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11568 Filed 5–10–95; 8:45 am]

BILLING CODE 5000–04–M

Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile; Notice of Meeting

SUMMARY: The second meeting of this committee will be held on May 23–24, 1995, at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA. The meeting is open to the public. This committee was established under Public Law 102–484. The meeting times and agenda are as follows:

Time: May 23, 1:30 pm to 4 pm; and May 24, 9 am to 3:30 pm.

Agenda: Discussion and Determination of: scope of work, specific topics for investigation by the Committee, and Committee structure.

For additional information contact Mr. Tom Meeker at 703–607–3203.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11570 Filed 5–10–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Community College of the Air Force Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on Monday, June 12, 1995, at 1:00 p.m. in the AETC Conference Room, Building 900, Randolph AFB, Texas. The meeting is open to the public.

The purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a state of the college briefing, a policy council update, and the status of reaffirmation actions.

For further information, contact Major Marie Morgan, (334) 953–7937, Community College of the Air Force, Maxwell Air Force Base, Alabama 36112–6653.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–11642 Filed 5–10–95; 8:45 am]

BILLING CODE 3190–01–P

Intent To Grant a Limited Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Clinical Instruments International, Inc., a corporation of the State of Connecticut, a limited exclusive license under: United States Patent No. 5,337,730 filed in the name of Michael D. Maguire for an ''Endoscope Cleansing Catheter and Method of Use''.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application(s) may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, HQ AFLSA/JACNP, 1501 Wilson Blvd. Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–11641 Filed 5–10–95; 8:45 am]

BILLING CODE 3190–01–P

Department of the Army

Final Environmental Impact Statement for Implementation of a Solid Waste Management Program, Fort Lewis, Washington

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: This Final Environmental Impact Statement (FEIS) was prepared to evaluate alternatives to, and environmental impacts of, the methods for handling, treating and disposing of solid waste. The proposed solid waste management program is designed to process all the solid waste generated at Fort Lewis and McChord Air Force Base in a manner that meets all applicable regulatory requirements. Four

alternatives are considered for managing solid waste.

FOR FURTHER INFORMATION CONTACT: Questions, comments, or requests for copies of the FEIS should be addressed to Mr. Randall W. Hanna at (206) 967–5646; or by writing to: Commander, Headquarters I Corps and Fort Lewis, ATTN: AFZHDEQ (Mr. Randall Hanna), Fort Lewis, Washington 98433–5000.

DATES: Comments on the FEIS should be received by June 12, 1995 to ensure due consideration.

SUPPLEMENTARY INFORMATION: Alternatives considered: Alternative 1—recycle 35% of the annual municipal solid waste (MSW); complete construction of a heat-recovery incinerator; and construct and dispose of incinerator ash in an on-site ash cell. Alternative 2 (Preferred Alternative)—recycle 50% of the annual MSW; complete construction of a heat-recovery incinerator; and dispose of the incinerator ash off site. Alternative 3—Demolish and salvage incinerator; increase recycling of annual MSW to 35% or greater; dispose of all non-recycled MSW in on-site landfill. Alternative 4 (No Action)—demolish and salvage incinerator; recycle 25% of the annual MSW; dispose of all non-recycled MSW in on-site landfill cells. Steam and hot water produced as a byproduct of the incinerator would be utilized to augment the existing Fort Lewis heating system.

The incinerator would enable Fort Lewis to retire two existing boiler plants that supply high temperature hot water heat, thereby conserving fossil fuel and heating costs. Also, Fort Lewis would retire one incinerator used to destroy classified documents and procedural waste from Madigan Army Medical Center. Operation of the incinerator would extend the life of the Fort Lewis landfill by about 25 year.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–11640 Filed 5–10–95; 8:45 am]

BILLING CODE 3710–08–M

Availability of U.S. Patents for Licensing

AGENCY: U.S. Army Research Laboratory, Physical Sciences Directorate, and U.S. Army Communications-Electronics Command.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including permanent magnet designs for various applications, power sources, phased array antennae, microstrip devices and applications, varying types resonators and oscillators for different applications, as well as many other different technical arts.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the Army Research Laboratory, Physical Sciences Directorate, and the Communications-Electronics Command wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

TITLE: MICROSTRIP FERRITE CIRCULATOR FOR SUBSTRATE TRANSITIONING
INVENTOR(S): Richard A. Stern, Richard W. Babbitt
PATENT NO: 5,177,456—Issued 01/05/93

TITLE: OPTICALLY ACTIVATED HYBRID PULSER WITH PATTERNED RADIATING ELEMENT
INVENTOR(S): Anderson H. Kim, Maurice Weiner, Louis J. Jasper, Jr., Thomas E. Koscica, Robert J. Youmans
PATENT NO: 5,177,486—Issued 01/05/93

TITLE: MICROSTRIP HIGH REVERSE LOSS ISOLATOR
INVENTOR(S): Richard A. Stern, Richard W. Babbitt
PATENT NO: 5,180,997—Issued 01/05/93

TITLE: SLOTTED MICROSTRIP ELECTRONIC SCAN ANTENNA
INVENTOR(S): Richard A. Stern, Richard W. Babbitt
PATENT NO: 5,189,433—Issued 02/23/93

TITLE: WIDE-RANGE MULTICOLOR IR DETECTOR
INVENTOR(S): Doran D. Smith, Mitra Dutta, Kwong-Kit Choi
PATENT NO: 5,198,659—Issued 03/30/93

TITLE: OPTICAL MODULATOR BASED ON GAMMA-X VALLEY MIXING IN GAAS-ALAS
INVENTOR(S): Mitra Dutta
PATENT NO: 5,208,695—Issued 05/04/93

TITLE: PLANAR FERRO-ELECTRIC PHASE
INVENTOR(S): Richard W. Babbitt, William C. Drach, Thomas E. Koscica
PATENT NO: 5,212,463—Issued 05/18/93

TITLE: COLOR NIGHT VISION CAMERA SYSTEM
INVENTOR(S): Yue T. Chiu, Philip F. Krzyzkowski, Richard P. Tuttle
PATENT NO: 5,214,503—Issued 05/25/93

TITLE: QUARTER WAVE HIGH VOLTAGE DC BLOCK COVERED WITH A POLYURETHANE INSULATING LAYER
INVENTOR(S): Richard W. Babbitt, William C. Drach, Thomas E. Koscica
PATENT NO: 5,216,395—Issued 06/01/93

TITLE: MAGNETIC FIELD SOURCES FOR PRODUCING HIGH- INTENSITY VARIABLE FIELDS
INVENTOR(S): Herbert A. Leupold
PATENT NO: 5,216,400—Issued 06/01/93

TITLE: MAGNETIC FIELD SOURCES HAVING NON-DISTORTING ACCESS PORTS
INVENTOR(S): Herbert A. Leupold
PATENT NO: 5,216,401—Issued 06/01/93

TITLE: METHOD OF TREATING A GALLIUM ARSENIDE SURFACE AND GALLIUM ARSENIDE SURFACE SO TREATED
INVENTOR(S): Gary J. Gerardi, Edward H. Poindexter, Fang Rong
PATENT NO: 5,219,797—Issued 06/15/93

TITLE: OPTICALLY CONTROLLED RESONANT TUNNEL DIODE OSCILLATOR
INVENTOR(S): James F. Harvey, Robert A. Lux, Thomas P. Higgins, Arthur Paolella, Dana J. Sturzebecher
PATENT NO: 5,223,802—Issued 06/29/93

TITLE: ANTI-EXPLOITATION METHOD AND APPARATUS FOR CONTROLLING AIRCRAFT IFF
INVENTOR(S): Sidney J. Grossman
PATENT NO: 5,223,837—Issued 06/29/93

TITLE: RADAR IDENTIFICATION
INVENTOR(S): Sidney J. Grossman
PATENT NO: 5,223,839—Issued 06/29/93

TITLE: ULTRA-WIDEBAND HIGH POWER PHOTON-TRIGGERED FREQUENCY INDEPENDENT RADIATOR
INVENTOR(S): Anderson H. Kim, Leo D. DiDomenico, Maurice Weiner, Louis J. Jasper, Jr., Robert J. Youmans, Thomas E. Koscica
PATENT NO: 5,227,621—Issued 07/13/93

TITLE: LOW-COST, LOW-NOISE, TEMPERATURE-STABLE, TUNABLE DIELECTRIC RESONATOR OCILLATOR
INVENTOR(S): Muhammad A. Mizan, Raymond C. McGowan
PATENT NO: 5,233,319—Issued 08/03/93

TITLE: FLEXIBLE SOLID ELECTROLYTE FOR USE IN SOLID STATE CELLS AND SOLID STATE CELL INCLUDING SAID FLEXIBLE SOLID ELECTROLYTE
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO: 5,238,759—Issued 08/24/93

TITLE: SAW TRANSDUCER WITH COPLANAR WAVEGUIDE TRANSITION
INVENTOR(S): Elio A. Mariani
PATENT NO: 5,239,517—Issued 08/24/93

TITLE: FREQUENCY HOPPING SIGNAL INTERCEPTOR
INVENTOR(S): Charles E. Konig
PATENT NO: 5,239,555—Issued 08/24/93

TITLE: MICROSTRIP ELECTRONIC SCAN ANTENNA ARRAY
INVENTOR(S): Richard A. Stern and Richard W. Babbitt
PATENT NO: 5,243,354—Issued 09/07/93

TITLE: PERIODIC PERMANENT MAGNET STRUCTURE FOR ACCELERATING CHARGED PARTICLES
INVENTOR(S): Herbert A. Leupold
PATENT NO: 5,245,621—Issued 09/14/93

TITLE: DETECTION AND CHARACTERIZATION OF LPI SIGNALS
INVENTOR(S): Charles E. Konig
PATENT NO: 5,247,308—Issued 09/21/93

TITLE: METHOD AND APPARATUS FOR GROWING SEMICONDUCTORS HETEROSTRUCTURES
INVENTOR(S): Kenneth A. Jones, Joseph R. Flemish, Alok Tripathi, Vladimir S. Ban
PATENT NO: 5,254,210—Issued 10/19/93

TITLE: FABRICATION TECHNIQUE FOR SILICON MICROCLUSTERS USING PULSED ELECTRICAL POWER
INVENTOR(S): Clarence G. Thornton, James F. Harvey, Robert A. Lux, Robert J. Zeto, Hardev Singh, Maurice Weiner, Terence Burke, Lawrence E. Kingsley
PATENT NO: 5,256,339—Issued 10/26/93

TITLE: METHOD OF GROWING DEVICE QUALITY INP ONTO AN INP SUBSTRATE USING AN ORGANOMETALLIC PRECURSOR IN A HOT WALL REACTOR
INVENTOR(S): Joseph R. Flemish, Kenneth A. Jones, Vladimir S. Ban
PATENT NO: 5,256,595—Issued 10/26/93

TITLE: CIRCUIT FOR ACCURATELY MEASURING PHASE RELATIONSHIP OF BPSK SIGNALS
INVENTOR(S): William J. Skudera, Jr., Vasilios Alevizakos
PATENT NO: 5,257,284—Issued 10/26/93

TITLE: DC POWER SUPPLY
INVENTOR(S): Raymond J. Pizzi, John M. O'Meara
PATENT NO: 5,258,701—Issued 11/02/93

TITLE: MICROSTRIP TRANSMISSION LINE SUBSTRATE TO SUBSTRATE TRANSITION
INVENTOR(S): Richard A. Stern, Richard W. Babbitt
PATENT NO: 5,258,730—Issued 11/02/93

TITLE: REAL-DATA FFT BUFFER
INVENTOR(S): Robert R. Leyendecker
PATENT NO: 5,260,613—Issued 11/09/93

TITLE: OPTICALLY ACTIVATED WAFER-SCALE PULSER WITH ALGAAS EPITAXIAL LAYER
INVENTOR(S): Anderson H. Kim, Robert J. Youmans, Maurice Weiner, Robert J. Zeto, Louis J. Jasper, Jr.
PATENT NO: 5,262,657—Issued 11/16/93

TITLE: METHOD OF MAKING A FLEXIBLE SOLID ELECTROLYTE FOR USE IN SOLID STATE CELLS
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO: 5,264,308—Issued 11/23/93

TITLE: METAL-ENCAPSULATED QUANTUM WIRE FOR ENHANCED CHARGE TRANSPORT
INVENTOR(S): Mitra Dutta, Harold L. Grubin, Gerald J. Iafrate, Ki Wook Kim, Michael A. Stroscio
PATENT NO: 5,264,711—Issued 11/23/93

TITLE: IONICALLY CONDUCTIVE BILAYER SOLID ELECTROLYTE AND ELECTROCHEMICAL CELL INCLUDING THE ELECTROLYTE
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO: 5,273,846—Issued 12/28/93

TITLE: SOLID STATE ELECTROLYTE FOR USE IN A HIGH TEMPERATURE RECHARGEABLE LITHIUM ELECTROCHEMICAL CELL AND HIGH TEMPERATURE RECHARGEABLE LITHIUM ELECTROCHEMICAL CELL INCLUDING THE SOLID STATE ELECTROLYTE
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO: 5,273,847—Issued 12/28/93

TITLE: OPTIC MODULATOR WITH UNIAXIAL STRESS
INVENTOR(S): Mitra Dutta, Hongen Shen, Jagadeesh Pamulapati
PATENT NO: 5,274,247—Issued 12/28/93

TITLE: HOLLOW CYLINDRICAL MAGNETIC FLUX SOURCE FOR IMAGE DETECTORS
INVENTOR(S): Herbert A. Leupold
PATENT NO: 5,274,309—Issued 12/28/93

TITLE: THERMAL CELL INCLUDING A SOLID STATE ELECTROLYTE
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO.: 5,278,004—Issued 01/11/94

TITLE: QUANTUM COLLECTOR HOT-ELECTRON TRANSISTOR
INVENTOR(S): Kwong-Kit Choi
PATENT NO.: 5,278,427—Issued 01/11/94

TITLE: SIGNAL AMPLIFICATION USING OPTICALLY ACTIVATED BULK SEMI-INSULATING GAAS
INVENTOR(S): Anderson H. Kim, Maurice Weiner, Robert J. Youmans, Robert A. Pastore, Jr.
PATENT NO.: 5,278,854—Issued 01/11/94

TITLE: TAPERED RADIAL TRANSMISSION LINE FOR AN OPTICALLY ACTIVATED HYBRID PULSER
INVENTOR(S): Anderson H. Kim, Maurice Weiner, Louis J. Jasper, Jr., Robert J. Youmans
PATENT NO.: 5,280,168—Issued 01/18/94

TITLE: PERMANENT MAGNET STRUCTURE FOR USE IN ELECTRIC MACHINERY
INVENTOR(S): Herbert A. Leupold, Ernest Potenziani, II
PATENT NO.: 5,280,209—Issued 01/18/94

TITLE: CIRCULAR POLARIZATION SELECTIVE SURFACE MADE OF RESONANT SPIRALS
INVENTOR(S): Gilbert A. Morin
PATENT NO.: 5,280,298—Issued 01/18/94

TITLE: HIGH POWER PHOTON TRIGGERED ULTRA-WIDEBAND RF RADIATOR WITH OPPOSITE APERTURES
INVENTOR(S): Anderson H. Kim, Maurice Weiner, Louis J. Jasper, Jr., Robert J. Youmans

PATENT NO.: 5,283,584—Issued 02/01/94

TITLE: UNIDIRECTIONAL SURFACE ACOUSTIC WAVE TRANSDUCER
INVENTOR(S): Elio A. Mariani
PATENT NO.: 5,289,073—Issued 02/22/94

TITLE: ALGAAS/GAAS THYRISTOR
INVENTOR(S): Terence Burke, Maurice Weiner, Jian H. Zhao
PATENT NO.: 5,291,041—Issued 03/01/94

TITLE: TRANSITION DETECTION CIRCUIT FOR PSK SIGNALS USING THE SAW CHIRP-Z ALGORITHM
INVENTOR(S): William J. Skudera, Jr., Charles E. Konig
PATENT NO.: 5,295,151—Issued 03/15/94

TITLE: METHOD OF PREPARING AN IMPREGNATED CATHODE WITH AN ENHANCED THERMIONIC EMISSION FROM A POROUS BILLET AND CATHODE SO PREPARED
INVENTOR(S): Louis E. Branovich, Donald W. Eckart
PATENT NO.: 5,298,830—Issued 03/29/94

TITLE: HIGHLY CONDUCTIVE ELECTROLYTE FOR USE IN AN AMBIENT TEMPERATURE RECHARGEABLE LITHIUM BATTERY AND AMBIENT TEMPERATURE RECHARGEABLE LITHIUM BATTERY INCLUDING SAID ELECTROLYTE
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO.: 5,300,376—Issued 04/05/94

TITLE: ABNORMAL BATTERY CELL VOLTAGE DETECTION CIRCUITRY
INVENTOR(S): Lawrence R. Groehl
PATENT NO.: 5,302,902—Issued 04/12/94

TITLE: SUBHARMONIC OPTICALLY INJECTION LOCKED OSCILLATOR
INVENTOR(S): Dana J. Sturzebecher, Thomas P. Higgins, Afshin S. Daryoush
PATENT NO.: 5,302,918—Issued 04/12/94

TITLE: METHOD FOR MIXING OPTICAL AND MICROWAVE SIGNALS USING A GAAS MESFET
INVENTOR(S): Steven A. Malone, Arthur C. Paolella
PATENT NO.: 5,304,794—Issued 04/19/94

TITLE: CAPACITOR WITH INCREASED ELECTRICAL BREAKDOWN STRENGTH AND METHOD OF FORMING THE SAME
INVENTOR(S): Michael Binder, Robert J. Mammone, Bernard Lavene
PATENT NO.: 5,305,178—Issued 04/19/94

TITLE: PLANAR DIGITAL FERROELECTRIC PHASE SHIFTER
INVENTOR(S): Thomas E. Koscica, Richard W. Babbitt, William C. Drach
PATENT NO.: 5,307,033—Issued 04/26/94

TITLE: HIGH-POWER ELECTRICAL MACHINERY
INVENTOR(S): Herbert A. Leupold, John T. Rehberg
PATENT NO.: 5,309,055—Issued 05/03/94

TITLE: SUPERCONDUCTING RING RESONATOR MICROWAVE OSCILLATOR FOR OPERATING AS A REMOTE TEMPERATURE SENSOR
INVENTOR(S): Roland Cadotte, Jr., Michael Cummings, Adam Rachlin, Richard W. Babbitt
PATENT NO.: 5,309,117—Issued 05/03/94

TITLE: PLANAR TUNABLE YIG FILTER
INVENTOR(S): Elio A. Mariani
PATENT NO.: 5,309,127—Issued 05/03/94

TITLE: HIGH TEMPERATURE, RECHARGEABLE SOLID ELECTROLYTE ELECTROCHEMICAL CELL
INVENTOR(S): Edward J. Plichta, Wishvender K. Behl
PATENT NO.: 5,312,623—Issued 05/17/94

TITLE: ELECTRONICALLY CONTROLLED FREQUENCY AGILE IMPULSE DEVICE
INVENTOR(S): Anderson H. Kim, Maurice Weiner, Louis J. Jasper, Jr., Robert J. Youmans, Lawrence E. Kingsley
PATENT NO.: 5,313,056—Issued 05/17/94

TITLE: SWEEP JAMMER IDENTIFICATION PROCESS
INVENTOR(S): Paul A. Michaels, Jr., Ralph J. Romano, Francis Giordano
PATENT NO.: 5,313,209—Issued 05/17/94

TITLE: HIGH POWER ELECTRICAL MACHINERY WITH TOROIDAL PERMANENT MAGNETS
INVENTOR(S): Herbert A. Leupold
PATENT NO.: 5,317,228—Issued 05/31/94

TITLE: SITUATION AWARENESS DISPLAY DEVICE
INVENTOR(S): Paul F. Sass
PATENT NO.: 5,317,321—Issued 05/31/94

TITLE: PULSE SHARPENING USING AN OPTICAL PULSE
INVENTOR(S): Anderson H. Kim, Maurice Weiner, Louis J. Jasper, Jr., Robert J. Youmans
PATENT NO.: 5,319,218—Issued 06/07/94

TITLE: TUBULAR STRUCTURE HAVING TRANSVERSE MAGNETIC FIELD WITH GRADIENT
INVENTOR(S): Herbert A. Leupold
PATENT NO.: 5,319,339—Issued 06/07/94

TITLE: BI-CHAMBERED MAGNETIC IGLOO
INVENTOR(S): Herbert A. Leupold
PATENT NO.: 5,319,340—Issued 06/07/94

TITLE: MULTI-BAND MICROSTRIP ANTENNA
INVENTOR(S): Vahakn Nalbandian, Choon S. Lee
PATENT NO.: 5,319,378—Issued 06/07/94

TITLE: CIRCUIT FOR MEASURING CAPACITANCE AT HIGH DC BIAS VOLTAGE
INVENTOR(S): Thomas E. Koscica, Richard W. Babbitt
PATENT NO.: 5,321,367—Issued 06/14/94

TITLE: ALL OPTICAL MULTIPLE QUANTUM WELL OPTICAL MODULATOR
INVENTOR(S): Mitra Dutta, Hongen Shen
PATENT NO.: 5,323,019—Issued 06/21/94

TITLE: FIELD EFFECT REAL SPACE TRANSISTOR
INVENTOR(S): Thomas E. Koscica, Jian H. Zhao
PATENT NO.: 5,323,030—Issued 06/21/94

TITLE: DUAL-CHANNEL FLEXURAL ACOUSTIC WAVE CHEMICAL SENSOR
INVENTOR(S): Raymond C. McGowan, Elio A. Mariani
PATENT NO.: 5,323,636—Issued 06/28/94

TITLE: LIGHT EMITTING DIODE WITH ELECTRO-CHEMICALLY ETCHED POROUS SILICON
INVENTOR(S): Michael F. Tompsett, Raphael Tsu
PATENT NO.: 5,324,965—Issued 06/28/94

TITLE: MULTICOLOR PHOTODETECTOR
INVENTOR(S): Kwong-Kit Choi
PATENT NO.: RE34,649—Issued 06/28/94

TITLE: SURFACE ACOUSTIC WAVE (SAW) CHEMICAL MULTI-SENSOR ARRAY
INVENTOR(S): Elio A. Mariani and William J. Skudera, Jr.
PATENT NO.: 5,325,704—Issued 07/05/94

TITLE: TREATED POROUS CARBON BLACK CATHODE AND LITHIUM BASED, NONAQUEOUS ELECTROLYTE CELL INCLUDING SAID TREATED CATHODE

INVENTOR(S): Michael Binder, Robert J. Mammone, William L. Wade, Jr.
PATENT NO.: 5,328,782—Issued 07/12/94

TITLE: MICROWAVE FERROELECTRIC PHASE SHIFTERS AND METHODS FOR FABRICATING
INVENTOR(S): Richard W. Babbitt, Thomas E. Koscica, William C. Drach
PATENT NO.: 5,334,958—Issued 08/02/94

TITLE: METHOD OF MAKING CYLINDRICAL AND SPHERICAL PERMANENT MAGNET STRUCTURES
INVENTOR(S): Herbert A. Leupold, George F. McLane
PATENT NO.: 5,337,472—Issued 08/16/94

TITLE: MAGNETIC FLUX-ENHANCED CONTROL LINE FOR SUPER-CONDUCTING FLUX FLOW TRANSISTOR
INVENTOR(S): William Wilber, Roland Cadotte, Jr., Adam Rachlin, Michael Cummings
PATENT NO.: 5,338,94—Issued 08/16/94

TITLE: X-BAND BIPOLAR JUNCTION TRANSISTOR AMPLIFIER
INVENTOR(S): Muhammad A. Mizan, Raymond C. McGowan
PATENT NO.: 5,339,047—Issued 08/16/94

TITLE: INSTANT-ON MICROWAVE OSCILLATORS USING RESONANT TUNNELING DIODE
INVENTOR(S): Robert A. Lux, Thomas E. Koscica, James F. Harvey
PATENT NO.: 5,339,053—Issued 08/16/94

TITLE: HIGH CRITICAL TEMPERATURE SUPERCONDUCTOR (HTSC) INCLUDING A RARE EARTH ALKALI METAL TITANATE AS AN OXYGEN DIFFUSION BARRIER IN THE DEVICE
INVENTOR(S): Arthur Tauber, Steven C. Tidrow
PATENT NO.: 5,340,799—Issued 08/23/94

TITLE: METHOD OF MAKING A SELECTIVE COMPOSITIONAL DISORDERING OF A GAAS BASED HETEROSTRUCTURE BY THE IN-DIFFUSION OF AU THROUGH A SINGLE CRYSTAL, EPITAXIALLY GROWN GE FILM
INVENTOR(S): Kenneth A. Jones, Howard S. Lee
PATENT NO.: 5,346,856—Issued 09/13/94

TITLE: MULTITERMINAL LATERAL S-SHAPED NEGATIVE DIFFERENTIAL CONDUCTANCE DEVICE
INVENTOR(S): Martin N. Wybourne, Doran D. Smith, Stephen M. Goodnick, Jong-Ching Wu Chris Berven
PATENT NO.: 5,347,141—Issued 09/13/94

TITLE: MODES OF INFRARED HOT ELECTRON TRANSISTOR OPERATION IN INFRARED DETECTION
INVENTOR(S): Kwong-Kit Choi
PATENT NO.: 5,347,142—Issued 09/13/94

TITLE: OPTICALLY CONTROLLED OSCILLATOR
INVENTOR(S): Thomas P. Higgins, Dana J. Sturzebecher
PATENT NO.: 5,347,235—Issued 09/13/94

TITLE: TUBULAR STRUCTURE HAVING TRANSVERSE MAGNETIC FIELD WITH GRADIENT
INVENTOR(S): Herbert A. Leupold
PATENT NO.: 5,347,254—Issued 09/13/94

TITLE: PERMANENT MAGNET STRUCTURE FOR USE IN ELECTRIC MACHINERY
INVENTORS(S): Herbert A. Leupold, Ernest Potenziani, II
PATENT NO.: 5,349,258—Issued 09/20/94

TITLE: DOUBLE BARRIER RESONANT PROPAGATION FILTER
INVENTORS(S): James F. Harvey, Robert A. Lux
PATENT NO.: 5,350,931—Issued 09/27/94

TITLE: ULTRA-WIDEBAND HIGH POWER PHOTON TRIGGERED FREQUENCY INDEPENDENT RADIATOR WITH EQUIANGULAR SPIRAL ANTENNA
INVENTORS(S): Anderson H. Kim, Leo D. DiDomenico, Maurice Weiner, Louis J. Jasper, Jr., Robert J. Youmans
PATENT NO.: 5,351,063—Issued 09/27/94

TITLE: APPARATUS FOR REAL TIME INTERFERENCE SIGNAL REJECTION
INVENTORS(S): Stuart D. Albert, William J. Skudera, Jr.
PATENT NO.: 5,355,091—Issued 10/11/94

TITLE: TREATED SOLID POLYMER ELECTROLYTE MEMBRANE FOR USE IN A FUEL CELL AND FUEL CELL INCLUDING THE TREATED SOLID POLYMER ELECTROLYTE MEMBRANE
INVENTORS(S): Michael Binder, Robert J. Mammone
PATENT NO.: 5,372,896—Issued 12/13/94

TITLE: UNIVERSAL INEXPENSIVE BATTERY STATE-OF-CHARGE INDICATOR
INVENTORS(S): Terrill Atwater, Richard M. Dratler
PATENT NO.: 5,372,898—Issued 12/13/94

TITLE: DIRECT OPTICAL INJECTION LOCKED FET OSCILLATOR
INVENTORS(S): Thomas P. Higgins, Dana J. Sturzebecher, Arthur Paolella
PATENT NO.: 5,373,261—Issued 12/13/94

TITLE: MICROSTRIP DIRECTIONAL COUPLER
INVENTORS(S): Erik H. Lenzing, Roland Cadotte, Jr., Michael Cummings
PATENT NO.: 5,373,266—Issued 12/13/94

TITLE: QUANTUM WELL PHONON MODULATOR
INVENTORS(S): Mitra Dutta, Gerald J. Iafrate, Ki W. Kim, Michael A. Stroscio
PATENT NO.: 5,374,831—Issued 12/20/94

TITLE: SIGNAL MIXING DEVICE UTILIZING A SUPERCONDUCTING STRIP LINE WITH SUPERCONDUCTING WEAK LINKS AND TWO CONTROL LINES
INVENTORS(S): Michael Cummings, Roland Cadotte, Jr., Adam Rachlin, Richard W. Babbitt
PATENT NO.: 5,378,94—Issued 01/03/95

TITLE: UNIAXIALLY STRAINED SEMICONDUCTOR MULTIPLE QUANTUM WELL DEVICE USING DIRECTION-DEPENDENT THERMAL EXPANSION COEFFICIENTS IN A HOST SUBSTRATE
INVENTORS(S): Arthur Ballato, John A. Kosinski, Mitra Dutta, Hongen Shen, Yicheng Lu, Jagadeesh Pamulapati
PATENT NO.: 5,381,260—Issued 01/10/95

TITLE: MONOLITHIC PHOTOCONDUCTIVE BIPOLAR PULSAR UTILIZING A RADIAL TRANSMISSION LINE
INVENTORS(S): Anderson H. Kim, Robert J. Youmans, Maurice Weiner, Lawrence E. Kingsley
PATENT NO.: 5,382,788—Issued 01/17/95

TITLE: FIELD AUGMENTED PERMANENT MAGNET STRUCTURES
INVENTORS(S): Herbert A. Leupold, Anup Tilak
PATENT NO.: 5,382,936—Issued 01/17/95

TITLE: FEEDBACK CIRCUITRY FOR RECREATING CW COMPONENTS FROM CHIRP-Z PULSES
INVENTORS(S): William J. Skudera, Jr.
PATENT NO.: 5,383,222—Issued 01/17/95

TITLE: VOLTAGE-TUNABLE, MULTICOLOR INFRARED DETECTORS

INVENTORS(S): Kwong-Kit Choi
PATENT NO.: 5,384,469—Issued 01/24/95
TITLE: SEQUENTIAL CIRCUITRY FOR RECREATING CW COMPONENTS FROM CHIRP-Z PULSES
INVENTOR(S): William J. Skudera, Jr.
PATENT NO.: 5,384,545—Issued 01/24/95
TITLE: HIGH TcSUPERCONDUCTING MICROSTRIP PHASE SHIFTER HAVING TAPERED OPTICAL BEAM PATTERN REGIONS
INVENTOR(S): Erik H. Lenzing, Charles D. Hechtman
PATENT NO.: 5,385,883—Issued 01/31/95
TITLE: POLARIZATION-SENSITIVE SHEAR WAVE TRANSDUCER
INVENTOR(S): John A. Kosinski
PATENT NO.: 5,386,168—Issued 01/31/95
TITLE: OPTICAL MODULATOR BASED ON PIEZOELECTRICALLY DRIVEN ANISOTROPIC OPTICAL ABSORPTION
INVENTOR(S): Gerald J. Iafrate, Mitra Dutta, Hongen Shen, Michael A. Stroscio, Arthur Ballato
PATENT NO.: 5,387,997—Issued 02/07/95
TITLE: MODIFIED CHIRP-Z PULSE DETECTOR
INVENTOR(S): William J. Skudera, Jr.
PATENT NO.: 5,388,121—Issued 02/07/95
TITLE: LIGHT-WEIGHT MAGNETIC FIELD SOURCES HAVING DISTORTION-FREE ACCESS PORTS
INVENTOR(S): Herbert A. Leupold
PATENT NO.: 5,396,209—Issued 03/07/95
TITLE: METHOD OF FORMING AN IMPROVED TAPERED WAVEGUIDE BY SELECTIVELY IRRADIATING A VISCOUS ADHESIVE RESIN PREPOLYMER WITH ULTRA-VIOLET LIGHT
INVENTOR(S): Steven A. Malone, Arthur Paolella, Dana J. Sturzebecher
PATENT NO.: 5,402,511—Issued 03/28/95

FOR FURTHER INFORMATION OR COPIES OF THE PATENTS LISTED, CONTACT: Mr. William H. Anderson, United States Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703–5010, or phone (908) 532–4112.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–11571 Filed 5–10–95; 8:45 am]

BILLING CODE 3710–08–P

Corps of Engineers

Availability of Patent Applications for Exclusive, Partially Exclusive, or Nonexclusive Licenses

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), the Department of the Army, U.S. Army Corps of Engineers announces the general availability of technology for licensing (U.S. and foreign patents pending). Foreign patents applied for include Japan, South Korea, South Africa, Taiwan, Mexico, Indonesia, Malaysia, U.K. including Hong Kong, Spain, Portugal, Sweden, Ireland, Finland, Norway, The Netherlands, Belgium, Denmark, Germany, France, Canada, Australia, Brazil, New Zealand, China, Russia, and Israel.

DATES: Proposals for an exclusive or partially exclusive license must be submitted within 120 days after the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Stewart, ATTN: CEWES–FV–C, (601) 634–4113, fax (601) 634–4180, Internet stewarp@exl.wes.army.mil or, for technical information, Mr. C. E. Chatham, ATTN: CEWES–CW, (601) 634–2460, FAX (601) 634–3433, Internet chatham@coafsl.wes.army.mil, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: This technology concerns a concrete armor unit for protecting coastal structures and shoreline embankments from erosion caused by waves and currents. The object of the invention is to provide a concrete block which, when placed in an interlocking matrix, has superior stability, strength, and wave energy dissipation and exhibits improved economics through reduced armor layer thickness and increased armor layer porosity. The CORE–LOC shape is composed of three members of generally octagonal shape, symmetrically tapered toward the outer ends. The three members are configures in an ''H'' pattern such that two outer members are parallel and the third member is perpendicular and midway between the two outer members. The units interlock when placed randomly on a rubble slope to form an armor layer matrix. The shape of the unit is such that it will, in general, not require steel reinforcement. A large number of model tests of rubble mound structures armored with CORE–LOC have been conducted at the U.S. Army Engineer Waterways Experiment Station. The units have demonstrated significantly superior stability and improved strength over existing armor shapes. The unit has also been proportioned to interlock with an existing armor unit for repair. Model tests have shown that the repaired sections are more stable than the original sections. The units are significantly more economical than all existing randomly-placed armor units currently available.

Each interested party is requested to submit an application for a license containing the information described in 37 CFR 404.8 for any one or combination of countries of interest within 120 days of publications of this notice in the **Federal Register.** The applications for licensing the armor unit technology will be evaluated using the following criteria:

1. Demonstrated ability to manufacture and/or market the armor unit technology.
2. Presentation of applicants plan to manufacture and/or market the armor unit technology.
3. Technical capability including expertise in the areas of engineering of coastal structures and/or marine heavy construction.
4. Time required to bring item to market.
5. License fee (annual fee that license is willing to pay for x number of years—royalty payments will be negotiated separately).
6. Country of origin, with preference given to U.S.-based company.
7. Small Business advantage for U.S. license.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–11643 Filed 5–10–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Change in Location of Southport, North Carolina, Public Hearing for the Draft Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Change in Location of Southport, North Carolina, Public Hearing.

SUMMARY: The Department of Energy public hearing in Southport, North Carolina, on May 23, 1995, will be held in the Southport City Hall, 201 East Moore Street, Southport, North Carolina, 28461, (910) 457–7900. The public hearing will be held from 6:00

p.m. to 10:00 p.m. The Department had earlier announced (60 FR 19899, April 21, 1995) that this meeting would be held in the Carolina Power and Light Visitors Center, Southport, North Carolina.

Issued in Washington, DC on May 3, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–11558 Filed 5–10–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Noncompetitive Financial Assistance for Cooperative Agreement Award

SUMMARY: The Department of Energy (DOE), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it is pursuing a noncompetitive financial assistance award to Stone & Webster Engineering Corporation for the continuation of Phase II of the High Pressure Heat Exchange Project.

FOR FURTHER INFORMATION CONTACT:

Susan Borthwick, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2377.

SUPPLEMENTARY INFORMATION: The objective of Stone and Webster Engineering Corporation's High Pressure Heat Exchange System (HiPHES) project is to develop an advanced high pressure heat exchanger using ceramic tubes for a convective steam/methane reformer. Under this continuation of Phase II of the Cooperative Agreement the Participant will conduct the research necessary to resolve key R&D issues identified and prioritized in Phase I, participate in the testing of candidate ceramic material and candidate joints under simulated reformer conditions, bring the technology and design to the point where a prototype unit can be built and operated in Phase III, if funded, and temporarily redirect the project toward the use of ceramic tubes for ethylene production.

DOE's purpose for continuing the cooperative agreement is to enable Stone & Webster to satisfactorily complete an activity presently being funded by DOE. There are significant engineering and design challenges associated with the development of a 30 foot long ceramic-tubed steam/methane reformer. Since ethylene cracking at higher temperatures is similar to the present work in some respects, and is an easier development problem to solve, the information generated during this intermediate step will be used to help guide the development of a steam/methane reformer.

Stone & Webster is an integrated provider of ethylene technology for the world's ethylene market. Because of Stone & Webster's leading position in the ethylene industry, new technology development, such as a more efficient furnace design, and advanced ceramic reactors, can expeditiously be incorporated into new and/or revamped ethylene plants in the U.S. and worldwide. The Stone & Webster effort is supported by a complex team of Participants (including various monolithic and ceramic composite manufacturers and consultants) with the necessary expertise, and the company has been working with DOE in the development of a higher temperature ceramic-tubed steam/methane reformer since 1988.

Eligibility for continuation of the cooperative agreement award is being restricted to Stone & Webster Engineering Corporation because of its past experience with the DOE and its unique institutional ties and expertise. The estimated cost to complete Phase II is $1.8 million dollars. The award date is on or about May 15, 1995.

Issued in Chicago, Illinois on April 21, 1995.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 95–11557 Filed 5–10–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 1962–000–CA]

Pacific Gas and Electric Company; Notice of Intent to Prepare an Environmental Assessment and to Conduct a Site Visit and Two Scoping Meetings for the Rock Creek—Cresta Project

May 5, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application for a new license (relicense) from the Pacific Gas and Electric Company (PG&E or applicant) for the constructed and operating Rock Creek—Cresta Project, located on the North Fork Feather River near the towns of Quincy and Oroville, in Butte, Plumas, Sutter, and Yuba Counties, California.

Upon review of the application and supplemental filings, the Commission staff has concluded that relicensing the two developments that comprise the existing project would not constitute a major federal action significantly affecting the quality of the human environment. Consequently, staff will prepare an Environmental Assessment (EA) that describes and evaluates the probable impacts of implementing the applicant's proposed and alternative; operational and maintenance procedures; environmental enhancement measures; and improved public recreational access and facilities at the Rock Creek and Cresta Developments.

The staff's EA: will consider both site specific and cumulative environmental impacts of relicensing the project; and will include economic and financial analyses of applicant's proposed and alternative environmental enhancement measures and sediment management procedures.

A Draft EA will be issued and circulated for review by all interested parties. All comments filed on the Draft EA will be analyzed by the FERC staff and considered in a final EA.

One element of the EA process is scoping and a site visit. These activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EA;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EA; and
- Identify resource issues that are of lessor importance and, consequently, do not require detailed analysis in the EA.

Site Visit

A site visit to the Rock Creek and Cresta Developments will be held on Wednesday, June 14, 1995, starting at 9:00 A.M. at PG&E's Rodgers Flat operational headquarters, located off Highway 70 in Storrie, California. The purpose of the visit is for interested persons to observe existing area resources and site conditions, learn the locations of proposed new recreational facilities, and discuss project operational procedures with representatives of PG&E and the Commission.

For details concerning the site visit, please contact Bill Zemke of PG&E in San Francisco, California at (415) 973–1646.

Scoping Meetings

The FERC staff will conduct two scoping meetings: the evening meeting is designed to obtain input from the general public, while the morning meeting will focus on resource agency

concerns. All interested individuals, organizations, agencies, and Indian Tribes are invited to attend either or both meetings in order to assist staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions, an EA scoping document will be distributed by mail to all persons and entities on the FERC mailing list for the Rock Creek—Cresta Project. Copies of the scoping document also will be made available at the scoping meetings.

The evening meeting for the general public will be held from 7:00 P.M. until 10:00 P.M. on Wednesday, June 14, 1995, in the conference room at the Oroville Public Library, located at 1820 Mitchell Avenue, Oroville, CA 95966. (From Highway 70 take Oroville Dam Boulevard east to Lincoln Avenue; then, north (left) onto Lincoln. The library is situated at the corner of Lincoln and Mitchell Avenues.)

The agency meeting will be held from 9:30 A.M. until 12:00 Noon on Thursday, June 15, 1995, in the conference room at the Oroville-La Porte Forest Service Ranger Station, located at 875 Mitchell Avenue, Oroville, CA 95965. (From Highway 70 take Oroville Dam Boulevard east; north (left) onto Fifth Avenue; then, east (right) on Mitchell Avenue.)

Scoping Meeting Procedures

Both meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the Rock Creek—Cresta Project. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the public meetings. Speaking time allowed for individuals at the evening public meeting will be determined before that meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EA;
- Identify resource issues that are of lessor importance and, therefore, do not required detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statement from experts and the public on issues that should be analyzed in the EA.

Information Requested

Federal and state resources agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to evaluate the environmental impacts associated with relicensing the project. The types of information sought included the following:

- Data, reports, and resource plans that characterize the physical, biological or social environments in the vicinity of the projects; and
- Information and data that help staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than July 16, 1995. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Lois Cashell, Secretary, Energy Federal Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should show the following caption on the first page: FERC No. 1962–000—CA; Rock Creek—Cresta Project.

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding.

For further information, please contact Jim Haimes in Washington, D.C. at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11611 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–143–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for Southern Natural Gas Company's Proposed Graniteville Line Project and Request for Comments on Environmental Issues

May 5, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of the facilities proposed in the Graniteville Line Project. This EA will be used by the Commission in its decisionmaking process to determine whether an environmental impact statement is necessary and whether to approve the project.[1]

Summary of the Proposed Projects

Southern Natural Gas Company (Southern) proposes to:

- Construct approximately 3.5 miles of 8-inch-diameter natural gas pipeline in Aiken County, South Carolina, which would replace approximately 3.5 miles of 4-inch-diameter pipeline. This proposed pipeline, referred to as the ''Graniteville Line'', would commence at a tie-in at milepost (MP) 501.0 on Southern's existing South Main Line and proceed in a northwesterly direction to a proposed interconnection with Southern's new Graniteville Mills Meter Station;
- Construct a new meter station at the Graniteville Mills interconnect to replace the existing Graniteville Mills meter station in Aiken County, South Carolina. The proposed meter station would consist of two 4-inch-diameter meter runs, a pressure regulator, and approximately 125 feet of miscellaneous buried piping. This facility would require a site approximately 150 feet by 150 feet for construction and operation. This construction would occur on the Graniteville Company's plant site in Graniteville, South Carolina;
- Construct a regulator station near MP 2.6 approximately 100 feet by 100 feet and an odorization facility at the take-off point on an approximate area of 50 feet by 50 feet; and
- Abandon in place the existing 4-inch-diameter Graniteville Line, except for approximately 0.5 mile of pipeline between MP 2.810 and MP 2.317, which

[1] Southern Natural Gas Company's application was filed with the Commission pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

would remain in service to serve existing customers.

Southern indicates that the proposed pipeline facilities would deliver an additional total firm transportation service of 3,625 thousand cubic feet (Mcf) of natural gas per day to Graniteville Company.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Southern proposes to use a 70-foot-wide construction right-of-way in nonagricultural areas and a 90-foot-wide construction right-of-way in agricultural areas. Following construction, a 50-foot-wide easement would be permanently maintained; the remaining 20 feet in nonagricultural areas and 40 feet in agricultural areas would be restored and revert back to prior use. About 30 acres would be affected by construction.

Additional working space would be required adjacent to the planned construction right-of-way at areas of steep side slopes, road, railroad, waterbody crossings, and wetlands. No new access roads would be required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed project would cross five waterbodies, four of which are perennial. The perennial waterbodies are Horse Creek (crossed twice), an unnamed tributary to Horse Creek, and the Sand River. These waterbodies support valuable riparian vegetation, which helps stabilize soil to prevent erosion and provides habitat for wildlife. These waterbodies may also support fishery resources.
- The pipeline would cross 0.35 mile of wetlands. These wetlands are classified as palustrine forested.
- The federally endangered red-cockaded woodpecker may exist within the immediate vicinity of the proposed pipeline right-of-way.
- About 17 acres of upland forest would be disturbed.
- Residences may be located within 50 feet of the edge of the proposed construction right-of-way.
- Right-of-way widths.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–143–000;
- Send a *copy* of your letter to: Mr. David Gallo, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 12, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Gallo at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. David Gallo, EA Project Manager, at (202) 208–2066.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11632 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. GT95–36–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1995.

Take notice that on May 2, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 1100
Sixth Revised Sheet No. 1101
Sixth Revised Sheet No. 1102
Sixth Revised Sheet No. 1103
Sixth Revised Sheet No. 1104
Sixth Revised Sheet No. 1105
Sixth Revised Sheet No. 1106
Sixth Revised Sheet No. 1107
Sixth Revised Sheet No. 1108
Fifth Revised Sheet No. 1109

The proposed effective date of the tariff sheets is June 1, 1995.

Algonquin states that the purpose of this filing is to reflect changes in Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11602 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–10–000]

Enogex, Inc.; Notice of Petition for Rate Approval

May 5, 1995.

Take notice that on May 1, 1995, Enogex filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.6760 per Mcf for transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Enogex states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Oklahoma. Enogex proposes an effective date of May 1, 1995.

Pursuant to Section 284.123(b) (2) (ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 19, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11603 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–285–000]

Illinois Power Company; Notice of Filing

May 5, 1995.

Take notice that on February 17, 1995, Illinois Power Company (Illinois) tendered for filing a clarification of the Addendum to its Coordination and Interchange Agreement with Illinois Municipal Electric Agency (IMEA). The clarification to the Addendum states that emission allowance revenues collected between January 1, 1995, and the date the Commission issues an order accepting Illinois' Addendum without hearing or investigation shall be subject to refund.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions and protests should be filed before May 15, 1995. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11604 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–506–000]

Illinois Power Company; Notice of Filing

May 5, 1995.

Take notice that on February 15, 1995, Illinois Power Company (Illinois) tendered for filing a clarification of the Addendum to its coordination agreements. The clarification to the Addendum states that emission allowance revenues collected between January 1, 1995, and the date the Commission issues an order accepting Illinois' Addendum without hearing or investigation shall be subject to refund.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions and protests should be filed before May 15, 1995. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11605 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–272–000]

K N Interstate Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1995

Take notice that on May 3, 1995, K N Interstate Gas Transmission Company (KNI) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–B and First Revised Volume No. 1–D. KNI

requests that the tendered sheets be accepted for filing and permitted to become effective on May 4, 1995.

KNI states that the purpose of its filing is to comply with the Commission's Final Rule (Order No. 577) issued March 29, 1995 at Docket No. RM95–5–000. In the instant filing, KNI submits tariff revisions to its general terms and conditions for service concerning short-term capacity releases that are exempt from advance posting and bidding requirements pursuant to § 284.243 of the Commission's Regulations. KNI's tariff revisions provide for the extension to one full calendar month the time period that capacity releases, at less than the maximum rate, are exempt from the Commission's advance posting bidding requirements. KNI's tariff revisions also provide for the reduced restriction period from 30 days to 28 days for a capacity re-release to the same pre-arranged shipper to be exempt from advance posting and bidding requirements.

KNI states that a copy of its filing was served on all KNI jurisdictional customers, interested parties and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11606 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–359–000]

Natural Gas Pipeline Company of America; Notice of Application

May 5, 1995.

Take notice that on April 26, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act requesting authorization to abandon approximately 360 feet of 6-inch lateral and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 800 feet of 6-inch replacement lateral at Natural's Columbia City storage complex in Louisa County, Iowa. The total estimated construction cost of the new lateral is $58,000. Natural's application is on file with the Commission and open to public inspection.

The lateral for which Natural is requesting abandonment authorization was certificated in Docket No. CP72–217.[1] Natural states that the new lateral is necessary as part of a change from dehydration at a wellsite to a central dehydration facility.

Natural states that there will be no significant loss of environmental quality because of the proposed project. Natural states that on March 17, 1995, it requested the U.S. Fish and Wildlife Service Endangered Species Clearance and the State Historical Society of Iowa Cultural Resources Clearance. On March 22, 1995, it requested the U.S. Army Corps of Engineers Clearance. Natural states that the above clearance letters will be submitted upon receipt.

Any person desiring to be heard or to make protest with reference to said application should on or before May 26, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11607 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 47 FPC 1564 (1972).

[Docket No. RP93–36–014]

Natural Gas Pipeline Company of America; Notice of Refund Report

May 5, 1995.

Take notice that on April 28, 1995, Natural Gas Pipeline Company of America (Natural) filed its report of refunds in the above referenced docket for the period June 1, 1993 through January 31, 1995.

Natural states that the refunds were disbursed on March 31, 1995 and that customers were served with calculations supporting their individual refunds at that time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11608 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–271–000]

Transwestern Pipeline Company; Notice of Stipulation and Agreement

May 5, 1995.

Take notice that on May 2, 1995, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, Transwestern Pipeline Company (Transwestern) tendered for

filing a Stipulation and Agreement and related Appendices to the filing, together with an explanatory statement and workpapers.

Transwestern states that copies of the filing have been served to all parties to the proceedings in Docket Nos. RP93–34–000, *et al.*; RP94–227–000, *et all.*; CP94–211, *et al.*; CP94–254–000; CP94–676–000; CP94–751–000, *et al.*; CP95–70–000; CP95–153–000; CP95–378–000; and CP95–112–000 in addition to all other persons whom Transwestern is required to serve in accordance with Commission Rule 602(d). Initial comments on the settlement are due on or before May 22, 1995, and reply comments are due on or before June 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1995. Any persons who have already been granted intervention in the following dockets (Docket Nos. RP93–34–000, *et al.*; RP94–227–000, *et al.*; CP94–211, *et al.*; CP94–254–000; CP94–676–000; CP94–751–000, *et al.*; CP95–70–000; CP95–153–000; CP95–378–000; and CP95–112–000) are automatically parties to the above-captioned proceeding, and need not file additional petitions to intervene in the above-captioned proceeding. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11609 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–405–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

May 5, 1995.

Take notice that on May 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP95–405–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a town border station, under Williston Basin's blanket certificate issued in Docket No. CP83–1–000, *et al.* pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin Proposes to abandon its North Sidney Town Border Station located in Richland County, Montana. Williston Basin states that Montana Dakota Utilities Co. (Montana-Dakota) no longer requires service through this border station because the main Sidney Border Station possesses sufficient capacity to provide reliable service to Montana Dakota to serve its requirements in Sidney. Williston Basin mentions that all above ground facilities will be removed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11610 Filed 5–10–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[Ref: 8HWM–ER; FRL 5205–6]

Proposed First Amendment to the Administrative Settlement Under 122(h)(1), Triangle Petroleum Site, Fruita, Mesa County, Colorado

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed amendment to the Administrative Settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9622(i), as amended by the Superfund Amendments and reauthorization Act (''CERCLA''), notice is hereby given of a proposed first amendment to the administrative settlement concerning the Triangle Petroleum Site in Fruita, Mesa County, Colorado.

Between the time that Administrative Settlement Agreement for Cost Recovery, Docket No. CERCLA VIII–95–01 (''Agreement''), was executed and the time that it became effective, R. W. Harmon and Sons a/k/a Mayflower Contract Services (''Harmon'') and Mesa County, Colorado, reached agreement with the Settling Parties and contributed to the Settling Parties' monies used in part for the payment to the Hazardous Substance Superfund.

EPA and the Settling Parties desire to amend the Agreement to add Harmon and Mesa County as parties to the Agreement. Therefore, the Agreement is amended to add Harmon and Mesa County as named Respondents and Signatories on the same terms and conditions as all the other Respondents.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this amendment. The Agency's response to any comments received will be available for public inspection at EPA Region VIII's Superfund Records Center, which is located on the 8th floor of the North Tower, at 999 18th Street, Denver, Colorado.

DATES: Comments must be submitted on or before June 12, 1995.

ADDRESSES: An original and two copies of comments must be sent to James R. Rhodes, Enforcement Specialist, Triangle Petroleum Site Team, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405.

FOR FURTHER INFORMATION CONTACT: Wendy Silver, Office of Regional Counsel, (303) 294–7568..

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 95–11680 Filed 5–10–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5206–1]

South Carolina and Georgia Marine Sanitation Device Standard; Petition

Notice is hereby given that a petition has been received from the States of South Carolina and Georgia requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to Section 312(f)(3) of Pub. L. 92–500 as amended

by Pub. L. 95–217 and Pub. L. 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Hartwell Lake to qualify as a ''No Discharge Area''.

Section 312(f)(3) states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The States of South Carolina and Georgia have certified that there are three existing pump-out facilities and two additional facilities planned to service vessels in Hartwell Lake.

The existing facilities, their address, telephone number, hours of operation and draught are as follows:

A. Hartwell Marina; 1500 North Forest Avenue, Hartwell, Georgia 30643; (404)376–5441; 9 am—5 pm; seven days a week; 16 foot draught.

B. Portman Shoals Marina; Route 11, Anderson, South Carolina 29624; (803)287–3211; 9 am—5 pm; seven days a week; 20 foot draught.

C. Western Carolina Sailing Club; 5200 Westwind Way, Anderson, South Carolina 29624; (803)226–6561; 24 hours; seven days a week; 8 foot draught.

The marinas proposing to add pump-out facilities are:

A. Seneca Marina; Box 1591, Clemson, South Carolina 29631; (803)653–4500.

B. Big Water Marina; Route 2, Box 133A, Big Water Road, Star, South Carolina 29684; (803)226–3339.

The number of boats with marine sanitation devices (MSD's) using the lake has been estimated to be 580. The ratio of boats with MSD's to pump-out facilities is 193.

The petition notes that each of the three marinas with existing pump-out facilities have waste treatment systems that conform with federal law. Hartwell Marina and Portman Marina pump-out facilities discharge into State approved and regulated septic tanks. Western Carolina Sailing Club's facilities discharge into a large holding tank which is picked up by a private concern that transports the sewage to one of the Anderson County sewage treatment plants.

Comments and views regarding this request for action may be filed on or before June 12, 1995. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Wesley B. Crum, Chief, Coastal Programs Section, US EPA, Region 4, 345 Courtland St. N.E., Atlanta, GA 30365. Telephone (404)347–1740 x4235.

Dated: May 3, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–11681 Filed 5–10–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2071]

Application for Review of Action in Rulemaking Proceeding

May 8, 1995.

Application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by May 26, 1995. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations. (Albion, Nebraska) (MM Docket No. 94–143).

Number of Petition Filed: 1.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–11646 Filed 5–10–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Sisto International Shipping, 560 Lee Drive, Miami Springs, FL 33136, Manuel Sisto, Tracy Sisto, (Partnership).

Keith Guidroz, #6 Wisteria Place, Marrero, LA 70072, Sole Peroprietor.

Dated: May 8, 1995.

By the Federal Maritime Commission.

[FR Doc. 95–11648 Filed 5–10–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Clyde Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Clyde Financial Corporation, Clyde, Texas; to engage *de novo* in making, acquiring, or servicing loans for itself or for others and loan marketing and advisory services pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be performed in Taylor, Callahan, Jones, Shackelford, Stevens, Eastland, Comanche, Brown Coleman, Erath, Throckmorton, and Runnels Counties, Texas.

Board of Governors of the Federal Reserve System, May 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-11620 Filed 5–10–95; 8:45 am]

BILLING CODE 6210–01–F

Eastside Holding Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 5, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eastside Holding Corporation, Snellville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Eastside Bank & Trust Company, Snellville, Georgia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Keene Bancorp, Inc., 401(k) Employee Stock Ownership Plan & Trust, Keene, Texas; to become a bank holding company by acquiring 27.3 percent of the voting shares of Keene Bancorp, Inc., Keene, Texas, and thereby indirectly acquire 98.9 percent of the voting shares of First State Bank, Keene, Texas, and 100 percent of the voting shares of Itasca State Bank, Itasca, Texas.

Board of Governors of the Federal Reserve System, May 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11619 Filed 5–10–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. No. C–3567]

Alliant Techsystems Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, Alliant Techsystems Inc. (Alliant), a Minnesota-based defense contractor, to acquire Hercules Inc.'s propellant division, Hercules Aerospace Company, under certain conditions, and requires Alliant to prevent its newly acquired propellant division from sharing non-public information with Alliant's ammunition and munitions division. Alliant also has to notify its propellant customers of the Commission order before obtaining any non-public information from them.

DATES: Compliant and Order issued April 7, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Laura Wilkinson, FTC/S–2224, Washington, DC. 20580. (202) 326–2830.

SUPPLEMENTARY INFORMATION: On Thursday, December 1, 1994, there was published in the **Federal Register**, 59 FR 61617, a proposed consent agreement with analysis In the Matter of Alliant Techsystems Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–11548 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20508.

[Dkt. C–3568]

Formu-3 International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Ohio weight-loss centers from misrepresenting the performance, efficacy or safety of any weight-loss program they offer, or the competence or training of their personnel, in the future. The consent order requires the respondents to possess scientific evidence to substantiate future claims, and, in addition, to make certain disclosures in conjunction with weight-loss and safety maintenance claims in the future.

DATES: Complaint and Order issued April 11, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Brenda Doubrava, Cleveland Regional Office, Federal Trade Commission, 520–A Atrium Office Plaza, 668 Euclid Ave., Cleveland, Ohio 44114–3006. (216) 522–4210.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Pubic Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Tuesday, January 31, 1995, there was published in the **Federal Register**, 60 FR 5922, a proposed consent agreement with analysis In the Matter of Formu-3 International, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–11547 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3570]

HEALTHSOUTH Rehabilitation Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, HEALTHSOUTH, an Alabama-based corporation, to divest Nashville Rehabilitation Hospital and related assets in Nashville, TN. within twelve months to a Commission approved entity. If the divestiture is not completed on time, the Commission is permitted to appoint a trustee to complete the transaction. In addition, the consent order requires HEALTHSOUTH to terminate management contracts to operate rehabilitation units at Medical Center East in Birmingham, AL. and Roper Hospital in Charleston, S.C. Also, the consent order requires HEALTHSOUTH, for ten years, to obtain Commission approval before merging, by acquisition, lease, management contract or otherwise, any of its rehabilitation hospital facilities in any of the three areas with any competing facilities in those areas.

DATES: Complaint and Order issued April 12, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Oscar Voss, FTC/S–3115, Washington, DC 20580. (202) 326–2756 or 326–2750.

SUPPLEMENTARY INFORMATION: On Friday, January 27, 1995, there was published in the **Federal Register**, 60 FR 5401, a proposed consent agreement with analysis In the Matter of HEALTHSOUTH Rehabilitation Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the compliant in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–11552 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3224]

Nature's Bounty, Inc., et al., Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, respondent and two of its wholly-owned subsidiaries to pay $250,000 in consumer redress, and to have scientific evidence to back up a variety of specific health-related advertising and promotional claims for any product they market in the future.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Dean Graybill, FTC/S–4302, Washington, DC 20580. (202) 326–3284 or Peter Metrinko, S–4631, Washington, DC 20580. (202) 326–2104.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Nature's Bounty, Inc., a corporation, Puritan's Pride, Inc., a corporation, and Vitamin World, Inc., a corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., and it now appearing that Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an Order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission, that:

1. Nature's Bounty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 90 Orville Dr., Bohemia, NY. Puritan's Pride, Inc., and Vitamin World Inc., wholly-owned subsidiary corporations of Nature's Bounty, Inc., are organized under and by virtue of the laws of the State of Delaware, with their offices and principal places of business located at 90 Orville Dr., Bohemia, NY.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached complaint, or that the facts as alleged in the attached complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order occurring after the Order becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

1. ''Product'' means any good that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under any brand name of respondents, their successors and assigns, or under the brand of any third party. ''Product'' also means any product sold or distributed to the public by third parties under any brand name of respondents, or under private labeling agreements with respondent, their successors and assigns.

2. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

I

It is ordered that respondents Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., their successors and assigns, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, research article, or any other scientific opinion or data.

II

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of ''Sleeper's Diet,'' ''L-Arginine,'' or ''L-Ornithine,'' or any other substantially similar amino acid product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Any such product stimulates greater production or release of human growth hormone in a user than a non-user of such product;

B. Any such product promotes muscular development; or

C. Any such product burns fat or otherwise alters human metabolism to use up or burn stored fat, or promotes weight loss.

For purposes of this Order paragraph, ''substantially similar amino acid product'' shall mean any product which is of substantially similar composition or possesses substantially similar properties to Sleeper's Diet, L-Arginine or L-Ornithine.

III

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of L-Cysteine, L-Methionine, or any other substantially similar hair care product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product will prevent or retard hair loss or promote hair growth where hair has already been lost. For purposes of this Order paragraph, ''substantially similar hair care product'' shall mean any product that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss or to promote hair growth where hair has already been lost, and which is of substantially similar composition or possesses substantially similar properties to L-Cysteine or L-Methionine.

IV

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any hair care product or service, in or affecting commerce, as ''commerce'' is defined in the Federal

Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that

(1) The use of the product or service will prevent, cure, relieve, reverse, or reduce hair loss; or

(2) The use of the product or service will promote the growth of hair where hair already has been lost.

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Manufacturing, advertising, labeling, packaging, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, *provided that,* this requirement shall not limit the requirements of Order paragraphs III or IV.A. herein.

V

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that any such product:

A. Cures, treats, prevents, or reduces the risk of developing any disease, disorder or condition in humans or relieves symptoms thereof;

B. Provides any weight loss or weight control benefit or otherwise provides an effective treatment for obesity;

C. Suppresses appetite, reduces the body's absorption of calories, stimulates metabolism, or reduces serum cholesterol;

D. Cures, treats, prevents, or reduces the risk of benign prostatic hypertrophy;

E. Promotes greater muscular development, endurance, strength, power, definition, or stamina, or shorter exercise recovery or recuperation time in a user than a non-user of such product;

F. Removes or diminishes dark circles under the eyes;

G. Improves mental clarity, mental concentration, mental comprehension, mental retention or mental alertness;

H. Aids digestion or promotes increased absorption of nutrients from ingested foods;

I. Relieves stress or promotes relaxation; or

J. Prevents, relieves or treats fatigue or boosts energy;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Provided however, that respondents shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondents;

2. The product is generally available at competing retail outlets;

3. The product is not identified with respondents and does not contain respondents' names or logos;

4. The product was not developed or manufactured at the instigation or with the assistance of respondents; and,

5. The product representation is not otherwise advertised or promoted by respondents.

Provided further, that the proviso in the preceding paragraph is currently identical to the ''safe harbor'' proviso contained in Paragraph V. of the order in *General Nutrition, Inc.*, Docket No. 9175, entered February 2, 1989. It is the intention of the parties to the order herein that the provisos shall remain identical. Therefore, except upon respondents filing a petition to reopen the proceeding herein and making a satisfactory showing that changed conditions of law or fact or the public interest warrants modification of the order herein by the Commission, respondents agree to be bound by any subsequent modifications (including vacation) of the safe harbor proviso in Docket No. 9175, without any further formal modification of the instant order.

VI

It is further ordered that nothing in this Order shall prohibit respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration (FDA) pursuant to the Nutrition Labeling and Education Act of 1990; *moreover,* nothing in this Order shall prohibit respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, from making any representation for any drug that is permitted in labeling for any drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VII

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name ''Sleeper's Diet'' or any other brand name that represents, directly or by implication, that such product has the ability to promote weight loss during sleep;

2. Using the name ''Memory Booster'' or any other brand name that represents, directly or by implication, that such product improves memory retention;

3. Using the name ''Dark Circle Eye Treatment'' or any other brand name that represents, directly or by implication, that such product removes dark circles from under the eyes; or

4. Using the name ''Super Fat Burners'' or any other brand name that represents, directly or by implication, that such product reduces body fact

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VIII

It is further ordered that respondents, their successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of two hundred and fifty thousand dollars ($250,000). Respondents shall make this payment on or before the tenth day following the date of issuance of this Order. In the event of any default on any obligation to make payment under this section,

interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used to provide direct redress to consumers allegedly injured by respondents in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Federal Trade Commission determines, in its sole discretion, that redress to consumers is impracticable or unwarranted, any funds not used for redress shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission.

IX

It is further ordered that, for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this Order;
2. All materials that were relied upon by respondents to substantiate any representation covered by this Order; and
3. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

X

It is further ordered that for a period of ten (10) years after service upon them of this Order, respondents, their successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising under this Order.

XI

It is further ordered that the respondents shall distribute a copy of this Order to each of their operating divisions, to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order, and to all distributors of products manufactured or marketed by respondents.

XII

It is further ordered that respondents shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc. (''respondents'').

The proposed consent order has been placed on the public record for sixty (60) days for receipt of public comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint alleges that respondents manufactured, advertised, offered for sale, sold or distributed a variety of products, for which they made the following representations:

A. Sleeper's Diet promotes weight loss during sleep.

B. L-Arginine stimulates the release of human growth hormone which increases muscle mass while decreasing body fat.

C. L-Ornithine stimulates the release of human growth hormone which increases muscle mass while decreasing body fat.

D. Prostex relieves the symptoms of benign prostatic hypertrophy.

E. L-Cysteine (1) increases hair growth, (2) prevents hangovers and brain and liver damage from alcohol, and (3) helps prevent harm caused by cigarette smoke.

F. L-Lysine improves stress tolerance and reduces fatigue.

G. L-Methionine prevents premature hair loss.

H. Octacosanol increases stamina, vigor, and endurance, improves reaction time, lowers cholesterol levels and strengthens muscles.

I. New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms.

J. KLB6 causes weight loss and reduces cholesterol levels.

K. Glucomannan causes weight loss by suppressing appetite and allowing calories to pass through the body undigested.

L. Sugar Blocker prevents weight gain by impeding the body's absorption of sugar.

M. Spirulina 500 mg. tablets suppress the appetite, enabling adherence to a diet.

N. KLB6 Grapefruit Diet causes weight loss by stimulating metabolism and suppressing appetite.

O. Herbal Cellulex Formula causes weight loss by eliminating body fat.

P. Memory Booster improves memory retention and mental alertness.

Q. Ginsana helps build physical endurance and mental alertness.

R. Fatbuster Diet Tea causes weight loss by eliminating fatty substances from the body.

S. Shake-A-Weigh reduces the body's absorption of calories from food.

T. Dark Circle Eye Treatment removes dark circles from under the eyes.

U. Natural Sterol Complex promotes growth in muscle mass and improves strength.

V. Super Fat Burners reduces body fat, thereby promoting muscle definition.

W. Super Cut reduces body fat, thereby promoting muscle definition.

X. Papaya Enzyme Tablets aid digestion and promote greater absorption of nutrients from food.

Y. Calmtabs relieves stress and promotes relaxation.

The Commission's complaint alleges that the above representations for Sleeper's Diet, L-Arginine, L-Ornithine, L-Cysteine, and L-Methionine are false and misleading. Further, the Commission alleges that respondents did not possess and rely upon a reasonable basis that substantiated any of the representations in (A) through (Y).

The Commission's complaint also alleges that respondents falsely and in a misleading manner represented that scientific research, including scientific papers and/or studies, prove that (1) Octacosanol may improve reaction time, lower cholesterol levels and strengthen muscles; (2) New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms; (3) as to Eye-Vites, also sold as CATA–RX, patients undergoing antioxidant therapy such as that provided by Eye-Vites and CATA–RX are 70% less likely to develop cataracts; and (4) Ginsana improves

physical endurance and mental alertness.

The complaint also alleges that through the use of trade names, respondents falsely and misleadingly represented that (1) ''Sleeper's Diet'' promotes weight loss during sleep; (2) ''Memory Booster'' improves memory retention; (3) ''Dark Circle Eye Treatment'' removes dark circles from under the eyes; and (4) ''Super Fat Burners'' reduces body fat.

The consent agreement resolving these allegations requires respondents to cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, research article, or any other scientific opinion or data. As to the products ''Sleeper's Diet,'' ''L-Arginine,'' or ''L-Ornithine,'' or any other substantially similar amino acid product, respondents are to cease and desist from representing that (1) any such product stimulates greater production or release of human growth hormone in a user than a non-user of such product; (2) any such product promotes muscular development; or (3) any such product burns fat or otherwise alters human metabolism to use up or burn stored fat, or promotes weight loss.

In connection with the products L-Cysteine, L-Methionine, or any other substantially similar hair care product, respondents are to cease and desist from representing that any such product will prevent or retard hair loss or promote hair growth where hair has already been lost. As to any hair care product or service, respondents are to cease and desist from representing that (1) the use of the product or service will prevent, cure, relieve, reverse, or reduce hair loss; or (2) the use of the product or service will promote the growth of hair where hair already has been lost, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Respondents are also prohibited from manufacturing, advertising, labeling, packaging, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act.

Respondents also are required to possess and rely upon competent and reliable scientific evidence as substantiation for any representation that any product (1) cures, treats, prevents, or reduces the risk of developing any disease, disorder or condition in humans or relatives symptoms thereof (2) provides any weight loss or weight control benefit or otherwise provides an effective treatment of obesity; (3) suppresses appetite, reduces the body's absorption of calories, stimulates metabolism, or reduces serum cholesterol; (4) cures, treats, prevents or reduces the risk of benign prostatic hypertrophy; (5) promotes greater muscular development, endurance, strength, power, definition, or stamina, or shorter exercise recovery or recuperation time in a user than a non-user of such product; (6) removes or diminishes dark circles under the eyes; (7) improves mental clarity, mental concentration, mental comprehension, mental retention or mental alertness; (8) aids digestion or promotes increased absorption of nutrients from ingested foods; (9) relieves stress or promotes relaxation; or (10) prevents, relieves or treats fatigue or boosts energy. However, the agreement states that this substantiation requirement does not apply if respondents are merely selling another manufacturer's products, and, *inter alia,* the product representation is made only on a product label or insert, and is not otherwise advertised or promoted by respondents. The consent agreement also notes that this ''safe harbor'' provision is currently identical to the ''safe harbor'' proviso contained in Paragraph V. of the order in *General Nutrition, Inc.,* Docket No. 9175, that it is the intention of the parties to the instant order that the provisos shall remain identical, and that respondents agree to be bound by any subsequent modifications (including vacation) of the safe harbor proviso in Docket No. 9175, without any further formal modification of the instant order. Respondents retain their right to file a petition to modify or vacate the instant order.

Also under the order, respondents may not use the name ''Sleeper's Diet'' or any other brand name that represents that such product has the ability to promote weight loss during sleep; use the name ''Memory Booster'' or any other brand name that represents that such product improves memory retention; use the name ''Dark Circle Eye Treatment'' or any other brand name that represents that such product removes dark circles from under the eyes; or use the name ''Super Fat Burners'' or any other brand name that represents that such product reduces body fat, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Under the terms of the order, respondents shall pay $250,000.00 to the Federal Trade Commission. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used to provide direct redress to consumers allegedly injured by respondents. If redress to consumers is impracticable or unwarranted, any funds not used for redress shall be paid to the United States Treasury.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify any of their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concerning Nature's Bounty, Inc.

File No. 932 3224

I dissent from the Commission's decision to accept a proposed consent order with Nature's Bounty and its subsidiaries, Puritan's Pride, Inc., and Vitamin World, Inc., because the order leaves the respondents free to sell products they know, or should know, are deceptively labeled.

The proviso in Paragraph V of the consent order states that the respondents would not necessarily be liable for false or unsubstantiated claims appearing on the labels or in the packaging of the products sold at its stores, even it if were clear that the companies had actual knowledge that those claims were unsubstantiated or untrue. I believe that the other should hold the respondents liable if they know, or should know, that the labels or packaging of any such product contains false or unsubstantiated claims.

[FR Doc. 95–11554 Filed 5–10–95; 8:45 am]
BILLING CODE 6750–01–M

[Dkt. C–3566]

Ninzu, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Maryland-based marketers to possess and rely upon competent and reliable scientific substantiating evidence to

support any performance, benefits, efficacy, or safety claims they make for any weight loss or weight control product or program or any acupressure device they market in the future.

DATES: Complaint and Order issued April 7, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC/S–4002, Washington, DC. 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: On Tuesday, January 31, 1995, there was published in the **Federal Register**, 60 FR 5932, a proposed consent agreement with analysis In the Matter of Ninzu, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–11550 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 931–0083]

Physicians Group, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the respondent, a Danville physicians' group, and its seven board members from attempting to engage in an agreement or agreeing with other physicians to negotiate or refuse to negotiate with a third party payor. In addition, it would require dissolution of the respondent within 120 days.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Rendell Davis, FTC/S–3115, Washington, DC 20580. (202) 326–2756 or (202) 326–2894.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

In the matter of Physicians Group, Inc., a corporation, Edwin J. Harvie, Jr., M.D., Eric N. Davidson, M.D., Milton Greenberg, M.D., Noah F. Gibson, IV, M.D., William W. Henderson, IV, M.D., Douglas W. Shiflett, M.D., and Lawrence G. Fehrenbaker, M.D., individually. File No. 931 0083.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, hereinafter sometimes referred to as proposed respondents, and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the proposed respondents and counsel for respondent Physicians Group, Inc., and counsel for the Federal Trade Commission that:

1. Proposed Respondent Physicians Group, Inc. is a nonstock corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business in Danville, Virginia. For purposes of this agreement and order, its address is Physicians Group, Inc., c/o Dr. Edwin J. Harvie, Jr., 101 Holbrook Street, Danville, Virginia 24541.

2. The individual respondents named in the caption above are the members of the board of directors of proposed respondent Physicians Group, Inc., are physicians licensed to practice medicine in the Commonwealth of Virginia, and are engaged in the business of providing physician services to patients for a fee in Pittsylvania County and Danville, Virginia. Their respective business addresses are as follows:

Edwin J. Harvie, Jr., M.D., Internal Medicine Associates, Ltd., 101 Holbrook Street, Danville, Virginia 24541;

Eric N. Davidson, M.D., Piedmont Internal Medicine, Inc., 125 Executive Drive, Suite H, Danville, Virginia 24541;

Milton Greenberg, M.D., 171 South Main Street, Danville, Virginia 24541;

Noah F. Gibson, IV, M.D., 181 North Main Street, Danville, Virginia 24541;

William W. Henderson, IV, M.D., Danville Pulmonary Clinic, Inc., 110 Exchange Street, Suite G, Danville, Virginia 24541;

Douglas W. Shiflett, M.D., Internal Medicine Associates, Ltd., 101 Holbrook Street, Danville, Virginia 24541; and

Lawrence G. Fehrenbaker, M.D., Danville Urologic Clinic, P.O. Box 1360, Danville, Virginia 24543.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute

[1] Copies of the Complaint and Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other order. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered that, for purposes of this order, the following definitions shall apply:

A. ''PGI'' means Physicians Group, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by PGI; their directors, officers, representatives, agents, and employees; and their successors and assigns.

B. ''Physician respondents'' means Edwin J. Harvie, Jr., M.D., Eric N. Davidson, M.D., Milton Greenberg, M.D., Noah F. Gibson, IV, M.D., William W. Henderson, IV, M.D., Douglas W. Shiftlett, M.D., and Lawrence G. Fehrenbaker, M.D.

C. ''Person'' refers to both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

D. ''Payor'' means any person that purchases, reimburses for, or otherwise pays for all or part of the health care services for itself or for any other person—including, but not limited to, health insurance companies; preferred provider organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

E. ''Reimbursement'' means any and all cash or non-cash compensation or other benefits received for the rendering of physician services.

F. ''Cost containment'' means methods used by payors to lower health care costs, including, but not limited to, procedures under which payors review utilization by participating physicians to determine whether a physician service is covered by insurance and whether such service is appropriate, and procedures under which payors deal with physicians who provide services that are determined not to be appropriate.

G. ''Integrated joint venture'' means a joint arrangement to provide health care services in which all physicians participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.

H. ''Professional business entity'' means professional corporation, professional partnership, and professional limited liability company.

II

It is further ordered that PGI and each physician respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, forthwith shall cease and desist from:

A. Entering into, attempting to enter into, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, conspiracy, agreement, or understanding, with or among any physician(s) to:

1. Negotiate, deal, or refuse to deal with a payor, or

2. Determine any terms, conditions, or requirements upon which physicians deal with a payor, including, but not limited to, terms of reimbursement or of cost containment; and

B. Encouraging, advising, pressuring, inducing, or attempting to induce any physician to:

1. Refuse to deal with a payor, or

2. Deal with a payor on terms collectively determined by physicians, including such terms as terms of reimbursement or terms of cost containment.

Provided that, nothing in this order shall prevent physicians who practice together as partners or employees in the same professional business entity from collectively determining the fees to be charged for services rendered by that professional business entity or from collectively determining other terms on which that professional business entity deals with payors.

Further provided that, nothing in this order shall prevent physicians who participate in the same integrated joint venture from collectively determining the fees to be charged for services rendered by that integrated joint venture or from collectively determining other terms on which that integrated joint venture deals with payors.

Further provided that, nothing in this order shall prevent the exercise of rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

Further provided that, nothing in this order shall prevent physicians from participating at the request of a payor in utilization review activities organized and controlled by the payor insofar as such participation continues only at the sufferance of the payor.

III

It is further ordered that PGI shall:

A. Within ten (10) days after the date on which this order becomes final, cease and desist all business and all other activities of any nature whatsoever, except those activities that are required in order to comply with the terms of this order or that are necessary to effect a winding up of PGI's affairs and its dissolution;

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in Paragraph III.C. below, distribute by first-class mail a copy of this order and the accompanying complaint to each past and present member of PGI and to each payor who, at any time since February 18, 1986, has communicated any desire, willingness, or interest in contracting for physician services with PGI or with any of the physician respondents; and

C. Dissolve itself within one hundred twenty (120) days after the date on which this order becomes final.

IV

It is further ordered that each physician respondent shall:

A. Within thirty (30) days after the date this order becomes final, prepare a list of the names, addresses, and telephone numbers of all payors who, at any time since February 18, 1986, have communicated any desire, willingness, or interest in contracting with him for physician services, and deliver a copy of that list to PGI; and

B. Take all action necessary to effect dissolution of PGI as required by this order.

V

It is further ordered that PGI shall:

A. Within ninety (90) days after the date on which this order becomes final, and prior to the dissolution provided for in Paragraph III.C. above, file with the Commission a verified written report demonstrating how it has complied and is complying with this order; and

B. Notify the Commission at least thirty (30) days prior to any proposed change in PGI, such as change of address, assignment, sale resulting in the emergence of a successor, or any other change in PGI that may affect compliance obligations arising out of this order.

VI

It is further ordered that each physician respondent shall:

A. Within sixty (60) days after the date this order becomes final, every sixty (60) days thereafter in which PGI is not dissolved, and within the thirty (30) days following dissolution of PGI, file with the Commission a verified written report setting forth in detail the manner and form in which he intends to comply, is complying, and has complied with this order, including, but not limited to, a full description of his efforts to comply with Paragraph IV.B. above;

B. Beginning on January 15, 1996, and continuing annually for three (3) years, on each succeeding January 15, through and including January 15, 1999, and at such other times as the Commission or its staff may by written notice require, file with the Commission a verified written report setting forth in detail the manner and form in which he has complied with the order; and

C. For ten (10) years, notify the Commission at least thirty (30) days prior to any proposed change in his address or in his medical practice, such as dissolution, assignment, sale resulting in the emergence of a successor, or any other change in his medical practice that may affect compliance obligations arising out of this order.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order and subject to any recognizable privilege, PGI and each physician respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of PGI or a physician respondent relating to any matters contained in this order;

B. Upon five business days' notice to PGI and without restraint or interference from it, to interview the officers, directors, or employees of PGI; and

C. Upon five business days' notice to a physician respondent and without restraint or interference from him, to interview the physician respondent or the employees of the physician respondent.

VIII

It is further ordered that this order shall terminate twenty (20) years from the date of issuance.

Physicians Group, Inc., Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement to a proposed consent order from Physicians Group, Inc. (''PGI'') and from the seven members of the board of directors of PGI (''PGI Directors''). The agreement settles charges by the Federal Trade Commission that PGI and the PGI Directors restrained competition among physicians practicing in the area of Danville, Virginia, by, among other things, combining or conspiring to fix the terms under which they would deal with third-party payors, including (1) terms of reimbursement and (2) the terms by which third-party payors attempt to contain health care costs.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order or to modify their terms in any way.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The proposed complaint alleges that PGI is a nonstock corporation with its principal place of business in Danville, Virginia, and that all the members of respondent PGI, including the PGI Directors, are physicians practicing in Pittsylvania County and Danville, Virginia.

The proposed complaint further alleges that, beginning in 1986, PGI and the PGI Directors conspired with each other and with other PGI members to (1) prevent or delay the entry into Pittsylvania County and Danville, Virginia, of third-party payors, (2) deal concertedly with third-party payors, and (3) resist the cost containment measures of third-party payors. In 1988 and 1989, PGI Directors conspired to fix the rate of reimbursement they were willing to accept from the Virginia Health Network, a managed care organization. As a result, the Virginia Health Network was not able to establish a network of health care providers in Pittsylvania County and Danville, Virginia. In 1992 and 1993, PGI and the PGI Directors conspired to fix the terms and conditions of cost containment they were willing to accept from the Key Advantage Plan, a managed care insurance plan for employees of the Commonwealth of Virginia. As a result, the Commonwealth of Virginia was not able until 1994 to fully implement the Key Advantage Plan in Pittsylvania County and Danville, Virginia. In addition, PGI and the PGI Directors conspired to refuse to deal with, and to fix the terms and conditions of dealing with, other third-party payors attempting to do business in Pittsylvania County and Danville, Virgina.

The proposed complaint alleges that this conduct had the following purpose, tendency, and capacity to result in the following effects:

A. Restraining competition among physicians in Pittsylvania County and Danville, Virginia;

B. Depriving consumers in Pittsylvania County and Danville, Virginia, of the benefits of competition among physicians;

C. Fixing or increasing the prices that are paid for physician services in Pittsylvania County and Danville, Virginia;

D. Fixing the terms and conditions upon which physicians in Pittsylvania County and Danville, Virginia, would deal with third-party payors, including, but not limited to, terms and conditions of cost containment, and thereby raising the price to consumers of insurance coverage issued by third-party payors; and

E. Depriving consumers in Pittsylvania County and Danville, Virginia, of the benefits of managed care.

Finally, the proposed complaint alleges that the above actions of PGI and the PGI Directors constitute unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The Proposed Consent Order

The proposed consent order would prohibit PGI and the PGI Directors from engaging in, or attempting to engage in, any combination, conspiracy, agreement, or understanding, with or among any physician(s) to negotiate, deal, or refuse to deal with a payor, or to determine any terms, conditions, or requirements upon which physicians deal with a payor, including, but not limited to, terms of reimbursement or of cost containment.

The proposed consent order would also prohibit PGI and the PGI Directors from encouraging, advising, pressuring, inducing, or attempting to induce any physician to (1) refuse to deal with a payor, or (2) deal with a payor on terms collectively determined by physicians, including such terms as terms of reimbursement or terms of cost containment.

The proposed consent order specifically permits the following:

1. Physicians who practice together as partners or employees in the same professional business entity collectively determining the fees to be charged for services rendered by that professional business entity, or collectively determining other terms on which that professional business entity deals with payors. (For purposes of this consent order, ''professional business entity'' means professional corporation, professional partnership, and professional limited liability company.)

2. Physicians who participate in the same integrated joint venture collectively determining the fees to be charged for services rendered by that integrated joint venture or collectively determining other terms on which that integrated joint venture deals with payors. (For purposes of the proposed consent order, ''integrated joint venture'' means a joint arrangement to provide health care services in which all physicians participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.)

3. The exercise of rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

4. Physicians participating at the request of a payor in utilization review activities organized and controlled by the payor insofar as such participation continues only at the sufferance of the payor.

The proposed consent order would require PGI to dissolve itself within 120 days after the date on which the proposed order becomes final. PGI Directors are to take all actions necessary to effect dissolution of PGI as required by the proposed consent order.

The proposed consent order would also require PGI to distribute copies of the proposed complaint and proposed order to past and present members of PGI and each payor who, at any time since February 18, 1986, has communicated any desire, willingness, or interest in contracting for physician services with PGI or with any of the PGI Directors. Each of the PGI Directors is to deliver to PGI a list of payors from whom he has received such a communication.

The order would require PGI and the PGI Directors to (1) file compliance reports with the Commission, (2) notify the Commission of certain proposed changes in PGI or the PGI Directors that may affect their compliance with the order, and (3) permit representatives of the Commission to have access to documents in the possession or under the control of PGI or the PGI Directors relating to any matters contained in the order and to interview the officers, directors, or employees of PGI and the employees of the PGI Directors.

The proposed consent order would terminate 20 years after the date it is issued.

PGI and the PGI Directors agreed to the proposed consent order for settlement purposes only, and their agreement to the order does not constitute an admission by them that the law has been violated as alleged in the proposed complaint.

Donald S. Clark,

Secretary.

[FR Doc. 95–11553 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 6699]

Pittsburgh Plate Glass Co., Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1957 consent order—which prohibited the respondent from discriminating in price between competing purchasers by charging auto manufacturers less for automotive safety glass than it charged glass distributors and glass dealers—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued April 19, 1957. Set aside order issued April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Pittsburgh Plate Glass Company. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 15 U.S.C. 13)

In the matter of Pittsburgh Plate Glass Company, a corporation. Docket No. 6699.

Order Reopening Proceeding and Setting Aside Order

On December 9, 1994, PPG Industries, Inc., the successor to Pittsburgh Plate Glass Company, (''PPG''), filed a Petition to Reopen and Set Aside Consent Order (''Petition'') in this matter. PPG requests that the Commission set aside the 1957 consent order in this matter pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public

Comment With Respect to Duration of Consumer Protection Orders, issued July 22, 1994, published at 59 FR 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In the Petition, PPG affirmatively states that it has not engaged in any conduct violating the terms of the order. The Request was placed on the public record, and the thirty-day comment period expired on January 16, 1995. Two public comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [1] The Commission's order in Docket No. 6699 was issued on April 19, 1957, and has been in effect for more than 37 years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 6699.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. 6699 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–11551 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[1] *See* Sunset Policy Statement, 59 Fed. Reg. at 45,289.

[Dkt. C–3571]

Reckitt & Colman plc; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order allows, among other things, Reckitt & Colman to acquire L&F Products Inc. with the required prior approval on the condition that it sells its own rug cleaning assets, within six months, to a Commission approved acquirer. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to complete the transaction. In addition, the consent order requires the respondent to obtain Commission approval, for ten years, before acquiring any interest in the carpet-deodorizer business in the United States.

DATES: Complaint and Order issued April 4, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2820.

SUPPLEMENTARY INFORMATION: On Friday, January 13, 1995, there was published in the **Federal Register**, 60 FR 3236, a proposed consent agreement with analysis In the Matter of Reckitt & Colman plc, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–11549 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[File No. 921 0117]

Reebok International Ltd., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts corporation and its subsidiary from fixing, controlling or maintaining the resale prices at which any dealer may advertise, promote, offer for sale or sell any Reebok or Rockport product. The Consent agreement also would prohibit, for a period of ten years, the respondents from enforcing or threatening suspension or termination of a dealer that sells or advertises a product below a resale price designed by Reebok or Rockport.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Alan Loughnan, New York Regional Office, Federal Trade Commission, 150 William St., Suite 1300, New York, NY 10038. (212) 264–0459.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney

In the matter of Reebok International Ltd., and the Rockport Company, Inc., corporations File No. 921 0117

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Reebok International Ltd. and The Rockport Company, Inc., a subsidiary of Reebok International Ltd., and it now appearing that Reebok International Ltd. and The Rockport Company, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated,

It is hereby agreed by and between Reebok International Ltd. and The Rockport Company, Inc., by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents Reebok International Ltd. and The Rockport Company, Inc., a subsidiary of Reebok International Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. The mailing address and principal place of business of proposed respondent Reebok International Ltd. is: 100 Technology Center Drive, Stoughton, Massachusetts 02072. The mailing address and principal place of business of proposed respondent The Rockport Company, Inc.

is: 220 Donald Lynch Boulevard, Marlboro, Massachusetts 01752.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. The proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. The proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for the purpose of this order, the following definitions shall apply:

(A) The term ''Reebok'' means Reebok International Ltd., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Reebok International Ltd., and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

(B) The term ''Rockport'' means The Rockport Company, Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by the Rockport Company, Inc., and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

(C) The term ''respondents'' means Reebok and Rockport.

(D) The term ''product'' means any athletic or casual footwear item which is manufactured, offered for sale or sold under the brand name of ''Reebok'' or ''Rockport'' to dealers or consumers located in the United States of America.

(E) The term ''dealer'' means any person, corporation or entity not owned by Reebok or Rockport, or by any entity owned or controlled by Reebok or Rockport, that in the course of its business sells any product in or into the United States of America.

(F) The term ''resale price'' means any price, price floor, minimum price, maximum discount, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. ''Resale price'' includes, but is not limited to, any suggested, established, or customary resale price.

II

It is further ordered that Reebok and Rockport, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, offering for sale, sale or distribution of any product in or into the United States of America in or affecting ''commerce,'' as defined by the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

(A) Fixing, controlling, or maintaining the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

(B) Requiring, coercing, or otherwise pressuring any dealer to maintain, adopt, or adhere to any resale price.

(C) Securing or attempting to secure any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any product.

(D) For a period of ten (10) years from the date on which this order becomes final, adopting, maintaining, enforcing or threatening to enforce any policy, practice or plan pursuant to which respondents notify a dealer in advance that: (1) The dealer is subject to partial or temporary suspension or termination if it sells, offers for sale, promotes or advertises any product below any resale price designated by respondents, and (2) the dealer will be subject to a greater sanction if it continues or renews selling, offering for sale, promoting or advertising any product below any such designated resale price. As used herein, the phrase ''partial or temporary suspension or termination'' includes but is not limited to any disruption, limitation, or restriction of supply: (1) Of some, but not all, products, or (2) to some, but not all, dealer locations or businesses, or (3) for any delimited duration. As used herein, the phrase ''greater sanction'' includes but is not limited to a partial or temporary suspension or termination of greater scope or duration than the one previously implemented by respondent, or complete suspension or termination.

Provided that nothing in this Order shall prohibit Reebok and Rockport from announcing resale prices in advance and unilaterally refusing to deal with those who fail to comply. Provided further that nothing in this Order shall prohibit Reebok and Rockport from establishing and maintaining cooperative advertising programs that include conditions as to the prices at which dealers offer products, so long as such advertising programs are not part of a resale price

maintenance scheme and do not otherwise violate this order.

III

It is further ordered that, for a period of five (5) years from the date on which this order becomes final, Reebok shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any product to any dealer:

ALTHOUGH REEBOK MAY SUGGEST RESALE PRICES FOR PRODUCTS, RETAILERS ARE FREE TO DETERMINE ON THEIR OWN THE PRICES AT WHICH THEY WILL ADVERTISE AND SELL REEBOK PRODUCTS.

IV

It is further ordered that, for a period of five (5) years from the date on which this order becomes final, Rockport shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any product to any dealer:

ALTHOUGH ROCKPORT MAY SUGGEST RESALE PRICES FOR PRODUCTS, RETAILERS ARE FREE TO DETERMINE ON THEIR OWN THE PRICES AT WHICH THEY WILL ADVERTISE AND SELL ROCKPORT PRODUCTS.

V

It is further ordered that, within thirty (30) days after the date on which this order becomes final, Reebok shall mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to all of its directors and officers, and to dealers, distributors, agents, or sales representatives engaged in the sale of any product in or into the United States of America.

VI

It is further ordered that, within thirty (30) days after the date on which this order becomes final, Rockport shall mail by first class mail the letter attached as Exhibit B, together with a copy of this order, to all of its directors and officers, and to dealers, distributors, agents, or sales representatives engaged in the sale of any product in or into the United States of America.

VII

It is further ordered that, for a period of two (2) years after the date on which this order becomes final, Reebok shall mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to each new director, officer, dealer, distributor, agent, and sales representative engaged in the sale of any product in or into the United States of America, within ninety (90) days of the commencement of such person's employment or affiliation with Reebok.

VIII

It is further ordered that, for a period of two (2) years after the date on which this order becomes final, Rockport shall mail by first class mail the letter attached as Exhibit B, together with a copy of this order, to each new director, officer, dealer, distributor, agent, and sales representative engaged in the sale of any product in or into the United States of America, within ninety (90) days of the commencement of such person's employment or affiliation with Rockport.

IX

It is further ordered that Reebok or Rockport shall notify the Commission at least thirty (30) days prior to any proposed changes in Reebok or Rockport such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of the order.

X

It is further ordered that, within sixty (60) days after the date this order becomes final, and at such other times as the Commission or its staff shall request, Reebok and Rockport shall file with the Commission a verified written report setting forth in detail the manner and form in which Reebok and Rockport have complied and are complying with this order.

XI

It is further ordered that this order shall terminate on [insert date twenty years after date of issuance].

Exhibit A

[Reebok Letterhead]

Dear Retailer: The Federal Trade Commission has conducted an investigation into Reebok's sales policies, and in particular Reebok's Centennial Plan, which was announced in November 1992 and whose retail pricing provisions have since been withdrawn. To expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Reebok has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. This letter and the accompanying Order are being sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand that you can sell and advertise our products at any prices you choose. While we may send materials to you which contain suggested retail prices, you remain free to sell and advertise those products at any price you choose.

We look forward to continuing to do business with you in the future.

Sincerely yours,

_____

President,
Reebok International Ltd.

Exhibit B

[Rockport Letterhead]

Dear Retailer: The Federal Trade Commission has conducted an investigation into Rockport's sales policies, and in particular Rockport's Suggested Retail Pricing Policy, which was announced in July 1992 and which, together with Rockport's subsequent ''Marathon Policy,'' has since been withdrawn. To expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Rockport has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. This letter and the accompanying Order are being sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand that you can sell and advertise our products at any price you choose. While we may send materials to you which contain suggested retail prices, you remain free to sell and advertise those products at any price you choose.

We look forward to continuing to do business with you in the future.

Sincerely yours,

_____

President,
The Rockport Company, Inc.

Analaysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Reebok International Ltd. and The Rockport Company, Inc. (a wholly-owned subsidiary of Reebok International Ltd.).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Reebok International Ltd. (''Reebok'') and The Rockport Company, Inc. (''Rockport'') have entered into combinations, agreements and understandings with certain of their dealers to maintain the

resale prices at which certain of their dealers sell certain of their athletic or casual footwear products. The complaint alleges that this conduct violates Section 5 of the Federal Trade Commission Act.

Reebok and Rockport have signed a consent agreement to the proposed consent order that prohibits them from fixing, controlling or maintaining the resale prices at which any dealer may advertise, promote, offer for sale or sell any Reebok or Rockport product. The proposed order prohibits Reebok and Rockport from coercing or pressuring any dealer to maintain, adopt or adhere to any resale price, and from securing or attempting to secure commitments or assurances from any dealer concerning resale prices. The proposed consent order also for a period of ten years prohibits Reebok and Rockport from enforcing or threatening to enforce any policy, practice or plan under which Reebok or Rockport notifies a dealer in advance that the dealer is subject to partial or temporary suspension or termination if it sells or advertises any product below a resale price designated by Reebok or Rockport, and that the dealer will be subject to a greater sanction if it continues or renews selling or advertising any product below a designated resale price.

The proposed order requires Reebok and Rockport to mail a letter to their dealers which will inform them that they can sell and advertise Reebok and Rockport products at any price they choose. The proposed order also requires Reebok and Rockport, for a period of five years, to place on any material in which they suggest resale prices a statement that the dealer is free to determine the prices at which it will sell Reebok or Rockport products.

The proposed order provides that the order shall terminate 20 years after the date of its issuance by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Roscoe B. Starek III, in the Matter of Reebok International, Ltd., File No. 921–0117

I find reason to believe that Reebok International, Ltd. (''Reebok'') has entered into agreements with retailers to restrain resale prices and has thereby violated Section 5 of the FTC Act, 15 U.S.C. § 45.[1] But I have dissented from the decision to accept the consent agreement in this matter because certain provisions of the Commission's order are not necessary to prevent unlawful conduct and may unduly restrain procompetitive activity by Reebok.

Under most circumstances, including those here, the competitive effects of RPM are ambiguous at worst and a full rule of reason analysis likely would not reveal cognizable anticompetitive effects.[2] Therefore, I would prefer that injunctive relief ordered to address RPM be strictly tailored to the per se allegations. The fencing-in restrictions in this order is related to resale price advertising (in subparagraphs II (A) and (C)) and to Reebok's ''structured termination policy'' (subparagraph II(D))—are unnecessarily broad and may enjoin efficient conduct.[3]

[FR Doc. 95–11555 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3027]

Third Option Laboratories, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Muscle Shoals, Alabama company and its officers to pay $480,000 to be used either for refunds to consumers or as disgorgement to the U.S. Treasury and to send a notice to consumers advising them of the consent agreement, which settles allegations that the respondents made a number of deceptive health claims for their ''Jogging in a Jug'' beverage. In future advertisements for that beverage or similar products, the respondents would have to clearly and prominently state that there is no scientific evidence that the product provides any health benefits.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: .Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Toby Milgrom Levin or Loren G. Thompson, FTC/S–4002, Washington, D.C. 20580. (202) 326–3156 or (202) 326–2049.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Third Option Laboratories, Inc., a corporation, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation. File No. 942–3027.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Third Option Laboratories, Inc., a corporation, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation (''proposed respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Third Option Laboratories, Inc., by its duly authorized officer, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Third Option Laboratories, Inc. is a corporation organized, existing, and doing business

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[1] *See Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U.S. 373 (1911) (resale price maintenance (''RPM'') held unlawful upon mere proof of agreement).

[2] *See, e.g.*, Pauline Ippolito, *Resale Price Maintenance: Evidence From Litigation*, 34 J.L. & Econ. 263 (1991). *See also* Kevin J. Arquit, *Resale Price Maintenance: Friend or Foe?* 60 Antitrust L.J. 447 (1992).

[3] Even if the evidence in this case suggests that Reebok's dealer advertising and termination policies supported RPM, deleting the related fencing-in injunctions likely would be procompetitive. The order should permit Reebok to exercise its lawful dealer termination rights and to engage in any procompetitive minimum advertised price programs ''unless (this conduct) includes some agreement on price levels.'' *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 484 U.S. 717, 735–36 (1988).

under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 2806 Avalon Avenue, Muscle Shoals, Alabama 35661.

Proposed respondents William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton are owners and officers of said corporation. They formulate, direct, and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement, contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final

Order

I

It is ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug, or any substantially similar product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

A. Cures or alleviates heart disease or its symptoms, including arterial blockages;

B. Substantially lowers serum cholesterol or triglycerides;

C. Cures or alleviates arthritis or its symptoms;

D. Breaks down or eliminates calcium or other mineral or chemical deposits in the circulatory system;

E. Improves the condition of the circulatory system;

F. Cleans internal organs;

G. Prevents or reduces the risk of cancer, leukemia, heart disease, or arthritis;

H. Provides the same health benefits as a jogging regimen;

I. Cures or alleviates lethargy;

J. Cures or alleviates dysentery;

K. Cures or alleviates constipation;

L. Stabilizes blood sugar levels in insulin-dependent diabetics;

M. Aids in the recovery from viral diseases;

N. Cures or alleviates swelling of the legs or muscle spasms; or

O. Is approved by the United States Department of Agriculture.

II

It is further ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any food, food or dietary supplement, or drug, as ''food'' and ''drug'' are defined in sections 12 and 15 of the Federal Trade Commission Act, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, regarding the performance, safety, benefits, or efficacy of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

For purposes of this Order, ''component and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that respondents, Third Option Laboratories, Inc., a

corporation, its successor and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

IV

It is further ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as ''endorsement'' is defined in 16 CFR 255.0(b)) of any such product represents the typical or ordinary experience of members of the public who use such product, unless such is the fact.

V

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI

Nothing in this Order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VII

It is further ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug or any substantially similar product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the name ''Jogging in a Jug'' or any other name that communicates the same or similar meaning for such product; *provided, however,* that nothing in this Order shall prevent the use of such name if the material containing the name clearly and prominently contains the following disclosure:

''THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS.''

For the purposes of this Order, ''clearly and prominently'' shall mean as follows:

A. In a television or video advertisement less than fifteen (15) minutes in length, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name. When the first presentation of the name appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the first presentation of the name appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;

B. In a video advertisement fifteen (15) minutes in length or longer, the disclosure shall be presented simultaneously in both the audio and visual potions of the advertisement, accompanying the first presentation of the name and immediately before each presentation of ordering instructions for the product. When the name that triggers the disclosure appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the name that triggers the disclosure appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. *Provided that,* for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product in conjunction with the name shall be deemed a presentation of ordering instructions so as to require the presentation of the disclosure provided herein;

C. In a radio advertisement, the disclosure shall immediately follow the first presentation of the name and shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

D. In a print advertisement, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; *provided, however,* that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement;

E. On a product label, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; *provided, however,* that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the label; and

F. On any packaging of the product shipped directly to consumers, the disclosure shall appear on each side of the packaging on which the name appears, in close proximity to the largest presentation of the name. The total area of the disclosure shall be at least half that of the name that triggers the disclosure. The disclosure shall be of a

color or shade that readily contrasts with the background of the packaging.

Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or labeling.

Nothing in this part shall apply to: (1) Advertising appearing on items that are sold or given or caused to be sold or given by respondents to consumers for their personal use and that display the name ''Jogging in a Jug'' or any other name that communicates the same or similar meaning; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of respondents' letterhead, on shipping labels, or on crates provided only to purchasers for resale.

VIII

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of four hundred and eighty thousand dollars ($480,000). Respondent shall make this payment on or before the tenth day following the date of entry of this Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used by the Commission to provide direct redress to purchasers of Jogging in a Jug in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Federal Trade Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

IX

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, within thirty (30) days after the date of service of this Order, send by first class mail, postage prepaid and address correction requested, to the last address known to respondents of each consumer who purchased Jogging in a Jug in any manner directly from respondents since January 1, 1993, an exact copy of the notice attached hereto as Attachment A. The mailing shall not include any other documents.

X

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall:

A. Within thirty (30) days after the date of service of this Order, send by first class certified mail, return receipt requested, to each purchaser for resale of Jogging in a Jug with which respondents have done business since January 1, 1993 an exact copy of the notice attached hereto as Attachment B. The mailing shall not include any other documents;

B. In the event that respondents receive any information that subsequent to its receipt of Attachment B any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this Order, respondents shall immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisements or promotional materials; and

C. Terminate the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use advertisements or promotional materials that contain any representation prohibited by this Order after receipt of the notice required by subparagraph B of this part.

XI

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notification letters sent to consumers pursuant to part IX of this Order;

B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part X of this Order; and

C. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of Part X of this Order.

XII

It is further ordered that, for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Any advertisement making any representation covered by this order;

B. All materials that were relied upon in disseminating such representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

XIII

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of seven (7) years from the date of service of this Order, provide a copy of this Order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order within three (3) days after the person assumes his or her position.

XIV

It is further ordered that respondents, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, for a period of seven (7) years after the date of service of this Order, notify the Commission within thirty (30) days of the discontinuance of

his or her present business or employment and of his or her affiliation with any new business or employment involving the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any food, food or dietary supplement, or drug, as ''food'' and ''drug'' are defined in sections 12 and 15 of the Federal Trade Commission Act. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities.

XV

It is further ordered that respondents, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

XVI

It is further ordered that respondents shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Attachment A

By First Class Mail, Postage Prepaid and Address Correction Requested

[To Be Printed on Third Option Laboratories, Inc. Letterhead]

[date]

Dear Consumer: Our records indicate that you purchased Jogging in a Jug from Third Option Laboratories, Inc. This letter is to inform you of our settlement of a civil dispute with the Federal Trade Commission (''FTC'') regarding certain claims made in our advertising for Jogging in a Jug.

The FTC alleged that advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) Heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (6) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can ''clean'' internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

Sincerely,

William J. McWilliams,

President, Third Option Laboratories, Inc.

Attachment B

By Certified Mail, Return Receipt Requested

[To Be Printed on Third Option Laboratories, Inc. letterhead]

[date]

Dear [purchaser for resale]: Third Option Laboratories, Inc. recently settled a civil dispute with the Federal Trade Commission (''FTC'') regarding certain claims for our product, Jogging in a Jug. As a part of the settlement, we are required to make sure that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing those claims.

The FTC alleged that the advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) Heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (7) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can ''clean'' internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

We request your assistance by asking you to discontinue using, relying on or distributing any of your current Jogging in a Jug advertising or promotional material. Please also notify any of your retail or wholesale customers who may have such materials to discontinue using them. If you continue to use those materials, we are required by the FTC settlement to stop doing business with you.

Thank you very much for your assistance.

Sincerely,

William J. McWilliams,

President, Third Option Laboratories, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Third Option Laboratories, Inc. (''Third Option''), and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, officers of Third Option.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Jogging in a Jug, a juice and vinegar beverage marketed by Third Option. The Commission's proposed complaint alleges that the respondents falsely represented in its advertising and promotional material that Jogging in a Jug would: (1) Cure or alleviate heart disease and its symptoms, including arterial blockages; (2) substantially lower serum cholesterol and triglycerides; (3) cure or alleviate arthritis and its symptoms; (4) break down or eliminate calcium or other mineral or chemical deposits in the circulatory system; (5) improve the condition of the circulatory system; (6) clean internal organs; (7) prevent or reduce the risk of cancer, leukemia, heart disease, and arthritis; (8) provide the same health benefits as a jogging regimen; (9) cure or alleviate lethargy; (10) cure or alleviate dysentery; (11) cure or alleviate constipation; (12) stabilize blood sugar levels in insulin-dependent diabetics; (13) aid in the recovery from viral infections; and (14) cure or alleviate swelling of the legs and muscle spasms. The proposed complaint further alleges that respondents falsely represented that they relied on a reasonable basis for these claims.

In addition, the proposed complaint alleges that respondents falsely represented that Jogging in a Jug was approved by the United States Department of Agriculture and that the testimonials or endorsements from consumers contained in the advertisements and promotional materials for Jogging in a Jug reflect the typical or ordinary experiences of members of the public who use the product. The proposed complaint further alleges that respondents falsely represented that they relied on a reasonable basis for these claims.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondents from making the

representations challenged as false in the proposed complaint for Jogging in a Jug or any substantially similar product.

Part II of the proposed order prohibits the respondents from making any representation about the performance, safety, benefits, or efficacy of any food, food or dietary supplement, or drug, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates it.

Part III of the proposed order prohibits the respondents from misrepresenting that any product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

Part IV of the proposed order prohibits the respondents from misrepresenting that any endorsement for any product reflects the typical or ordinary experience of members of the public who use the product.

Parts V and VI of the order are safe harbor provisions. Part V allows representations for any drug that is permitted in the labeling for that drug under any tentative final or final standard promulgated by the Food and Drug Administration (''FDA''), or under any new drug application approved by the FDA. Part VI allows representations permitted in labeling for any product by regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Part VII of the order requires that the respondents cease using the name ''Jogging in a Jug'' or any name that communicates the same or similar meaning unless the material containing such name clearly and prominently contains the disclosure ''THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS.'' The terms of Part VII do not apply to: (1) The use of such name on items that are sold or given or caused to be sold or given to consumers for their personal use; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of corporate letterhead, on shipping labels, or on crates provided only to purchasers for resale.

Part VIII of the order requires respondents to pay to the Commission the sum of four hundred and eighty thousand dollars ($480,000). The Commission will then determine, in its sole discretion, whether to use the payment to provide direct redress to consumers or to pay the funds to the United States Treasury if redress is not practicable.

Part IX of the order requires the respondents to send a letter describing this settlement to identifiable past purchasers of Jogging in a Jug. Part X of the order requires the respondents to send a similar letter to their purchasers for resale. Part X further requires the respondents to notify their purchasers for resale that if the purchasers for resale do not stop using promotional materials containing claims covered by the order, the respondents are required to stop doing business with them. Part XI of the order requires that the respondents maintain for five years copies of all communications with consumers and purchasers for resale pursuant to the terms of Parts IX and X.

Parts XII, XIII, XIV, XV, and XVI relate to the respondents' obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in employment or corporate structure, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, Third Option Laboratories, Inc., File No. 942 3027

Today, the Commission accepts for public comment a consent agreement to remedy various misrepresentations concerning the purported health benefits of a drink called ''Jogging in a Jug.'' The record shows that the claims are far removed from reality, and there is ample reason to believe they violated section 5 of the FTC Act. I concur in the complaint on which the order is based except to the extent that it alleges as a violation the content of newspaper articles that are reproduced in the respondents' promotional materials and those materials accurately identify and reproduce such articles in their original format without modification. Complaint ¶ 7 and Exhibit F.

Second, I dissent from Part VII of the order. Although the complaint does not challenge as materially misleading the unadorned use of the product's name, Jogging in a Jug (nor would I, given the absence of evidence), Part VII of the order prohibits, in connection with the advertising and sale of Jogging in a Jug (or any similar product), use of the name Jogging in a Jug, or any other name communicating a similar meaning, unless the name is accompanied clearly and prominently by a disclosure stating: ''THERE IS NO SCIENTIFIC EVICENCE THAT JOGGING IN A JUG [or other name] PROVIDES ANY HEALTH BENEFITS,'' and which includes six extensive paragraphs minutely detailing what will constitute ''clearly and prominently'' for purposes of compliance with this requirement.

The Commission in the past has used this form of relief, which can substantially limit potentially lawful conduct, to remedy health claims that seem more credible than those likely to be taken by reasonable consumers here. For example, the Commission imposed a similar requirement to remedy the pain relief claim it found to have been conveyed by the name ''Aspercreme'' in *Thompson Medical Co.*, 104 F.T.C. 648 (1984). The likelihood that a consumer would except that a product named Aspercreme would contain aspirin and would rely on that claim to his or her detriment seems to me far greater than the likelihood that a consumer would rely to his or her detriment on an implied message that a product called Jogging in a Jug would provide the health benefits of jogging.

[FR Doc. 95–11556 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held at the U.S. Government Printing Office, 732 North Capitol Street, Carl Hayden Room—8th Floor, Washington, DC 20401, on Wednesday, May 24, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online, **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and

reader aids are included in the database as ASCII text files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills; Public Laws; U.S. Code; and GAO Reports.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by telephone: 202–512–1525; by fax: 202–512–1262; or by Internet e-mail at john@eids05.eids.gpo.gov. Seating reservations will be accepted through Monday, May 22, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–11612 Filed 5–10–95; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–94]

Notice of Availability of Administrative Reports of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of nine ATSDR health effects studies.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

SUPPLEMENTARY INFORMATION: Sections 104(i)(1), (7), (8), and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)(1), (7), (8), and (9)], provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

On February 13, 1990, ATSDR published in the **Federal Register** [55 FR 5136] a final rule entitled, ''Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities.'' The primary purpose of that rule, which created a new regulation at 42 CFR Part 90, was to set forth general procedures that ATSDR will follow relating to certain agency activities, including the conduct of health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of CERCLA will be available to the general public upon request.

Availability

The reports of the health effects studies listed below are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22151, telephone: 1–800–553–6847. There is a charge for these items as determined by NTIS.

Health effects study	NTIS document No.
Soil-Related Lead Poisoning in Socorro, New Mexico. ATSDR/HS–94/36.	PB94–193406
A Standardized Test Battery for Lung and Respiratory Diseases for Use in Environmental Health Field Studies. ATSDR/HS–94/37.	PB94–205556
Immune Function Test Batteries for Use in Environmental Health Field Studies. ATSDR/HS–94/38.	PB94–204328
National Exposure Registry Policies and Procedures Manual (Revised). ATSDR/HS–95/39.	PB95–154571
National Exposure Registry Trichloroethylene (TCE) Subregistry Baseline Technical Report (Revised). ATSDR/HS–95/40.	PB95–154589
Mortality Study of Children Residing Near ASARCO Copper Smelting in Ruston, Washington. ATSDR/HS–95/41.	PB95–142022
Health Study to Assess the Human Health Effects of Mercury Exposure to Fish Consumed from the Everglades. ATSDR/HS–95/42.	PB95–167276
Exposure to PCBs from Hazardous Waste Among Mohawk Women and Infants at Akwesasne. ATSDR/HS–95/43.	PB95–159935
Jasper County, Missouri Superfund Site Lead and Cadmium Exposure Study. ATSDR/HS–95/44.	PB95–179404

In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate State and local government agencies, and the affected local communities.

ATSDR previously announced the availability of 35 final reports of health effect studies and a software package for the analysis of disease clusters [55 FR 31445, August 12, 1990; 57 FR 29091, June 30, 1992; 58 FR 29413, May 20, 1993; 58 FR 63378, December 1, 1993; and 59 FR 47879, September 19, 1994]. Additional final reports will be announced semiannually in the **Federal Register** as they become available.

Dated: May 5, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–11629 Filed 5–10–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[Announcement 550]

Enhancing Partnerships With Private Sector Health Care Provider Organizations; Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to enhance partnerships with private sector health care provider organizations and to promote the improvement of immunization coverage in primary care settings.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the section **Where to Obtain Additional Information**.)

Authority

This program is authorized under the Public Health Service Act, Sections 301 [42 U.S.C. 241] and 317 [42 U.S.C. 247b], as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants for this program are national private sector health care provider organizations and associations with an active membership of at least 2500 health care providers.

Availability of Funds

Approximately $500,000 is available in FY 1995 to fund up to seven awards. The average award will range from $75,000 to $150,000. Awards will begin on or about September 1, 1995, and will be made for 12 month budget periods within a project period of up to 5 years. Funding estimates outlined above may vary and are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress, an acceptable application, and the availability of funds.

Purpose

The purpose of this cooperative agreement is:

1. To establish partnerships with national private provider organizations and associations to effectively utilize the combined resources of the public and private health care delivery systems.

2. To meet the immunization objectives established by the Secretary of the Department of Health and Human Services. Priority will be given to those activities likely to result in increased immunization levels among children 24 months of age and reduction/elimination of targeted vaccine-preventable diseases by 1996.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Develop and Implement Immunization Initiatives: Recipients must develop and implement among their constituencies a plan to enhance the delivery of immunization services through implementing the —Standards for Pediatric Immunization Practices—, implementing provider self assessment activities, developing incentives for providers to improve coverage, implementing reminder/recall systems, and developing and implementing creative and innovative activities.

2. Develop an evaluation plan to monitor progress toward achieving their objectives.

B. CDC Activities

1. Provide technical assistance to plan, implement, and evaluate each component of the plan to enhance delivery of immunization services.

2. Assist in interpretation of current scientific literature related to methods to improve immunization coverage levels.

3. Provide assistance in the evaluation of each plan component (process and outcome) through the analysis and interpretation of coverage and other relevant data.

Evaluation Criteria

The application will be evaluated according to the following criteria:

A. Background and Need: The extent to which the applicant understands the problem of underimmunization and proposes a plan to address the issues specific to their constituents. (20 points)

B. Operational Plan: The feasibility and appropriateness of the applicant's operational plan to enhance immunization services delivery among constituencies through implementing the ''Standards for Pediatric Immunization Practices'', implementing provider self-assessment activities, developing incentives for providers to improve coverage, implementing reminder/recall systems, and developing and implementing creative and innovative activities. (45 points)

C. Coordination with Public Sector Activities: The extent to which the applicant proposes to coordinate activities with State and local immunization programs and other appropriate agencies as evidenced by letters of support. (5 points)

D. Capability: The extent to which the applicant appears likely to succeed in implementing proposed activities as measured by (1) Relevant past experiences; (2) feasible program objectives; (3) a realistic timetable for plan implementation; (4) a sound management structure; and (5) the qualifications of staff, including the appropriateness of their proposed roles and responsibilities or job descriptions. (30 points)

E. Budget and Justification: The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement. (Not weighted)

Executive Order 12372

This program is not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.268.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this announcement (#550) will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1, (OMB Number 0937- 0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Attn: Lisa Tamaroff, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, on or before July 10, 1995.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are

considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other materials may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6796.

Please refer to Announcement Number *550* when requesting information and submitting an application.

Programmatic technical assistance may be obtained from William A. Murrain, Immunization Services Division, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E52, Atlanta, GA 30333, telephone (404) 639–8208.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001- 00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Copies of the ''Standards for Pediatric Immunization Practices'' may be obtained from the National Immunization Program, Immunization Services Division, Centers for Disease Control and Prevention (CDC), Mailstop E–34, 1600 Clifton Road, NE., Atlanta, GA 30333, telephone (404) 639–8225.

Dated: May 5, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–11624 Filed 5–10–95; 8:45 am]

BILLING CODE 4163–18–P

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6 p.m.–9 p.m., June 4, 1995; 8 a.m.–5 p.m., June 5, 1995; 8 a.m.–12 noon, June 6, 1995.

Place: Wyndham Garden Hotel-Midtown, 125 10th Street, NE, Atlanta, Georgia 30309.

Status: Open: 6 p.m.–7 p.m., June 4, 1995; closed: 7 p.m.–9 p.m., June 4, 1995, through 12 noon, June 6, 1995.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

Beginning at 7 p.m., June 4, through 12 noon, June 6, the committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Mailstop K58, Atlanta, Georgia 30341–3724, telephone 404/488–4580.

Carolyn J. Russell,

Director, Management Analysis and Services Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–11625 Filed 5–10–95; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, May 31, 1995, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 10:00 a.m. to adjournment. The topics proposed for discussion include (1) Report on the Structure and Function of the Division of Research Grants; (2) Views from the NIH Basic Research Ombudsman and the NIH Clinical Research Emissary; (3) REGO II—Study of the Clinical Center; and (4) New Affirmative Action Plan. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Program Assistant, Office of the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than May 24, 1995.

Dated May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11596 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the thirtieth meeting of the Fogarty International Center (FIC) Advisory Board, May 23, 1995, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to noon. In addition to a report by the Director, FIC, and a report on the Science Leadership Exchange that was recently sponsored by the White House Office of Science and Technology Policy, the agenda will focus on new and emerging infectious diseases which result from ecological changes and population patterns. In addition to naturally evolving disease pathogens, the agenda also will address manufactured pathogens and research issues related to biological weapons.

In accordance with the provisions of Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:15 p.m. to adjournment for the review of applications to the International Research Fellowship and Senior International Fellowship Programs; Fogarty International Research Collaboration and HIV, AIDS and Related Illnesses Collaboration Awards; nominations to the Scholars-in-Residence Program; and proposals for Scholar's conferences.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program.

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11597 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Asthma Prevention.

Dates of Meeting: May 30, 1995.

Time of Meeting: 8:00 a.m.

Place of Meeting: National Institutes of Health, Rockledge II Building, Room 10229, 6701 Rockledge Drive, Bethesda, Maryland.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Virginia S. Taggart, M.P.H., 6701 Rockledge Drive, Room 10218, Bethesda, Maryland 20892, (301) 435–0202.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11585 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, National Institute of Allergy and Infectious Diseases; Meeting: Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on June 12–14, 1995. The meeting will be held at Twinbrook II, Room 200, 12441 Parklawn Drive, Rockville, Maryland.

The meeting will be open to the public on June 12 from 9:30 a.m. to 11 a.m. and from 11:15 a.m. to 12:15 p.m. On June 13 the meeting will be open from 8 a.m. until 8:30 p.m. On June 13 the meeting will be open from 8 a.m. until 8:30 a.m. During the open sessions, the permanent staff of the Laboratory of Immunogenetics, Laboratory of Molecular Structure and the Laboratory of Immunopathology will present and discuss their immediate, past and present research activities.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 12 from 8:30 a.m. until 9:30 a.m., from 11 a.m. until 11:15 a.m., and from 12:15 p.m. until recess; on June 13 from 8:30 a.m. until recess; and on June 14 from 8 a.m. until adjournment, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Franklin A. Neva, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health.)

Dated: May 5. 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–11600 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on June 19–20, 1995, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 9:45 a.m. on June 19 to discuss administrative details relating to committee business and program review, and for a report from the Director, Divison of Extramural Activities which will include a discussion of budgetary matters. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:45 a.m. until recess on June 19, and from 8:30 a.m. until adjournment on June 20. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Olivia Preble, Acting Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C19, Bethesda, Maryland 20892, telephone 301–496–8208, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11590 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on June 8–9, 1995, at the Columbia Inn Hotel and Conference Center, Wincopin Circle, Columbia, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m. on June 8, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on June 8, and from 8 a.m. until adjournment on June 9. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301–496–3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, National Institute of Health.

[FR Doc. 95–11599 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on June 5–7, 1995. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of Health, Building 31G, Bethesda, Maryland. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland.

The meeting of the full Council will be open to the public on June 5 in Conference Room 6 from approximately 1 p.m. until 4 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include reports on AIDS-related research, topical microbicides, electronic grants administration, and training issues.

On June 6 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in conference rooms 8 and 6 respectively. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until adjournment on June 6, and from 8 a.m. until recess of June 7. The subcommittee will meet at the Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on June 5, in conference rooms 6, 7 and 8 respectively. The meeting of the full Council will be closed from 4 p.m. until recess on June 5 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad is advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–11598 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on June 8, 1995. The meeting of the full Council will be open to the public June 8, from 8:00 a.m. to 10:30 a.m. and again from 4 p.m. to 5 p.m. in Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland, to discuss administrative issues relating to Council business and special reports. The following subcommittee meetings will be open to the public June 8 from 10:30 a.m. to 11:30 a.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee meeting will be held in Conference Room 10, Building 31; Digestive Diseases and Nutrition Subcommittee meeting will be held in Room 9A–52, Building 31; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Room 2A–52, Building 31. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on June 8, from 11:30 a.m. to 3 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The full Council meeting will be closed from 3 p.m. to 4 p.m. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Natcher Building, Room 6AS–25C, Bethesda, Maryland 20892, (301) 594–8834, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A07, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6623.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11591 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute on Alcohol Abuse and Alcoholism.

The meeting will be open to the public, as indicated, to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ida Nestorio at (301) 443–4375.

The meeting will be closed to the public, as indicated below, in accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of intramural programs and projects conducted by the National Institute of Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the productivity of individual staff scientists, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and the roster of committee members may be obtained from Ms. Ida Nestorio, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. Telephone: 301–443–4375.

Other information pertaining to the meeting can be obtained from the Executive Secretary.

Name of Committee: Board of Scientific Counselors, NIAAA.

Executive Secretary: Theodore Colburn, Ph.D., 9000 Rockville Pike, Building 31—MSC 2088, Room 1B58, Bethesda, MD 20892–2088, 301–402–1226.

Date of Meeting: June 5–6, 1995.

Place of Meeting: Conference Room 9, Bldg. 31, NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

Open: June 5, 7:30 a.m. to 8 a.m.

Agenda: Discussion of administrative details and other issues related to Board activities.

Closed: June 5, 8 a.m. to recess; June 6, 9 a.m. to adjournment.

Agenda: Review and evaluation of intramural research programs and projects.

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11592 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee.

Date: June 8, 1995.

Time: 8 a.m.–5:30 p.m.

Place: Holiday Inn—Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland.

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The application and/or proposal and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11588 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Minority Access to Research Careers.
Date: May 17.
Time: 2 p.m.—adjournment.
Place: National Institutes of Health (TELECONFERENCE) 45 Center Drive, Room 1AS–13F Bethesda, MD 20892–6200.
Contact Person: Dr. Helen Sunshine, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13F, Bethesda, MD 20892–6200.
Purpose: To review MARC Conference grant.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the first meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11587 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting President's Cancer Panel

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, June 6, 1995 at Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20892. Notice of the meeting room will be posted in the hotel lobby.

This meeting will be open to the public on June 6, 1995 from 1:30 pm to approximately 5 pm. The topics will be AIDS Neoplasms.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, Room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892, (301–496–5708) will provide a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301–496–1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 4B43, National Institutes of health, Bethesda, Maryland 20892 (301–496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: May 5, 1995.

Susan K. Feldman,

Committee Mangement Officer, NIH.

[FR Doc. 94–11593 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications
Name of SEP: Clinical Sciences
Date: June 2, 1995
Time: 12:00 noon
Place: NIH, Rockledge II, Room 4146 Telephone Conference
Contact Person: Dr. Martin Padarathsingh, Scientific Review Admin., 6701 Rockledge Drive, Room 4146, Bethesda, MD 20891, (301) 594–7192

Name of SEP: Microbiological and Immunological Sciences
Date: June 2, 1995
Time: 12:00 noon
Place: NIH, Rockledge II, Room 4202 Telephone Conference
Contact Person: Dr. Howard Berman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, (301) 594–7234

Name of SEP: Microbiological and Immunological Sciences
Date: June 5, 1995
Time: 3:00 p.m.
Place: NIH, Rockledge II, Room 4206 Telephone Conference
Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, MD 20892, (301) 594–7310

Name of SEP: Microbiological and Immunological Sciences
Date: June 6, 1995
Time: 4:00 p.m.
Place: NIH, Rockledge II, Room 4206 Telephone Conference
Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, MD 20892, (301) 594–7310

Name of SEP: Multidisciplinary Sciences
Date: June 9, 1995
Time: 1:00 p.m.
Place: Rosslyn-Westpark, Arlington, VA
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 594–7276.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11586 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications
Name of SEP: Multidisciplinary Sciences
Date: June 4–6, 1995
Time: 7:00 p.m.
Place: La Posada de Santa Fe Hotel, Santa Fe, NM
Contact Person: Dr. Nabeeh Mourad, Scientific Review Adminin., 6701 Rockledge Drive, Room 5110, Bethesda, MD 20892, (301) 594–7213

Name of SEP: Microbiological and Immunological Sciences
Date: June 8, 1995
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD
Contact Person: Dr. Marcel Pons, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, MD 20892, (301) 594–7210

Name of SEP: Multidisciplinary Sciences
Date: June 8, 1995
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5116, Telephone Conference
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge

Drive, Room 5116, Bethesda, MD 20892, (301) 594–7276

Name of SEP: Biological and Physiological Sciences
Date: June 9, 1995
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5146, Telephone Conference
Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, MD 20892, (301) 594–7169

Name of SEP: Multidisciplinary Sciences
Date: June 15–16, 1995
Time: 2:00 p.m.
Place: Holiday Inn, Gaithersburg, MD
Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, MD 20892, (301) 594–7683

Name of SEP: Multidisciplinary Sciences
Date: June 19–20, 1995
Time: 9:00 a.m.
Place: Marriott Hotel, Dulles Airport, VA
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 594–7342

Name of SEP: Clinical Sciencies
Date: June 22, 1995
Time: 1:00 p.m.
Place: American Inn, Bethesda, MD
Contact Person: Dr. Fred Marozzi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, MD 20892, (301) 435–1785

Purpose/Agenda: To view Small Business Innovative Research Award grant applications
Name of SEP: Multidisciplinary Sciences
Date: June 21, 1995
Time: 5:00 p.m.
Place: Boston Park Plaza, Hotel, Boston, MA
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 594–7276

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the aplications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837-93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–11589 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Special Emphasis Panel (SEP); Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: June 6, 1995.

Time: 1:00 p.m.

Place: Georgetown Holiday Inn, Washington, DC.

Contact Person: Dr. Lillian Pubols, Scientific Review Admin., 6701 Rockledge Drive, Room 5184, Bethesda, MD 20892, (301) 594–7325.

Name of SEP: Multidisciplinary Sciences.

Date: June 28, 1995.

Time: 8:00 a.m.

Place: ANA Hotel, Washington, DC.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 594–7376.

Name of SEP: Biological and Physiological Sciences.

Date: July 5, 1995.

Time: 2:30 p.m.

Place: NIH, Rockledge II, Room 6168, Telephone Conference.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, MD 20892, (301) 435–1043.

The meetings will be closed in accordance with the provisions set forth in secs, 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93,396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–11601 Filed 5–10–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–00–5440–10–ZBBB; CACA–30079; CACA–25594; CACA–3192]

Proposed Land Exchange and Rights-of-Way for Eagle Mountain Non-Hazardous Municipal Solid Waste Landfill and Recycling Center

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs-South Coast Resource Area, Desert District, California.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1508.22, notice is hereby given that the Bureau of Land Management (BLM) and the County of Riverside (County) will prepare a joint Federal Environmental Impact Statement/County Environmental Impact Report (EIS/EIR) for a proposed land exchange and rights-of-way with Kaiser Eagle Mountain, Inc. (Kaiser) for a proposed Class III non-hazardous, municipal solid waste landfill and recycling center at the Eagle Mountain mine site in Riverside County, California. The landfill would be operated by Mine Reclamation Corporation (MRC).

In the proposed land exchange, BLM would acquire from Kaiser approximately 2,846 acres of land that include areas containing important habitat for the desert tortoise (a federally listed threatened species) and habitat supporting the desert pupfish (a federally listed endangered species). The acquisition of these offered private lands would benefit BLM's biological, cultural, scenic, and resource management goals and programs.

BLM would transfer to Kaiser approximately 3,481 acres of public land, much of which is disturbed from past mining operations and is subject to unpatented mining and mill site claims currently held by Kaiser. Kaiser would lease this land together with other lands necessary for the landfill to MRC for use in developing and operating a Class III non-hazardous, municipal solid waste landfill and recycling center (Landfill).

Kaiser is also applying for the conversion of a legislatively approved railroad right-of-way (granted to Kaiser for rail and road access to the mine site for mining purposes) to a 26.8 mile right-of-way grant pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976 for rail and road access to the site. Kaiser also is applying for a new 6.75 mile right-of-way

pursuant to FLPMA to allow road access via existing Eagle Mountain Road to the site. The new FLPMA right-of-way is proposed to be issued jointly to Kaiser and the Metropolitan Water District. The proposed new FLPMA right-of-way to Kaiser would supersede the existing legislative right-of-way to allow use of the rail and road for landfill purposes.

The site also would be used for rail and equipment maintenance, landfill gas recovery and utilization, flare/energy recovery, and leachate processing. Alternatives to the current proposal will be considered in the EIS/EIR.

SUPPLEMENTARY INFORMATION: The project site is Kaiser's open iron mine located in the Eagle Mountains in eastern Riverside County, California. The site is located approximately 10 miles north of Interstate Highway 10 and Desert Center, approximately 170 miles east of Los Angeles, and approximately 50 miles west of the Arizona border.

MRC has leased from Kaiser the lands necessary for the Landfill and a 52-mile private railroad for the Landfill for a period of 100 years. MRC proposes to use approximately 4,564 acres of the leased area for the Landfill facility site, of which about 2,262 acres would be for actual landfilling. The proposed railroad right-of-way traverses public land from Ferrum to the mine site. Before refuse is delivered to the project site, it will be processed through a transfer station or a Materials Recovery Facility (MRF) as near as practicable to the sources of refuse production in Southern California. At the transfer station or MRF, which will not be owned or operated by MRC, refuse will be screened for hazardous substances, sorted for recyclables, compacted, and loaded into closed shipping containers. The closed containers will be transported to the Landfill site by train or in some cases by truck. MRC plans to have the Landfill operational in 1997.

Initially, MRC expects to receive approximately 3,000 to 4,000 tons of waste per day. Over the first 10 years, this daily volume is expected to reach 12,000 tons per day. The peak waste flow of 20,000 tons is not expected to be reached until at least 20 years into the operations, with 18,000 tons per day being transported by rail and a maximum of 2,000 tons per day being transported by road. The waste would be placed in and around the existing open mining pits at the site. The estimated total capacity of the proposed Landfill is approximately 670 million tons.

The project would be developed to meet stringent state and federal regulations and guidelines for municipal solid waste landfills. The entire area underlying the refuse would be lined with a composite liner overlain by a leachate collection and removal system. At no time would refuse be placed upon or against unlined native material. Other environmental monitoring and control systems to be constructed would include: groundwater monitoring wells, leachate collection and treatment system, drainage systems, and landfill gas control and recovery systems.

In conjunction with the development of the Landfill, Kaiser would redevelop the Eagle Mountain Townsite (Townsite) located near the Landfill site. The Townsite consists of residential and commercial buildings and infrastructure as well as an operating community correctional facility. Although the Townsite was once populated with nearly 3,700 people, the current Townsite population has decreased to approximately 220 people.

The Eagle Mountain Landfill and Recycling Center project was previously evaluated in a Joint EIS/EIR prepared by the BLM and the County. A Notice of Intent for the prior EIS/EIR was published November 15, 1989 (See 54 FR 47581). The County certified the EIR portion of the joint document on November 3, 1992, and the BLM issued its Record of Decision (ROD) for the Project on October 20, 1993. Appeals were filed with the Interior Board of Land Appeals (IBLA) as a result of the BLM's approval of the project.

In December, 1992, three lawsuits were filed in state court challenging the adequacy of the EIR under the California Environmental Quality Act (CEQA). In September, 1994, a state court judge issued a Writ of Mandate to the County finding the EIR inadequate in specified areas and requiring further environmental review to be undertaken by the County. As the County was preparing to initiate a new round of environmental review to address the deficiencies identified by the state court in its Writ of Mandate, BLM requested that the ROD be remanded to the BLM to facilitate undertaking joint environmental review with the County pursuant to the National Environmental Policy Act (NEPA). The IBLA has now remanded the matter to the BLM to allow for further environmental review.

BLM has agreed to again prepare a joint NEPA/CEQA environmental document in cooperation with the County. The new document will include review of potential environmental impacts from the anticipated improvements to the Townsite, located adjacent to the Landfill site. The County will concurrently process land use applications for the Landfill and the Townsite.

BLM has responsibility for the environmental review being conducted pursuant to NEPA and will ensure appropriate review in accordance with Council on Environmental Quality (CEQ) regulations for implementing NEPA, pertinent guidance contained in the Department of Interior Manual on Environmental Quality (DM 516), and the BLM NEPA Handbook (H–1790–1). The environmental document will be developed by a third party contractor approved by BLM. BLM will maintain overall responsibility for preparation and review of the document.

DATES: Four public scoping meetings will be held on consecutive days at the following times and locations:

9 a.m–12 p.m. May 31, 1995: Council Chamber, City of Palm Desert, 73–510 Fred Waring Drive, Palm Desert, California

6 p.m.–9 p.m. May 31, 1995: County Service Area #51, Clubhouse, 26251 Parkview, Desert Center, California

9 a.m–12 p.m. June 1, 1995: Riverside Raincross Convention Center, Community Room, 3443 Orange Street, Riverside, California

6 p.m.–9 p.m. June 1, 1995: Ramada Inn, San Jacinto Room, 3885 West Florida Avenue, Hemet, California

Registration begins at 8:30 a.m. for the morning meetings and 5:30 p.m. for the evening meetings.

Public participation is an integral part of the review process. Comments are being requested to help identify significant issues or concerns related to the proposed action to determine the scope of the issues (including alternatives) that need to be analyzed, and to identify and eliminate from detailed study the issues that are not significant. All comments recommending that the EIS/EIR address specific environmental issues should contain supporting documentation and rationale. Written comments must be submitted no later than 30 days from the date of this notice to the following address: Ms. Julia Dougan, Area Manager, Bureau of Land Management, Palm Springs-South Coast Resource Area Office, 63–500 Garnet Avenue, North Palm Springs, California, 92258–2000.

FOR ADDITIONAL INFORMATION CONTACT: Dr. Joan Oxendine, BLM, Palm Springs-South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258–2000, telephone 619–251–4804.

Dated: May 5, 1995.

Julia Dougan,

Area Manager.

[FR Doc. 95–11645 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–40–P

[ES–930–05–4111–11–241A; LAES 46330; LAES 46331]

Louisiana: Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas leases LAES 46330 and LAES 46331, East Baton Rouge Parish, Louisiana, was timely filed and accompanied by all required rentals and royalties accruing from January 1, 1995, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $125 publication fee has been made.

The Bureau of Land Management is proposing to reinstate the leases effective January 1, 1995, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above. This is in accordance with section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

FOR FURTHER INFORMATION CONTACT: Gina A. Goodwin at (703) 440–1534.

Dated: May 2, 1995.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 95–11644 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–801997

Applicant: Mr. Keith Brust, Tucson, Arizona

The applicant requests a permit to take the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) near the Sphinx Mine, Chirachuaua Mountains, Arizona, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–802211

Applicant: Paula Power, Southwest Texas State University, San Marcos, Texas

The applicant requests a permit to collect seeds, maintain, and reintroduce Texas wildrice (*Zizania texana*) from populations in the San Marcos River, San Marcos and Hays Counties, Texas for scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–802209

Applicant: Virginia M. Dalton, Tucson, Arizona

The applicant requests a permit to take lesser long-nosed bats (*Leptonycteris curasoae*) in southern Arizona for scientific research and recovery purposes of the species as prescribed by Service recovery documents.

Addresses: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See ADDRESSES above.)

Dave Langowski,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–11627 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

Permit No. PRT–779652

Applicant: Thomas Olsen Associates, Inc., Hemet, California

The applicant requests amendment of their permit to include authorization to take (survey breeding populations, monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) and the southwestern willow flycatcher (*Empidonax traillii extimus*) in Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Diego, and Ventura Counties, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–798011

Applicant: Prunuske Chatham, Inc., Occidental, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (Branchinecta conservatio), the vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) throughout the range of the species in California, for the purpose of enhancing the survival of the species.

Permit No. PRT–801821

Applicant: Kern River Research Center, Weldon, California

The applicant requests a permit to take (monitor nests, survey using taped vocalizations, capture, band, and release) the southwestern willow flycatcher (Empidonax traillii extimus) on the south fork of the Kern River in Kern County, and the Santa Margarita River in San Diego County, California, for the purpose of enhancement of survival of the species.

Permit No. PRT–801998

Applicant: California Dept. of Water Resources, Red Bluff, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), the vernal pool fairy shrimp (*Branchinecta lynchi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) throughout the range of the species in California, for the purpose of enhancing the survival of the species.

Permit No. PRT–801985

Applicant: William G. Butler, Jr., Costa Mesa, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), the vernal pool fairy shrimp (*Branchinecta lynchi*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) in Fairview Park, Costa Mesa, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802086

Applicant: Lisa Webber, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), the vernal pool fairy shrimp (*Branchinecta lynchi*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the range of the species in California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802089

Applicant: Patricia Tatarian, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), the vernal pool fairy shrimp (*Branchinecta lynchi*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) throughout the range of the species in California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802092

Applicant: John E. Moeur, Claremont, California

The applicant requests a permit to take (harass by survey, collect and release, collect eggs for laboratory analysis) the Riverside fairy shrimp (*Streptocephalus wootoni*) in San Diego and Riverside Counties, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802094

Applicant: Carl J. Page, Cotati, California

The applicant requests a permit to take (capture and release) the tidewater goby (*Eucyclogobius newberryi*) throughout the range of the species in California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802103

Applicant: Thomas Roberts, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), the vernal pool fairy shrimp (*Branchinecta lynchi*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) throughout the range of the species in California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802104

Applicant: Carolee Caffrey, Los Angeles, California

The applicant requests a permit to take (survey populations, monitor nests and nest disturbance) the California least tern (*Sterna antillarum browni*) in Los Angeles and Orange Counties, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–802107

Applicant: Patricia Baird, Long Beach, California

The applicant requests a permit to take (capture, measure, band, color band, color mark with dye, take blood samples, and release) the California least tern (*Sterna antillarum browni*) throughout the range of the species in California, for the purpose of scientific research and enhancing the survival of the species.

Permit No. PRT–802160

Applicant: Bayfront Conservancy Trust, Chula Vista Nature Center, Chula Vista, California

The applicant requests a permit to take (use experimental captive propagation procedures, euthanize excess progeny) unreleasable clapper rails [may be the light-footed clapper rail (*Rallus longirostris levipes*) or the Yuma clapper rail (*Rallus longirostris yumanensis*)] and their progeny at the Chula Vista Nature Center, Chula Vista, California, to develop captive breeding protocol for the purpose of scientific research and enhancing the survival of the species.

DATES: Written comments on the permit applications must be received on or before June 12, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: May 4, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–11628 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–55–P

Finding of No Significant Impact for Incidental Take Permits for the Construction of Single Family Residences at the Specific Site Locations Indicted Below in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared Environmental Assessments for issuance of Section 10(a)(1)(B) permits for the incidental take of the Federally endangered golden-cheeked warbler *Dendroica chrysoparia)* during the construction and operation of single-family residences in Travis County, Texas.

Proposed Action

The proposed action is the issuance of permits under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant (Rex B. Rivers) plans to construct a single-family residence at the specific site indicated as Lot 4, Critter Canyon Subdivision (6.65 acre lot) aka 8402 Critter Canyon, Austin, Travis County, Texas (PRT–799945).

The Applicant (Wayne Bell) plans to construct a single-family residence at the site indicated as Lot 22, Blue Hills Estates (3.95 acres) aka 6500 Distant View, Austin, Travis County, Texas (PRT–799946).

The proposed construction and operation of the single-family residences will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the individual Environmental Assessment/Habitat Conservation Plans. These conservation plan actions ensure that the criteria established for issuance incidental take permits will be fully satisfied.

Alternatives Considered

1. Proposed action,
2. Alternate site locations,
3. Alternative site designs,
4. Wait for issuance of a regional Section 10(a)(1)(B) permit,
5. No action.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plans, the Service has determined that these actions are not major Federal actions which would significantly affect the quality of the human environment with the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of Environmental Impact Statements on the proposed action is not warranted.

It is my decision to issue the section 10(a)(1)(B) permits for the construction and operation of the single-family residences at the sites specified above in Travis County, Texas.

John E. Cross,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–11626 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of Federal Aid in Sport Fish and Wildlife Restoration Administrative Funds

AGENCY: Interior, Fish and Wildlife Service.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service), Division of Federal Aid, is announcing the availability of funds for Federal Aid administrative grants in accordance with the policy and procedures for selecting and funding Federal Aid in Sport Fish Restoration and Wildlife Restoration Projects.

DATES: Applications/proposals must be received by June 1, 1995.

ADDRESSES: Proposals must be sent to the Fish and Wildlife Service, Chief, Division of Federal Aid, MS 140 ArlSq, 1849 C Street N.W., Washington, D.C. 20240. A copy of the Policy and Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Projects may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Hazel Wilson, Division of Federal Aid, Fish and Wildlife Service; (703) 358–2156.

SUPPLEMENTARY INFORMATION: The Service is seeking proposals for sport fish and wildlife restoration projects. In fiscal year 1996, the amount of administrative funds estimated to be made available for administrative projects is $750,000 for Sport Fish Restoration and $1,200,000 for Wildlife Restoration. The focus areas for evaluating projects for fiscal year 1996 will be the same as those used to evaluate projects for fiscal year 1995. The annual process for requirements for submitting proposals and selecting projects was provided in the **Federal Register** Notice of May 31, 1994, (59 FR 28110).

Dated: May 3, 1995.

Mollie H. Beattie,

Director.

[FR Doc. 95–11564 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Department of the Interior.

ACTION: Notice of Proposed Cooperative Research and Development Agreement (CRADA).

SUMMARY: The United States Geological Survey (USGS) is entering into a Cooperative Research and Development Agreement (CRADA) with The University of Maryland at College Park (UMCP). The purpose of the CRADA is to jointly develop more efficient and effective techniques for the transfer of USGS technology to industry within the State of Maryland. Any other organizations interested in pursuing the possibility of a CRADA with the USGS for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to Dr. A. Inderbitzen, Office of the Director, U.S. Geological Survey, 104 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, Telephone (703) 648–4450, FAX (703) 648–5470, E-Mail: AINDERBI@RIDGISD.ER.USGS.GOV

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: May 1, 1995.

Anton L. Inderbitzen,

Office of the Director.

[FR Doc. 95–11638 Filed 5–10–95; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–374]

Certain Electrical Connectors and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on April 3, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of AMP Incorporated, 470 Friendship Road, Harrisburg, PA 17105 and The Whitaker Corporation, 4550 New Linden Hill Road, Suite 450, Wilmington, DE 19808. The complaint and motion were supplemented on April 27, 1995. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrical connectors and products containing same by reason of alleged infringement of claims 17, 18, 20, 21 and 23 of U.S. Letters Patent 5,383,792. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary general exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of electrical connectors and products containing same that infringe claims 17, 18, 20, 21 and 23 of U.S. Letters Patent 5,383,792 during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Kent Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the

Commission's Final Rules of Practice and Procedure. (59 FR 39020, 39043 (August 1, 1994.) The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58. (59 FR at 39062.)

SCOPE OF INVESTIGATION: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on May 5, 1995, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electrical connectors and products containing same by reason of alleged infringement of claims 17, 18, 20, 21 or 23 of U.S. Letters Patent 5,383,792, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.58 of the Commission's Final Rules of Practice and Procedure (59 FR 39020, 39062 (August 1, 1994)), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to an Administrative Law Judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

AMP Incorporated, 470 Friendship Road, Harrisburg, PA 17105

The Whitaker Corporation, 4550 New Linden Hill Road, Suite 450, Wilmington, DE 19808.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Berg Electronics, Inc., 825 Old Trail Road, Etters, PA 17319

Hon Hai Precision Industry Co., Ltd., 66 Chung Shan Road, Tucheng, Taiwan

Foxconn International Inc., 930 W. Maude Avenue, Sunnyvale, CA 94086

Tekcon Electronics Corp., 2F, 164, Fu Hsin S. Rd., Sec. 2, Taipei City, Taipei 0106, Taiwan

(c) Kent Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401L, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

(5) The request filed by Respondent Berg Electronics, Inc. on April 21, 1995, to designate the temporary relief proceedings ''more complicated'' is denied without prejudice to the renewal of that request before the presiding Administrative Law Judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with sections 210.13 and 210.59 of the Commission's Final Rules of Practice and Procedure. (59 FR at 39045–46, 39062). Pursuant to 19 CFR sections 201.16(d), 210.13(a) and 210.59 of the Commission's Final Rules of Practice and Procedure (59 FR at 39045, 39062–63), such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: May 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–11682 Filed 5–10–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. TA–201–64]

Fresh Winter Tomatoes

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On May 4, 1995, the Commission received a letter from the petitioner in the subject investigation (Florida Tomato Exchange, Orlando, FL) withdrawing its petition. Accordingly, the investigation concerning fresh winter tomatoes (investigation No. TA–201–64) is terminated. Notice of the institution of the Commission's investigation was published in the **Federal Register** of April 3, 1995 (60 FR 16883).

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This investigation is being terminated under the authority of section 202 of the Trade Act of 1974.

By order of the Commission.

Issued: May 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–11683 Filed 5–10–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31960 (Sub-No. 2)]

Wisconsin Central Ltd.—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant additional overhead trackage rights to Wisconsin Central Ltd. (WCL) over 6.41 miles of rail line between IHB's connection with the Norfolk Southern Railway Company (NS) at Chicago Ridge, IL, and its connection with the Grand Trunk Western Railroad Company (Grand Trunk) in Blue Island, IL. These trackage rights are in addition to trackage rights previously granted in a 1991 Agreement between the parties [1]

[1] The existing trackage rights were acquired by WCL under a notice of exemption in *Wisconsin Central Ltd.—Trackage Rights Exemption—Indiana*

and a 1994 Modification Agreement.[2] The 1991 Agreement granted overhead trackage rights totaling 13.53 miles between IHB's connection with WCL at Norpaul Yard, Franklin Park, IL, and its connection with the Belt Railway Company of Chicago (Belt) at Elsdon, in Chicago, IL, as well as between IHB's connections with the Belt and Consolidated Rail Corporation at Elsdon. The 1994 Modification Agreement granted overhead trackage rights totaling 3.86 miles between IHB's connection with the Belt at Bedford Park, IL, and its connection with the NS at Chicago Ridge. The trackage rights granted to WCL by IHB in this and the two previous matters total 23.8 miles. The proposed transaction will secure for WCL a more efficient route via the IHB to connect with the Grand Trunk at Blue Island. The trackage rights were to become effective on or after April 28, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Janet H. Gilbert, 6250 North River Road, Suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 5, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11665 Filed 5–10–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–423 (Sub-No. 1X)]

Houston Belt & Terminal Railway Company—Discontinuance Exemption—in Harris County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the discontinuance of Houston Belt & Terminal Railway Company's lease and operation of the Settegast Yard between mileposts 0.0/3.99 and mileposts 3.34/3.56 in Houston, Harris County, TX, subject to standard labor protective conditions.

DATES: This exemption will be effective on June 10, 1995. Petitions to stay must be filed by May 22, 1995. Petitions to reopen must be filed by May 31, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–423 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, one copy must be served on Joseph D. Anthofer, Houston Belt & Terminal Railway Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

(Assistance for the hearing impaired is available through TDD services (202) 927–5721)

Decided: April 26, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11666 Filed 5–10–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Troops to COPS Grant Program

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') in conjunction with the Department of Defense announces the availability of grants to encourage the hiring of separated members of the armed forces as law enforcement officers. Eligible applicants under Troops to COPS are only those agencies which have been selected to receive COPS hiring grants under COPS Phase I, COPS AHEAD and COPS FAST.

DATES: Troops to COPS Application Kits will be available on May 10, 1995. Completed Applications must be postmarked by August 15, 1995.

ADDRESSES: Troops to COPS Application Kits will be mailed to all eligible agencies or may be obtained by writing to Troops to COPS, P.O. Box 14440, Washington, D.C. 20044 or by calling the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770. Completed Troops to COPS Application Kits should be sent to Troops to COPS, COPS Office, P.O. Box 14440, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770, or Ellen Scrivner or Craig Uchida, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Avenue, N.W., Washington, DC 20530, (202) 514–2058. Listings of recently separated veterans that law enforcement agencies may access, as well as a list of COPS grantee agencies, will be maintained by the Office of Transition Services and may be accessed by contacting the Department of Defense toll free at 1–800–727–3677.

SUPPLEMENTARY INFORMATION:

Overview

The office of Community Oriented Policing Services, in conjunction with the Department of Defense, has created the Troops to COPS program, under the provisions of 10 USC § 1152. Troops to COPS is designed to provide an incentive for law enforcement agencies to facilitate the transition of veterans from protection of the nation in the armed forces to service in community policing in communities across America.

Troops to COPS permits eligible agencies to seek reimbursement for the cost of law enforcement training for the qualified veteran who is hired as a law enforcement officer. Troops to COPS grants may not be used to reimburse costs for equipment, uniforms or vehicles. Grants will be made for up to $5,000 per veteran hired. These grants will be made on a reimbursable basis, which will be paid once the veteran has been hired and trained. Grant funds may be applied to eligible costs incurred during the qualifying veteran's first three years of service as a law enforcement officer. There is no local matching requirement for a Troops to

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Harbor Belt Railroad Company, Finance Docket No. 31960 (ICC served Nov. 4, 1991).

[2] *Wisconsin Central Ltd.—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company*, Finance Docket No. 31960 (Sub-No. 1) (ICC served May 10, 1994).

COPS grant. The Troops to COPS Application will seek basic information about the veteran who was hired and a brief itemization of training costs for which the agency seeks to be reimbursed.

Agencies may apply for reimbursement only after a veteran has satisfied the normal hiring standards and procedures of that agency. To be eligible for reimbursement, the veterans hired must have been a member of the armed forces or reserves on or after October 1, 1993, and must have been honorably discharged or released from active duty characterized as honorable. Preference will be given to the requests of those departments who have hired a veteran who: (1) Has been involuntarily separated; or (2) is approved for separation under the Armed Forces Voluntary Separation Incentive, or the Special Separation Benefits program; or (3) has retired pursuant to the Transition Assistance Act; and (4) has experience in the military police of the respective branch of the armed forces. The Troops to COPS Application Kit will contain a more detailed explanation of these preferences.

An award under Troops to COPS will not affect the eligibility of an agency for a grant under any other COPS program.

Dated: April 24, 1995.

Joseph E. Brann,

Director.

[FR Doc. 95–11005 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice policy, 28 C.F.R. § 50.7 notice is hereby given that on April 28, 1995, a proposed consent decree in *United States* v. *Blackbird Mining Co., et al.,* and *State of Idaho, et al.* v. *The M.A. Hanna Company,* Consolidated Case No. 83–4179 (D. Idaho), was lodged with the United States District Court for the District of Idaho. The consent decree resolves claims against the M.A. Hanna Company, Hanna Services Company, Noranda Mining Inc., Noranda Exploration, Inc., Blackbird Mining Company Limited Partnership, and Alumet Corporation pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.*, and against the M.A. Hanna Company, Hanna Services Company, Noranda Mining Inc., Noranda Exploration, Inc., Blackbird Mining Company Limited Partnership pursuant to the Federal Water Pollution Control Act (Clean Water Act, or ''CWA''), 33 U.S.C. 1251 *et seq.*, and the Endangered Species Act (''ESA''), 16 U.S.C. 1531 *et seq.*, to accomplish the clean up of the contamination and restoration of the natural resources at the Blackbird Mine in central Idaho and for the recovery of past and future response costs. The United States' claims were filed in June 1993 against the past and current owners and operators of the mine on behalf of the Forest Service and NOAA acting as natural resource trustees and on behalf of the EPA. The United States case was consolidated with a case filed by the State of Idaho in 1983 against most of the same parties.

This settlement is a joint coordinated plan developed by the Governments', in consultation and cooperation with the Settling Defendants, for the restoration and replacement of the injured natural resources at the site. The major provisions of the Consent Decree (CD) consist of cash payments to the Governments, implementation of a Biological Restoration and Compensation Plan (BRCP) that is filed with the Consent Decree, and a commitment to clean up the site pursuant to a series of Response Actions and implementation of the final remedy selected by EPA under the CERCLA remediation process. Specifically, the Consent Decree provides as follows:

A. Cash payments

(1) Cash payment at time of entry to the Natural Resource Trustees (NOAA, USDA Forest Service, and Idaho) of $4.7 million which was expended on the Natural Resource Damage Assessment,

(2) Payment of $328,742 to EPA, NOAA and USDA for past response costs, and

(3) Payment of $2.5 million into a trust fund for implementation of the Hatchery Component of the BRCP.

B. Natural Resource/Biological Restoration and Compensation Plan

This portion of the Settlement commits the Defendants to implement and pay for a two-part program to fully compensate the Natural Resources Trustees for losses resulting from the injury or destruction of natural resources—including the ''threatened'' spring/summer chinook salmon—due to releases of hazardous substances from Blackbird Mine. The proposed projects are valued by the Trustees at approximately $17 million, and include restoration as well as compensation for ''interim'' losses.

One part of the program, known as the ''Hatchery Operations Program,'' consists of construction of fish hatchery facilities and associated structures necessary to catch adult salmon brood stock, raise the smolts and reintroduce them into Panther Creek (and possibly other streams in the Salmon River Basin). These activities are not intended to commence until 2005. The costs of these facilities is approximately $2.5 million. This money is being placed in a trust fund that may be withdrawn by the Trustees and used for alternative restoration projects if the Trustees for any reason determine not to implement the proposed Hatchery Program.

The second part of the BRCP is referred to as the ''Smolt Survival Plan''. This habitat improvement program commits the Defendants to realign approximately 1.2 miles of degraded salmon rearing habitat in Panther Creek and maintain protective barriers on this portion of the stream for *100* years. The defendants are also required to exclude cattle on 2 miles of valuable salmon rearing habitat in Panther Creek, and on an additional 8 miles on other streams to be identified and selected elsewhere in the Salmon River Basin. The cattle exclusion measures must be maintained for 50 years. Defendants will also construct at least 2 acres of off channel rearing ponds for juvenile salmon.

Defendants will pay all planning costs, monitoring costs and up to $2 million for Trustee oversight costs, and comply with NEPA, ESA and other permitting requirements. The BRCP monitoring program is a complex technical/scientific program designed to insure appropriate water quality that will support all life stages of salmonids and the continued health of the ecosystem.

The BRCP commits the Defendants to restore water quality so that the Hatchery Operation plan may begin by 2005. If this is not achieved, Defendants are subject at the Governments' discretion to: specific performance, and/or liquidated damages of $25,000 for each month that the hatchery operation is delayed or interrupted because of failure to meet the water quality standard, or the reopening of the lawsuit. The water quality standard is based on EPA's ambient water quality for both chronic and acute toxicity for copper.

The Consent Decree also commits the Defendants to remediate the site pursuant to early Response Actions and a ROD under the EPA CERCLA process. There are specific performance provisions, stipulated penalties, and a reopener to assure full remediation of the site. The Defendants finally commit to pay the Government's future response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and refer to *United States* v. *Blackbird Mining Co., et al.*, and *State of Idaho, et al.* v. *The M.A. Hanna Company*, DOJ number 90–11–2–816.

Copies of the proposed consent decree may be examined at the Office of the Attorney General, Chief Natural Resources Division, 700 W. Jefferson, Ste. 210, Boise, Idaho; Office of the United States Attorney, 877 W. Main St., Ste. 201, Boise, Idaho; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the consent decree, please enclose a check in the amount of $22.75 (25 cents per page reproduction costs) payable to the ''Consent Decree Library''. When requesting a copy please refer to *United States* v. *Blackbird Mining Co., et al.*, and *State of Idaho, et al.* v. *The M.A. Hanna Company*, Consolidated Case No. 83–4179 (D. Idaho), DOJ Case number 90–11–2–816.

Copies of reports which were relied upon by the United States and the State of Idaho in entering into the consent decree are available for inspection at the Office of the United States Attorney, 877 W. Main St., Ste. 201, Boise, Idaho.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–11573 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and the Rivers and Harbors Act of 1899

In accordance with Department of Justice policy, 28 C.F.R. § 50.7, notice is hereby given that a consent decree in *United States of America* v. *Philip M. Punzelt, Jr., John Giunta and Jeff Northrop*, (D. Conn. No. 3:95CV000156 (DJS)), was lodged with the United States District Court for the District of Connecticut on January 26, 1995.

The proposed Consent Decree concerns alleged violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344(s), and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, by defendants Philip M. Punzelt, Jr., John Giunta and Jeff Northrop.

As described more fully in the Complaint, on December 15, 1982, the Department of the Army, Corps of Engineers, issued a permit to Philip M. Punzelt, Jr. to perform specified work, including construction of a seawall, in the navigable waters of the Saugatuck River, Westport, Connecticut. The permit expired on December 31, 1987. Defendant Punzelt and his contractor, defendant John Guinta, continued to perform construction of the seawall and placed fill material into the navigable waters of the United States after expiration of the permit. In addition, defendants Philip Punzelt and Jeff Northrop placed unauthorized floats and docks in the navigable waters of the United States.

This work, and the placement of the unauthorized structures, constitute violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, as well as Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403.

The proposed Consent Decree calls for a civil penalty of $20,000.00 to be paid by defendant Philip M. Punzelt, Jr. under the Clean Water Act, 33 U.S.C. 1311 and 1344, and requires Mr. Punzelt to submit to the Corps of Engineers an application for an After-the-Fact permit to retain the unauthorized fill material, floats and docks, and abide by the outcome of the permit process. Under the Consent Decree, defendant John Giunta must pay a civil penalty of $6,000.00 under the Clean Water Act, 33 U.S.C. 1311 and 1344; and defendant Jeff Northrop must pay $16,000.00 as disgorgement of economic benefit derived from activities in violation of Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403. Mr. Northrop is alleged to have placed and/or maintained unauthorized floats and docks in the Saugatuck River, and received income from rental of the unauthorized structures. Finally, the proposed Consent Decree provides that the defendants will be enjoined from future violations of the Clean Water Act and the Rivers and Harbors Act of 1899.

The United States Attorney's Office will receive written comments relating to the Consent Decree until June 12, 1995. Comments should be addressed to Sharon E. Jaffe, Esq., Assistant United States Attorney, District of Connecticut, P.O. Box 1824, New Haven, Connecticut 06508, and should refer to *United States of America* v. *Philip M. Punzelt, Jr., et al.*, (D. Conn. No. 3:95CV000156 (DJS)).

The Complaint and Consent Decree in this case may be examined at the Clerk's office, United States District Court, 450 Main Street, Hartford, Connecticut 06103.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 95–11572 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 HDP User Group International, Inc.

Notice is hereby given that, on February 27, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP USER GROUP INTERNATIONAL, INC., an Arizona non-profit corporation, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASAT, Palo Alto, CA; ESEC, Phoenix, AZ; IMC, Linkoping, SWEDEN; Combitech, Jonkoping, SWEDEN; National Semiconductor, Santa Clara, CA; and Delco Electronics (a subsidiary of GM), Kokomo, IN have become members of the HDP User Group.

No other changes have been made in either the membership or the planned activity of the joint venture. Membership remains open and HDP intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, the HDP User Group filing its original notification pursuant to section 6(a) of the Act. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 23, 1995 (60 FR 15306–7).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–11637 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Michigan Materials and Processing Institute

Notice is hereby given that, on February 14, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* (''the Act''), the Michigan Materials and Processing Institute (''MMPI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were recently accepted as Class A Shareholders in MMPI: Gougeon Brothers, Inc., Bay City, MI; and Carl H. Schmidt Company, Southfield, MIT.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 6, 1990, 55 FR 36710. The last notification was filed with the Department on September 29, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 1994, 59 FR 55131.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–11634 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on February 13, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were recently accepted as active members of NCMS: Advanced Cybernetics Group, Inc., Sunnyvale CA; Advanced Optical Equipment and Systems Corporation, Boulton, CT; Andersen Consulting LLP, Detroit, MI; Continental Electronics Corporation, Dallas, TX; Franklin Consulting LTD, Troy, MI; General Atomics, San Diego, CA; Physical Sciences, Inc., Andover, MA; XFER International Inc., Ann Arbor, MI. In addition, the following companies were recently accepted as affiliate members of NCMS: Center for Clean Industrial Treatment Technologies (CenCITT), Houghton, MI; New Jersey Institute of Technology, Newark, NJ. The following company has resigned from active membership in NCMS: Santech Industries, Inc. Forth Worth, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 5, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 26, 1994 (59 FR 49084).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–11635 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the SQL Access Group, Inc. and X/Open Company Limited

Notice is hereby given that, on November 7, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The SQL Access Group, Inc. (''the Group''), and X/Open Company Limited (''X/Open''), who have a collaborative agreement, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The SQL Access Group, Inc., has also filed notification individually with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the changes are as follows: Neuron Data, Palo Alto, CA, has becomes a member of SQL Access Group, Inc.; and Novell, Inc., Sunnyvale, CA, has become a member of X/Open Company Limited.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SQL and X/Open intend to file additional written notifications disclosing all changes in membership.

On July 16, 1992, the Group and X/Open filed their original notification pursuant to section 6(b) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(a) of the Act on December 14, 1992 (57 FR 59128).

The last notification was filed with the Department on June 2, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 17, 1994 (59 FR 59434).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–11636 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wilfred Baker Engineering, Inc. Cooperative Research Agreement for Explosion Hazards and Protective Structure Designs

Notice is hereby given that, on March 14, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), parties to a Cooperative Research Agreement have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Wilfred Baker Engineering, Inc., San Antonio, TX; Mobil Research and Development Corp., Princeton, NJ; Phillips Petroleum Company, Bartlesville, OK; Exxon Research and Engineering Co., Florham Park, NJ; Shell Oil Company, Houston, TX; Eastman Chemical Company, Kingsport, TN; Chevron Research and Technology Company, Richmond, CA; DuPont Company, Wilmington, DE; ARCO Chemical Company, Newtown

Square, PA; Texaco Inc., Bellaire, TX; and Union Carbide Corporation, South Charleston, WV. The objective of the venture is to provide one or more programs to collect, compile, analyze and distribute information regarding explosion hazards and protective structures design as related to the refining and chemical processing industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–11633 Filed 5–10–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Reinstatement of KRT Drywall/Acoustical

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Reinstatement, KRT Drywall/Acoustical.

SUMMARY: This notice advises that KRT Drywall/Acoustical, has been reinstated as an eligible bidder on Federal contracts and subcontracts and federally-assisted construction contracts.

FOR FURTHER INFORMATION CONTACT: Shirley J. Wilcher, Deputy Assistant Secretary For Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW, Room C–3325, Washington, DC 20210 (202–219–9475).

SUPPLEMENTARY INFORMATION: KRT Drywall/Acoustical, Logan, Utah, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed May 5, 1995, Washington, D.C.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance Programs.

[FR Doc. 95–11655 Filed 5–10–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: May 31, 1995; 9:00 am–4:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward H. Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matter are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11697 Filed 5–10–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis in Biological Sciences (#1754).

Date and Time: June 1–2, 1995, 8:30 am–4:00 pm.

Place: NSF, 4201 Wilson Boulevard, Arlington, VA, Rm 330.

Type of Meeting: Closed.

Contact Person: John Cross, Program Director, and Arthur Kowalsky, Program Director, Biological Instrumentation and Instrument Development, National Science Foundation, Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate biochemical/environmental proposals and structural/computational biology proposals in Rm. 330 for the Academic Research Infrastructure (ARI) program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11696 Filed 5–10–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Education and Human Resources (#1119).

Date and Time: June 1–2, 1995; 8:30 am–5:30 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Betty Jones, Program Director, Summer Science Camp (SSC), Human Resource Development (HRD), Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1633.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the SSC Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: May 8, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11698 Filed 5–10–95; 8:45 am]

BILLING CODE 7555–01–M

Interagency Arctic Research Policy Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee (IARPC).

Date and Time: Wednesday, May 31, 1995, 2–3:30 pm.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open. The meeting is open to the public.

Contact Person: Charles E. Myers, Office of Polar Programs, Room 755, National Science Foundation, Arlington, VA 22230, Telephone: (703) 306–1031.

Purpose of Committee: The Interagency Arctic Research Policy Committee was

established by Public Law 98–373, the Arctic Research and Policy Act, to help set priorities for future arctic research, assist in the development of a national arctic research policy, prepare a multi-agency budget and Plan for arctic research, and simplify coordination of arctic research.

Proposed Meeting Agenda Items:

1. Review of U.S. Arctic Policy
2. Government-wide Arctic Research Budgets
3. Beringian Systems Initiative
4. IARPC Data Management Activities
5. Biennial Revision to U.S. Arctic Research Plan
6. Comments from Arctic Research Commission

Public Participation: Committee meetings are not public hearings and will not receive verbal comments from the public unless specifically invited by the Committee. Persons invited to address the Committee will be limited to 5 minutes each. Others who want to address the Committee must submit a proposed statement. If the statement is relevant and appropriate to the agenda at that particular meeting, the Committee will invite you to present your statement. The texts of statements shall not exceed 5 double spaced typed pages each.

Charles E. Myers,

Head, Arctic Staff, Office of Polar Programs.

[FR Doc. 95–11695 Filed 5–10–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Circumferential Cracking of Steam Generator Tubes; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 95–03 on requesting licensees for pressurized water reactors to review recent information on the circumferential cracking of steam generator tubes at the Maine Yankee Atomic Power Station and determining its applicability to their facilities. This generic letter is available in the Public Document Rooms under accession number 9504210127. This generic letter was issued on an expedited basis under NRC procedures for issues for which the staff requires a timely response. This generic letter is discussed in Commission information paper SECY–95–100 which is also available in the Public Document Rooms.

DATES: The generic letter was issued on April 28, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Karwoski at (301) 415–2754.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 4th of May 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–11652 Filed 5–10–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Westinghouse Standard Plant Designs; Notice of Meeting

The ACRS Subcommittee on Westinghouse Standard Plant Designs will hold a meeting on May 31, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 31, 1995—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss a draft Commission paper concerning the status of issues associated with the review of the Westinghouse AP600 design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel Dudley, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: May 5, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–11650 Filed 5–10–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Auxiliary and Secondary Systems; Notice of Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on June 7, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

A portion of the meeting may be closed to public attendance to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, June 7, 1995—8:30 a.m. until 5:00 p.m.

The Subcommittee will discuss the Nuclear Energy Institute's petition for rulemaking to amend portions of the regulations governing fire protection at nuclear power plants, the status of the Fire Protection Task Action Plan, issues associated with fire barrier penetration seals, the staff's visit to Narora nuclear power plant in India, and the staff's observations on the fire protection provisions at the nuclear power plants in India. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will than hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel Dudley, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: May 5, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–11651 Filed 5–5–95; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting on System Safety, Human Factors, and Transportation Issues

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's (the Board) Panel on Transportation & Systems will hold a meeting June 14, 1995, in Arlington, Virginia. The meeting, which is open to the public, will be held at the Holiday Inn Arlington at Ballston (near the Ballston Metro stop on the Orange Line), 4610 North Fairfax Drive, Arlington, Virginia 22203; Tel (703) 243–9800; Fax (703) 527–2677.

The one-day meeting will begin at 8:30 a.m. The agenda includes discussion of the application of system safety and human factors engineering to the Department of Energy's (DOE) civilian radioactive waste management program. For example, the Department of Energy (DOE) will present a safety analysis of tunnel boring machine operations at Yucca Mountain, Nevada. The agenda also includes a review of progress in the multipurpose canister (MPC) development effort and updates on parts of the DOE's transportation program, including developments in truck cask certification.

As with all the Board's meetings, time will be set aside on the agenda for comments and questions from the public. To ensure that everyone wishing to speak is offered time to do so, the Board encourages those who have comments to sign the Public Comment Register which will be located at the sign-in table on the day of the meeting. Written comments for the record also may be submitted to the Board staff at the sign-in table.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning August 9, 1995. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 5, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–11594 Filed 5–10–95; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9751]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Champion Enterprises, Inc., Common Stock, $1.00 Par Value)

May 5, 1995.

Champion Enterprises, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Securities is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on May 2, 1995 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of the Securities on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of the Securities and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before May 26, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–11690 Filed 5–10–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–5590]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Fluke Corporation, Common Stock, $.25 Par Value; Common Stock Purchase Rights With Respect to Common Stock, $.25 Par Value)

May 5, 1995.

Fluke Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and

registration on the American Stock Exchange, Inc. (''Amex'') and Pacific Stock Exchange Incorporated (''PSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex and PSE, the Securities are listed on the New York Stock Exchange, Inc. (''NYSE''). The Securities commenced trading on the NYSE at the opening of business on April 10, 1995 and concurrently therewith the Securities were suspended from trading on the Amex and PSE.

In making the decision to withdraw the Securities from listing on the Amex and PSE, the Company considered the direct and indirect costs and expenses attendant in maintaining the listing on such exchanges in addition to the listing on the NYSE. The Company does not see any significant advantage in the trading of the Securities on three exchanges and believes that such additional listings would cause confusion and fragment the market for the Securities.

Any interested person may, on or before May 26, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–11689 Filed 5–10–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6407]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Southern Union Company, Common Stock, $1.00 Par Value)

May 5, 1995.

The Southern Union Company (''Company'') has filed an application with the Securities and exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on February 27, 1995, and concurrently therewith the Security was suspended from trading on the Amex.

According to the Company, its Board of Directors determined that listing on the NYSE would benefit both the Company, its shareholders and its utility customers by broadening the potential investment audience and providing greater liquidity for the Security.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market.

Any interested person may, on or before May 26, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–11691 Filed 5–5–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2770]

Florida; Declaration of Disaster Loan Area

Putnam County and the contiguous Counties of Alachua, Bradford, Clay, Flagler, Marion, St. Johns, and Volusia in the State of Florida constitute a disaster area as a result of damages caused by a tornado which occurred on April 24, 1995. Applications for loans for physical damage may be filed until the close of business on July 3, 1995 and for economic injury until the close of business on February 5, 1996 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8,000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 277012 and for economic injury the number is 850900.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: May 3, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–11688 Filed 5–10–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/14–0079]

Developers Equity Capital Corp.; Notice of Surrender of License

Notice is hereby given that Developers Equity Capital Corporation, 1880 Century Park East, Suite 211, Los Angeles, California 90067, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Developers Equity Capital Corporation

was licensed by the Small Business Administration on June 12, 1964.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 3, 1995 and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 8, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–11654 Filed 5–10–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–020]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). The Committee is a 19-member Federal advisory committee that advises the Coast Guard on matters related to the training, qualification, licensing, certification and fitness of seamen serving in the U.S. merchant marine.

DATES: Membership applications must be received by July 10, 1995.

ADDRESSES: Persons interested in applying for membership on MERPAC may obtain an application form by writing to Commandant (G–MVP–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001, or by calling the points of contact in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Miller, Assistant to the Executive Director, MERPAC, Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001, (202) 267–0224.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act (5 U.S.C. App.) to advise the Coast Guard on merchant marine personnel issues. It consists of 19 members. Eight positions are either vacant or the current appointments will expire in 1995.

Applicants are needed to fill positions requiring the following backgrounds:

(a) Deck Officer (inland/river route);

(b) Engineer Officer (limited chief engineer or designated duty engineer);

(c) Unlicensed seamen (two positions—one Qualified Member of the Engine Department and one Able Bodied Seaman);

(d) Marine Educator (three positions—two persons from State maritime academies and one person from other maritime training institutions); and

(e) General Public (one position).

The membership term is three years. No member may hold more than two consecutive three-year terms.

To achieve the desired balance of membership the Coast Guard is especially interested in receiving applicants from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided. The Committee normally meets in Washington, DC, with working group meetings for specific problems on an as required basis.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: March 28, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–11662 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–043]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for July 1, 1995, through June 30, 1996. The application may be reviewed at the PWSRCAC office, 750 W. 2nd Ave., Suite 100, Anchorage, Alaska, 99501–2168, between the hours of 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 277–4523. The Coast Guard seeks comments on the application from interested groups. The Coast Guard will publish a later notice in the **Federal Register** to notify the public of its decision regarding the recertification request.

DATES: Comments must be received on or before June 26, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–043), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between the hours of 8 a.m. to 3 p.m., Monday through Friday, except Federal holidays. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Marine Environmental Protection Division, (202) 267–0500.

SUPPLEMENTARY INFORMATION: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of Regional Citizens' Advisory councils for Cook Inlet and Prince William Sound Alaska. The Coast Guard published guidelines on December 31, 1992, to assist groups seeking recertification under the Act (57 FR 62600). The Coast Guard issued a policy statement on July 7, 1993, (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of PWSRCAC, the currently certified advisory group for the Prince William Sound region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at the terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. At the conclusion of the comment period, the Coast Guard will review all application

materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732 (o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: May 5, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–11664 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–044]

Public Hearings on Impacts of the Proposed Goethals Bridge Project, Staten Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearings.

SUMMARY: Notice is hereby given that the Commandant has authorized two public hearings to be held by the Commander, First Coast Guard District at Staten Island, New York and Elizabeth, New Jersey, jointly with the U.S. Army Corps of Engineers. The purpose of these hearings is to consider an application by the Port Authority of New York and New Jersey for Coast Guard approval of location and plans of a proposed three-lane, fixed, vehicular, bridge project across Arthur Kill, mile 11.5 between Staten Island, New York and Elizabeth, New Jersey, adjacent to the existing Goethals Bridge. The Corps of Engineers approval is needed for placement of fill associated with this project. All interested persons may present data, views and comments, orally or in writing, concerning the impact of the proposed bridge project on navigation and the human environment. Of particular concern at this time is the impact the proposed action will have on the environment.

DATES: The hearings will be held on June 13, 1995 commencing at 3:30 p.m. and June 15, 1995 commencing at 2 p.m. Final comments for the record must be received by July 14, 1995.

ADDRESSES: Comments should be mailed or delivered to Commander (obr), First Coast Guard District, Governors Island, New York, New York 10004–5073. The June 13 hearing will be held at the New Dorp High School, 465 New Dorp Lane, Staten Island, NY. The June 15 hearing will be held at the Elizabeth City Hall, 50 Winfield Scott Plaza, Elizabeth, NJ.

FOR FURTHER INFORMATION CONTACT: Miss Evelyn Smart, Environmental Protection Specialist, First Coast Guard District, Governors Island, New York, New York 10004–5073, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The proposed new fixed bridge will be 2171 meters (7123 feet) in length crossing Arthur Kill and Old Place Creek on the Staten Island approach. The proposed structure will provide navigation a minimum vertical clearance of 41.2 meters (135 feet) above Mean High Water and minimum horizontal clearance of 152.4 meters (500 feet) measured normal to the axis of the channel. Two bridge design options, tied-arch and cable-stayed, are being considered for the main bridge span.

The purpose of this project is to improve crossing capacity of the Staten island bridges system to meet present and anticipated future traffic demands. The project is also designed to eliminate the functional obsolescence of current design features on the existing bridge and to improve traffic service. The proposed additional bridge is also intended to improve truck traffic flow and related shipments of goods moved within the metropolitan region.

Consideration of approval of the location and plans for the proposed vehicular bridge is the regulatory action precipitating the Coast Guard's involvement in this project. The Corps of Engineers is involved because of the project need for the placement of fill in the waterway.

The Coast Guard, as Federal lead agency, has determined that this project will have a significant impact on the environment and is preparing a Draft Environmental Impact/4(f) Statement (DEIS). The Corps of Engineers is a cooperating agency.

Alternatives were selected through a screening evaluation process which addressed transportation facility and systems options including: new highway or tunnel crossings; continued use of existing but modified crossing facilities; transit alternatives; freight movement alternatives; HOV alternatives; travel demand management schemes; transportation systems management and intelligent vehicle highway systems. The DEIS evaluates the No Action alternative and three transportation improvement alternatives: Goethals South crossing; Goethals North crossing; expanded Goethals HOV lane.

Significant environmental impact issues which will be addressed in the DEIS are land use, socioeconomic impacts, archaeological resources, water quality, wetlands, fish and wildlife, coastal zone, navigation, construction, traffic, air and noise, aesthetics, and hazardous materials. Information concerning availability of the DEIS may be obtained from Ms. Evelyn Smart at the phone number listed under **FOR FURTHER INFORMATION CONTACT.**

The hearings will be informal. Representatives of the Coast Guard and Corps of Engineers will preside, make brief opening statements and announce the procedures to be followed at the hearings. Each person who wishes to make an oral statement should contact Ms. Evelyn Smart at the phone number under **FOR FURTHER INFORMATION CONTACT** before the hearing dates. Such notification should include the approximate time needed to make the presentation and the hearing location at which the presentation will be made. Comments previously submitted are a matter of record and need not be resubmitted at the hearings. Speakers are encouraged to provide written copies of their oral statement to the hearing officers at the time and place of the hearings.

Interested persons who are unable to attend either hearing may also participate in the consideration of the proposed project by submitting their written comments by mail to the Commander (obr), First Coast Guard District at the address under **ADDRESSES** by July 14, 1995. Copies of all written communications will be available for review by interested persons after the hearings at the office of the Commander (obr), First Coast Guard District, between 8:30 a.m. and 4:30 p.m. Monday through Friday, except holidays. Each written comment should identify the proposed project, clearly state the reason for any objections, comments or proposed changes to the plans, and include the name and address of the person or organization submitting the comment. All comments received, whether in writing or presented orally at the public hearings, will be fully considered before final agency action is taken on the proposed bridge permit application.

A transcript of the hearings will be available for public review approximately 30 days after the

hearings. All comments will be made a part of the official case record.

Dated: May 5, 1995.

M.F. McCormack,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–11663 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Intent to Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for Detroit City Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to Hold a Public Scoping Meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that environmental documentation, including an Environmental Impact Statement (EIS), will be developed concurrently with the preparation of a Master Plan for Detroit City Airport. The purpose of this plan is to determine the facilities that will be required to meet future (a 20-year time period) demand for airport operations and develop methods for providing noise compatibility with surrounding land uses. Forecasts indicate a need for a primary runway length of 6,000 feet in this densely developed urban location. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East 8820 Beck Road, Belleville, Michigan 48111, 313–487–7280.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Bureau of Aeronautics, Michigan Department of Transportation (MDOT), and the Federal Highway Administration (FHWA) and with the assistance of the City of Detroit, will prepare an EIS concurrently with the preparation of a Master Plan for Detroit City Airport. The purpose of this Master Plan is to determine the facilities that will be required to meet future (a 20-year time period) demand for airport operations and develop methods for providing noise compatibility with surrounding land uses. Forecasts indicate a need for a primary runway length of 6,000 feet.

Due to the densely developed urban location of the airport and the potential for significant environmental impacts associated with any proposed expansion, a decision has been made to prepare an EIS concurrently with the preparation of the Master Plan so that decision-makers will have an early and complete understanding of the consequences of any action proposed by the plan. The Joint Lead Agencies for the EIS will be the FAA and MDOT. The FHWA will be a cooperating agency.

Two cemeteries are located immediately north and south of the airport's existing primary runway (15/33). It is the desire of the people of Detroit, expressed during past airport improvement programs, to not disturb these cemeteries. Therefore, an extension of Runway 15/33 beyond its present length of 5,090 feet is not being considered as one of the EIS alternatives. Instead, a new runway is envisioned; based on previous planning efforts, a new 6,000-foot primary runway located west of the current runway is being proposed. The ''no action'' alternative also will be investigated by the EIS. In addition to concerns generated by the construction and operation of airport facilities, potentially significant issues are: the relocation of Van Dyke Avenue; the closure of Six Mile Road; and the relocation of residents, businesses, roads, and utilities. Due to the relocation of Van Dyke Avenue, the FHWA will be a cooperating agency for this EIS.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Copies of materials to be evaluated can be obtained by contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

PUBLIC SCOPING MEETING: To facilitate receipt of comments, two public scoping meetings will be held on Thursday, June 15, 1995. A technical meeting will be held at 10:00 a.m. at Cobo Hall (One Washington Blvd., Detroit, Michigan). A community workshop will be held at 6:00 p.m. at Davis Aerospace Technical High School (10200 Erwin St., Detroit, Michigan), to solicit comments and input from the general public on the environmental analysis process. If you plan on attending either meeting, please contact Mr. Ernest Gubry. Written comments and recommendations may be sent to Mr. Gubry's office at the above noted address prior to June 30, 1995.

Issued in Belleville, Michigan, on May 3, 1995.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA, Great Lakes Region,

[FR Doc. 95–11674 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Diego Int'l-Lindbergh Field, San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose only, and impose and use PFC revenue from a PFC at San Diego Int'l-Lindbergh Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as recodified by Title 49 U.S.C. 40117 [C(3)]) and 14 CFR, Part 158. On April 26, 1995, the FAA determined that the application to use from a PFC submitted by the San Diego Unified Port District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 26, 1995.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division AWP–621, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA., 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Donald E. Hillman, Jr., Acting Port Director, San Diego Unified Port District, P.O. Box 488, San Diego, California, 92112–0488. Comments from air carriers may be in the same form as provided to the San Diego Unified Port District under section 158.23 of FAR Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section. Airports Division AWP–621, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 297–1029. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose only and impose and use the revenue from a PFC at San Diego Int'l-Lindbergh Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as recodified by Title 49 U.S.C. 40117 [C(3)]) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On April 26, 1995, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the San Diego Unified Port District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 26, 1995.

The following is a brief overview of the application:

Level of the Proposed PFC: $3.00
Proposed Charge Effective Date: October 1, 1995
Proposed Charge Expiration Date: January 1, 2002
Total Estimated PFC Revenue: $132,341,000

Brief description of the proposed project—Impose and Use:

Construct an 8-gate addition to the West Terminal Building—Total $1,000,000
Construct additional apron paving for support of West Terminal Building Addition—Total $100,000
Modify the terminal access roads—Total $28,093,000
School noise attenuation projects—Total $1,461,000
Construct remain overnight apron—Total $2,250,000
Upgrade HVAC in East and West Terminals—Total $13,239,000

Impose only:

Enlarge East Terminal Gates 1 and 2 for international flights—Total $1,069,000
Construct second level roadway for East and West Terminals—Total $27,510,000
Construct second floor ticketing area at existing East Terminal—Total $29,134,000
Construct additional 7 gates on west side addition of West Terminal—Total $10,347,000
Construct apron paving for additional 7 gates on west side addition of West Terminal—Total $10,754,000
Modify roadway system for additional 7 gates on west side addition of West Terminal—Total $3,064,000
Construct terminal apron east of East Terminal including building demolition—Total $1,947,000
Replace airport fire station—Total $2,373,000

Impose only alternative projects (Total project costs):

Construct west airport access road to west side of terminal buildings—Total $92,178,000
Extend Taxiway C west to the approach end of Runway 9—Total $21,131,000
Relocate Taxiway B 400 feet from runway centerline—Total $22,739,000
Construct airport access road from Washington Street north side of airport to west side of terminal buildings—Total $50,109,000

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxis.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the San Diego Unified Port District Building.

Issued in Hawthorne, California, on May 1, 1995.

Robert C. Bloom,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 95–11675 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Flight Recorder and Cockpit Voice Recorder

AGENCY: Federal Aviation Administration.

ACTION: Correction to notice of cancellation of Technical Standard Orders (TSO's) C51a and C84.

SUMMARY: This notice was issued in Vol. 60, No. 74, on page 19443, Tuesday, April 18, 1995, to make the following correction:

On page 19444 in the first column, first sentence ''Based on the findings of the NTSB TSO–C54a, and TSO–C81 are canceled May 18, 1995.'' The sentence should read ''Based on the findings of the NTSB TSO–C51a, and TSO–C84 are canceled May 18, 1996.''

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 95–11676 Filed 5–10–95; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Office of Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, D.C., on May 5, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application	Applicant	Reason for delay	Estimated date of completion
10415–N	National Aeronautics and Space Administration, Washington, DC	1, 3, 4	06/01/1995
10443–N	Accuracy Systems, Inc., Phoenix, AZ	1	07/15/1995
10515–N	Queen City Barrel Co., Cincinnati, OH	4	06/01/1995
10520–N	Schlumberger Well Services, Houston, TX	1, 4	06/01/1995
10581–N	Luxfer UK Limited, Nottingham, England	4	06/01/1995
10592–N	MG Industries, Valley Forge, PA	1, 3, 4	06/15/1995
10606–N	General Oil Equipment Co., Inc., Tonawanda, NY	4	06/15/1995
10664–N	EFIC Corporation, San Jose, CA	1, 3, 4	07/01/1995
10680–N	A.B. Chance Company, Centralia, MO	4	07/01/1995
10704–N	Liquid Air Corporation, Walnut Creek, CA	1, 4	07/15/1995
10713–N	Intercontinental Packaging Corporation, Tuckahoe, NY	1, 4	07/15/1995
10740–N	CSXT/BIDS, Philadelphia, PA	4	06/01/1995
10747–N	Shell Oil Company, Houston, TX	1, 4	06/15/1995
10760–N	Applied Companies, San Fernando, CA	4	07/01/1995
10778–N	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	1, 4	06/15/1995
10786–N	Puerto Rico Maritime Shipping Authority, Pueble Viejo, Guaynabo, PR	4	07/01/1995
10822–N	Gulf and Caribbean Cargo, Inc., Orlando, FL	4	06/15/1995
10829–N	Amoco Pipeline Company, Levelland, TX	1, 4	06/15/1995
10835–N	Shell Oil Company, Houston, TX	1, 4	06/15/1995
10875–N	Morton International, Inc., Ogden, UT	4	06/01/1995
10896–N	Air Products and Chemicals, Inc., Allentown, PA	1	08/10/1995
10915–N	Luxfer USA Limited, Riverside, CA	1, 3, 4	06/15/1995
10945–N	Structural Composites Industries, Pomona, CA	1, 3, 4	07/15/1995
10946–N	Airco Gases of The BOC Group Inc., Murray Hill, NJ	1, 4	07/15/1995
10952–N	Propack, Inc., Essington, PA	1	06/15/1995
10996–N	AeroTech, Inc. & Industrial Solid Propulsion, Inc., Las Vegas, NV	1, 3	06/01/1995
10997–N	HR Textron, Inc., Pacoima, CA	1, 4	07/15/1995
10012–N	Martin Marietta, Denver, CO	3	06/01/1995
10022–N	A.B. Chance Co., Centralia, MO	4	06/01/1995
10098–N	Alcan Smelters and Chemicals Ltd., Montreal, Quebec, Canada	3	06/01/1995
11117–N	Champion International Corporation, Hamilton, OH	4	06/01/1995
11148–N	Willert Home Products, St. Louis, MO	3, 4	06/01/1995
11151–N	SET Environmental, Inc., Wheeling, IL	4	09/01/1995
11153–N	SET Environmental, Inc., Wheeling, IL	4	09/01/1995
11157–N	Northwest Ohio Towing & Recovery, Beaverdam, OH	4	06/01/1995
11165–N	Oxford Container Co., New Oxford, PA	4	06/01/1995
11169–N	Amalgamet Canada, Toronto, Ontario, Canada	4	06/15/1995
11185–N	Medical Disposal Services, Inc., Chicago, IL	4	07/01/1995
11188–N	Chevron Chemical Company, Richmond, CA	4	06/15/1995
11193–N	U.S. Department of Defense, Falls Church, VA	4	06/01/1995
11194–N	Pressure Technology, Inc., Hanover, MD	1, 3, 4	08/15/1995
11207–N	Duke Power Company, Charlotte, NC	4	06/15/1995
11209–N	National Propane Gas Association, Arlington, VA	3	06/01/1995
11218–N	Allied Signal, Inc., Morristown, NJ	4	06/01/1995
11241–N	Rohm and Haas Company, Philadelphia, PA	3	06/01/1995
11249–N	UOP, Shreveport, LA	4	06/01/1995
11275–N	DHE Fabrication and Machining, Vereeniging, RA	4	06/01/1995
11278–N	Regional Hospital Service, Inc., Portsmouth, VA	4	06/01/1995
11282–N	Idaho Power Company, Boise, ID	1	08/15/1995
11284–N	Webb Chemical Service Corp., Muskegon, MI	4	06/01/1995
11285–N	Akzo Chemicals, Inc., Chicago, IL	3	06/01/1995
11286–N	International Sensor Technology, Irvine, CA	1, 3	06/01/1995
11288–N	Intercontinental Packaging Corporation, Tuckahoe, NY	1, 4	04/15/1995
11301–N	ICI Explosives USA Inc., Dallas, TX	3, 4	06/01/1995
11302–N	Stolt Tank Containers Limited, Hull, North Humberside, England	1	07/01/1995

MODIFICATIONS TO EXEMPTIONS

Application	Applicant	Reason for delay	Estimated date of completion
1479–M	U.S. Department of Defense, Kelly AFB, TX	4	06/01/1995
3121–M	U.S. Department of Defense, Falls Church, VA	4	06/01/1995
8878–M	Amalgamet Canada—Division of Premetalco, Inc., Tornoto, Ontario, Canada	4	06/01/1995
9001–M	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, England	1	06/15/1995
9221–M	Applied Companies, San Fernando, CA	3, 4	08/15/1995

MODIFICATIONS TO EXEMPTIONS—Continued

Application	Applicant	Reason for delay	Estimated date of completion
9370–M	Norris Cylinder Company, Longview, TX	4	06/15/1995
10323–M	Solkatronic Chemicals, Inc., Fairfield, NJ	4	06/15/1995
10340–M	Schutz Werk GmbH & Co., Selters, West Germany	4	06/01/1995
10441–M	ETSS of Ohio, Inc., Tipp City, OH	4	06/01/1995
10645–M	Essex Cryogenics of Missouri, Inc., St. Louis, MO	4	07/01/1995
10913–M	Aco-Assmann of Canada Ltd., Pickering, Ontario, Canada	4	06/01/1995

PARTIES TO EXEMPTION APPLICATIONS WITH MODIFICATION

Application No.	Applicant	Reason for delay	Estimated date of completion
9997–PM	Hodgdon Powder Company, Inc., Shawnee Mission, KS	1	07/01/1995
11249–PM	Ashland Chemical Company, Columbus, OH	4	06/01/1995

[FR Doc. 95–11616 Filed 5–10–95; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Public Meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group will be held in Washington, DC.

DATES: The meeting will be held on Wednesday, May 24, 1995.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds, PC:E:L, 1111 Constitution Avenue, NW., room 7046 IR, Washington, DC 20224. Telephone number (202) 622–5026 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Commissioner's Advisory Group will be held on Wednesday, May 24, 1995, beginning at 10 a.m. in room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will include the following topics:

CEP Audit Planning
Electronic Filing
Technology, Privacy and Security
Measuring Impact of Strategic Partnerships
White House Conference on Small Business and Issue Recommendations
Integrated Joint Training
Update on New CAG Focus Issues for 1995–96

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Lorenza Wilds, no later than May 15, 1995. Ms. Wilds can be reached at (202) 622–5026 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write: Ms. Lorenza Wilds, Office of Public Liaison PC:E:L, Internal Revenue Service, 1111 Constitution Avenue, NW. (Room 7046 IR), Washington, DC 20224.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–11545 Filed 5–10–95; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Request to Mortgage Company for Amount of Unpaid Mortgage, VA Form Letter 29–712

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than June 12, 1995.

Dated: May 4, 1995.

By the direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Request to Mortgage Company for Amount of Unpaid Mortgage, VA Form Letter 29–712
2. This form letter is used by Veterans Benefits Administration (VBA) to request the amount of the unpaid mortgage from the lending institution with whom the veteran carries his/her mortgage. The information collected is used to determine the veteran's Veterans Mortgage Life Insurance (VAMLI) premiums
3. Individuals or households

4. 75 hours
5. 10 minutes
6. On occasion
7. 450 respondents

[FR Doc. 95–11575 Filed 5–10–95; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Veterans Mortgage Life Insurance Health Statement, VA Form 29–0562

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

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DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than June 12, 1995.

Dated: May 4, 1995.

By direction of the Secretary.

Donald L. Neilson,
Director, Information Management Service.

Reinstatement

1. Veterans Mortgage Life Insurance Health Statement, VA Form 29–0562
2. This form is used by the Veterans Benefits Administration (VBA) to obtain health information when an application for Veterans Mortgage Life Insurance (VMLI) is received. The information collected is used by the insurance personnel to determine if VMLI health requirements are met
3. Individuals or households
4. 20 hours
5. 5 minutes
6. On occasion
7. 240 respondents

[FR Doc. 95–11576 Filed 5–10–95; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 91

Thursday, May 11, 1995

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

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, May 9, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–11816 Filed 5–9–95; 2:59 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 16, 1995 at 10:00 a.m.

PLACE: 999 E. Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, May 17, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This oral hearing will be open to the public.

MATTERS BEFORE THE COMMISSION: Bush-Quayle Oral Presentation.

DATE AND TIME: Wednesday, May 17, 1995 at 2:00 p.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Revised Public Financing Final Rules and Explanation and Justification
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–11815 Filed 5–9–95; 2:30 pm]

BILLING CODE 6715–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 17, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Reclassification of Position of the Manager of the Washington, D.C. Branch Office
(2) Docketing Procedures
(3) Regulations:
- A. Parts 211 and 261, Proposed Rule—Administrative Finality and Finality of Returns of Compensation
- B. Part 220, Determining Disability
- C. Part 230, Reduction and Nonpayment of Annuities by Reason of Work
- D. Part 255, Recovery of Overpayments
- E. Part 320, Initial Determinations under the Railroad Unemployment Insurance Act and Reviews and Appeals from Such Determinations
- F. Part 345, Contributions and Contribution Report
- G. Part 366 and 367, Collection of Debts

Portion Closed to the Public

(A) Pending Board Appeals:
1. Anderson, Sue M.
2. Corti, Virginia E.
3. Hedrick, Brooks J.
4. LaCaze, Catherine
5. Mabry, Billy R.
6. Moor, Richard & Mary
7. Moya, Cyril
8 . Myers, Joseph R.
9. Smith, Rose A.
10. Williams, Kenneth

The person to contact for more informaiton is Beatrice Ezerki, Secretary to the Board, Phone No. 312–751–4920.

Dated: May 8, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–11767 Filed 5–9–95; 2:30 pm]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published].

STATUS: Closed and Open Meetings.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Time Changes.

The time for the closed meeting scheduled for Tuesday, May 9, 1995, at 10:00 a.m., have been changed to 10:30 a.m. The time for the open meeting scheduled for Wednesday, May 10, 1995, at 10.00 a.m., has been changed to 9:00 a.m.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 8, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–11829 Filed 5–9–95 3:45 pm]

BILLING 8010–01–M

Corrections

Federal Register

Vol. 60, No. 91

Thursday, May 11, 1995

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

DEPARTMENT OF DEFENSE

Meeting of the DOD Advisory Group on Electron Devices

Correction

In notice document 95–11024 appearing on page 22053 in the issue of Thursday, May 4, 1995, in the first column, the document heading should read as set forth above.

BILLING CODE 1505–01–D

THE PRESIDENT

3 CFR

Proclamation 6778 of March 17, 1995

To Amend the Generalized System of Preferences

Correction

In Proclamation 6778 appearing on page 15455 in the issue of Thursday, March 23, 1995, in the heading, the Proclamation number ''6788'' should read ''6778''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35655; File No. SR-DTC-95-05]

Self-Regulatory Organizations; The Depository Trust Company; Order Extending Temporary Approval of a Proposed Rule Change Expanding the Money Market Instrument Settlement Program

Correction

In notice document 95–11130 beginning on page 22423 in the issue of Friday, May 5, 1995, make the following correction:

On page 22425, in the second column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21035; File No. 812-9276]

Connecticut General Life Insurance Company, et al.

Correction

In notice document 95–11131 beginning on page 22421 in the issue of Friday, May 5, 1995, make the following correction:

On page 22423, in the third column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

Federal Register

Thursday
May 11, 1995

Part II

Department of Commerce

Bureau of Export Administration

15 CFR Part 730, et al.

Simplification of Export Administration Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, and 774

[Docket No. 950407094–5094–01]

RIN 0694–AA67

Export Administration Regulation; Simplification of Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Bureau of Export Administration (BXA) is proposing a comprehensive revision and reorganization of its Export Administration Regulations (EAR), the regulatory regime through which BXA imposes export and reexport controls on those items and activities within its jurisdiction. This proposed rule would clarify the language of the EAR, simplify their application, and generally make the export control regulatory regime more user-friendly.

DATES: Written comments on this proposed rule must be received on or before July 10, 1995.

ADDRESSES: Written comments should be sent to Cecil Hunt, Deputy Chief Counsel for Export Administration, United States Department of Commerce, Bureau of Export Administration, Fourteenth Street and Constitution Avenue, N.W., Room 3839, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Larry E. Christensen, Acting Director, Regulatory Policy Division, Bureau of Export Administration, (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee (TPCC), entitled *Toward a National Export Strategy.* The report included the following among its goals:

Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly.

In November 1993, BXA organized a Task Group, drawn from several of its offices, to carry out the TPCC recommendation. The Task Group launched its review project by publishing an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on February 10, 1994 (59 FR 6528). This notice was designed to solicit comments from industry and the interested public. The ANPRM asked for suggestions concerning improvements BXA could make to the EAR and described several specific issues on which BXA was particularly interested in receiving public input.

Over seven months during the development of this proposed regulation, BXA shared four discussion packages with Regulations & Procedures Technical Advisory Committee (RPTAC), an advisory committee consisting of industry representatives. This was to seek the comments of a working group of persons intimately familiar with the private sector's role in using the EAR. The packages were also made available to other interested members of the public, with the last two being made available electronically on FedWorld. The four discussion Packages were dated August 2, 1994, September 29, 1994, January 12, 1995, and February 28, 1995.

Based on the comments received from the public and from the RPTAC and its own assessment of how the EAR could be improved, the Task Force determined that the EAR should be entirely reorganized and streamlined. The Task Force accomplished this through the development of innovations that resulted in the following important features, among others:

- No license or other authorization would be required for any transaction under BXA jurisdiction unless the regulations *affirmatively* state the requirement. (Current regulations state that *all* exports are *prohibited* unless an applicable general license has been established or a validated license or other authorization has been granted by BXA.)
- The terms ''general'' license and ''validated'' license would be dropped. The term ''license'' would be used to refer only to authorization issued by BXA upon application. The proposed regulations would convert the many current general licenses into a smaller number of ''exceptions'', set forth in the proposed regulations, to the obligation to seek a license when the control list indicates that the particular item going to the stated country generally requires a license.
- The chapters of the regulations would be arranged to give the exporter and reexporter a logical path to follow.
- The affirmative statements of the need to obtain a license, currently scattered throughout the regulations, would be consolidated into ten general prohibitions. One chapter would contain the license review policy for all list-based license requirements; another would provide for the requirements and review policies of licenses based on the end-use or end-user involved in a proposed export or reexport; and the list-based license requirements are contained in the Commerce Control List (CCL) indicating the reason for control and the Country Chart indicating the country scope of each reason for control.
- The Country Groups used in the current regulations would be revised in favor of Groups which better reflect post-Cold War circumstances.
- The CCL would be redesigned to state the reasons for control more specifically within each Export Control Classification Number (ECCN).
- The redesigned CCL would be used in tandem with a new Country Chart that would indicate whether a license is required for any ECCN to any country in the world and the reason or reasons for control.

Set forth below is a detailed part-by-part description of the proposed rule and a review of comments received pursuant to the ANPRM, along with BXA's responses.

Part-by-Part Analysis

Part 730—General Information

This Part is designed to provide a convenient introduction and orientation for readers of the EAR, particularly those who are not used to dealing with such regulations. This Part briefly indicates the types of controls contained in the EAR (export and reexport controls and antiboycott regulations), identifies the key statutes involved, and alerts the reader to the fact that jurisdiction over some exports and reexports is exercised by agencies other than BXA.

Part 730 notes the basic control purposes and the relationship of some of the controls to multilateral arrangements. It points out that only a small percentage of exports, reexports, and other transactions subject to the EAR involve the need to apply to BXA for a license. Many items (commodities, technology, and software) listed on the CCL may be exported and reexported without a license due to License Exceptions that can be used simply by meeting the terms of the EAR.

Further, this Part 730 notes that this proposed re-write of the EAR is designed to enhance the ability of exporters and reexporters to find the rules on their own, but also advises on the availability of help. It also highlights the benefits to exporters and reexporters from the precision, completeness, and objective character of the detailed provisions of the EAR.

Part 730 relates the antiboycott provisions of the EAR to the Internal Revenue Code provisions that deny certain tax benefits for boycott-related reasons.

Part 730 closes by cautioning that its brief descriptions are solely for convenience and that readers must look to the body of the EAR and elsewhere

for the actual rules. The regulations being replaced do not contain material comparable to Part 730.

Part 732—Scope of the Export Administration Regulations

The proposed regulation would introduce the term ''subject to the EAR'' to define the scope of the regulations. The term would be used in the rule to describe those items and activities over which BXA exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are *not* subject to the EAR would be outside the regulatory jurisdiction of the EAR and not affected by the proposed regulations. It should be noted that the term ''subject to the EAR'' is not to be confused with licensing or other requirements imposed in other parts of the EAR. The fact that an item or activity is subject to the EAR does not mean that a license or other requirement automatically applies. A license or other requirement would apply only in those cases where the EAR impose a licensing or other requirement on such items or activities.

Items previously included on the CCL under ECCNs ending in the letter ''G'' were known as basket categories. Under this rule, the basket categories would be included within the term ''subject to the EAR,'' even though they are not listed on the CCL.

The proposed rule would make clear that items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BXA and other agencies try to minimize overlapping jurisdiction, situations might occur in which an exporter and a reexporter would have to comply with more than one regulatory program. Moreover, items not subject to the EAR may or may not be subject to licensing by other agencies.

Generally, all *U.S. origin* items, items exported from the United States, and certain foreign-made products, as described in § 732.4, would be subject to the EAR. However, certain items, such as items that are exclusively controlled for export by another department or agency of the U.S. Government, would be explicitly excepted from the EAR. Further, technology and software that are already publicly available or will be made publicly available, as described in § 732.7; arise during or result from fundamental research, as described in § 732.8; are educational, as described in § 732.9; or are included in certain patent applications, as described in § 732.10, would *not* be subject to the EAR.

Certain foreign-made products would be subject to the EAR. Controlled U.S. origin parts, components, materials, or other commodities incorporated abroad into foreign-made products, if they exceed certain *de minimis* levels. For the first time, the proposed rule includes technology and software in the calculation of *de minimis* values. BXA especially invites substantive comments and suggestions on calculating such values for technology and software. BXA is considering requirements that such calculations be made in accordance with United States accounting standards including the rulings of the Financial Accounting Standards Board and that calculations be based solely upon cost records maintained in the normal course of business. BXA is also considering whether to require a one-time report of such calculations in advance of any reliance upon the *de minimis* exclusion for technology and software. BXA also urges exporters to provide substantive comments and suggestions on this option. In addition, foreign-made direct products of U.S. origin technology or software and any commodity produced by any plant or major component of a plant which is a direct product of U.S. origin technology or software, would be subject to the EAR as provided in the current regulations.

The proposed regulations make clear that certain activities would also be subject to the EAR. The activities subject to the EAR would include certain proliferation-related activities by any person, as set forth in Part 744. Activities prohibited by any order issued under the EAR, including a denial order, would also be subject to the EAR.

Part 732 would also contain rules governing other exports and reexports subject to the EAR. The rule would continue the general policy of permitting most shipments to Canada without a license. Further, items exported from U.S. foreign trade zones would be subject to the EAR, as would items moving intransit through the United States. Finally, the proposed regulations would state that neither a license nor other authorization would be required for shipments from the United States to Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any other territory, dependency, or possession of the United States.

BXA would offer assistance to a potential exporter, or other interested party, in determining whether an item is subject to the EAR.

Part 734—General Prohibitions

If an export, reexport, or activity is subject to the EAR, the general prohibitions contained in Part 734 and the exceptions set forth in Part 740 must be reviewed to determine if a license is necessary. However, no license or other authorization would be required for any transaction subject to the EAR unless the regulations *affirmatively* state the requirement.

Part 734 would contain the rules for ascertaining when an export or reexport subject to the EAR requires a license. This would involve determining whether a transaction subject to the EAR is subject to a general prohibition. Specifically, if an export or reexport subject to the EAR is also subject to a general prohibition, then a license would be required in order to undertake the export or reexport, unless an exception to the prohibition applies.

This part would set forth ten general prohibitions, listed in the proposed regulations at §§ 734.2(b)(1)–(10). The CCL in Part 774 and the Country Chart in Part 738 when taken together define the scope of General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports). General Prohibitions Four through Ten are not so limited, these general prohibitions apply to all items subject to the EAR unless otherwise specified, and these general prohibitions apply to all items subject to the EAR whether or not listed on the CCL.

BXA especially invites substantive comments concerning the controls on foreign produced direct products of U.S. technology and software provided at General Prohibition Three. The term ''duties'' is used in the proposed regulation to mean responsibilities. One early comment suggested that some readers might confuse this with the term ''duties'' meaning a tax on the importation of items. BXA invites comments on the use of the term.

Part 736—Steps You May Follow in Determining Your Licensing Requirements

Part 736 would provide a logical step-by-step path exporters and reexporters may follow in discerning their license requirements and prohibitions under the EAR. These steps would explain the relationship among the scope of the EAR, the general prohibitions, the License Exceptions, and other chapters of the EAR. BXA is considering the possibility of merging the text regarding steps into the introductory portions of the ''General Prohibitions'' chapter (Part 734). BXA invites specific comments on such a reorganization.

Part 738—Commerce Control List and the Country Chart

BXA maintains the Commerce Control List (CCL), located in Supplement No. 1 to Part 774, which includes listed items subject to the EAR. Individual items are identified on the CCL under an Export Control Classification Number (ECCN).

An ECCN contains several items of information that the exporter and reexporter must have in order to determine whether a license is required by the CCL for a particular item. As revised by the proposed rule, the ''License Requirements'' section of each ECCN contains two columns entitled ''Controls'' and ''Country Chart''. The ''Controls'' column lists all applicable Reasons for Control, in order of restrictiveness, and to what extent each applies (e.g., to the entire entry or only to certain subparagraphs). Those items requiring licenses for a greater number of countries and/or items are listed first. The ''Country Chart'' column identifies, for each applicable Reason for Control, a column name and number. This column information is used in the Country Chart to identify the list of countries requiring a license.

The proposed rule also adds a ''License Alternatives'' section to each ECCN. The ''License Alternatives'' section identifies ECCN-driven alternatives to applying for a license and a brief eligibility statement for each. The alternatives consist of ECCN-driven License Exceptions (Part 740) and the Special Comprehensive License (Part 752). The information in this section is provided to assist in deciding which alternative related to a particular item and destination would be explored prior to submitting an application for a license to BXA. This section would be consulted only AFTER an exporter or reexporter has determined that a license is required based on an analysis of the ECCN and the Country Chart.

The proposed rule also introduces the Commerce Country Chart (Country Chart). The Country Chart, located in Supplement No. 1 to Part 738, contains licensing requirements based on the export's destination and ''Reason for Control.'' In combination with the CCL, the Country Chart allows an exporter and reexporter to refer to one place in the EAR and determine whether a license is required for the export or reexport of any item on the CCL to any country in the world.

Part 740—License Exceptions

Part 740 of the proposed rule provides for exceptions from license requirements similar to many of the general licenses contained in the current regulations. It consolidates exceptions into one chapter; the current regulation deals with commodities in one chapter and technology and software in another. This Part also organizes the exceptions in more transaction-oriented groupings, e.g., all exceptions dealing with parts are included in License Exception PTS. License Exceptions contained in this Part of the proposed rule permit the export or reexport without a license required by the CCL provided the conditions for the use of the License Exception are met.

Eligibility for a License Exception would be based upon the item to be exported or reexported, the country of ultimate destination, the end-use of the item, and the end-user. If a License Exception is available, the exporter or reexporter may proceed with the export or reexport without a license. However, the exporter and reexporter would be required to meet *all* the terms and conditions required by the License Exception for the export or reexport to be authorized without a license. By using a License Exception, the exporter or reexporter would be self-certifying that all terms, conditions, and provisions for the use of that License Exception have been met. Including the appropriate License Exception symbol on the Shippers Export Declaration, e.g., ''TMP'' for temporary exports, would constitute such a certification.

Items that are listed on the CCL but do not require a license by reason of the Country Chart at Part 738 must be certified by entering the symbol ''NLR'' in the appropriate place on the Shippers Export Declaration. This constitutes representations of the exporter that the listed item does not require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the item is subject to the EAR.

BXA solicits comments on the incorporation of proliferation controls into License Exceptions. Many General Licenses and Permissive Reexports originally focused on national security controls. BXA would like public input on the extent to which proliferation concerns have, or have not, been addressed by License Exceptions.

Part 742—Control Policy—CCL Based Controls

This Part contains licensing review policies and certain requirements for all items listed on the CCL. It consolidates most of current Part 785, and substantial portions of Parts 776 and 778. In addition to providing the license policies and certain license requirements, it notes any contract sanctity dates that may have been established for particular export or reexport control programs and describes any multilateral cooperation in particular export or reexport control programs.

The proposed regulation tracks the reasons for control listed in the Country Chart by providing the licensing policy for every column on the chart. In addition, this Part includes two control policies for items included on the CCL, but not reflected in the Country Chart; it includes provisions for supercomputers and communications intercepting devices.

This proposed rule, consistent with the National Defense Authorization Act (NDAA) for fiscal year 1993 entitled the ''Iran-Iraq Arms Non-Proliferation Act of 1992'', would codify the current statutory policy of denial for all items that require a license for Iran. The reader should note that additional unilateral trade restrictions on Iran are currently under review within the Administration.

The reader should also note that controls for Libya are currently under review within the Administration.

This proposed rule would reflect the Secretary of State's 6(j) determination of August 12, 1993, that the Government of Sudan has repeatedly provided support for acts of international terrorism. This rule would also reflect the Acting Secretary of State's determination of December 28, 1993, that five categories of multilaterally controlled items would be controlled under section 6(j). License applications for the following items would be reviewed under the 6(j) procedures:

All items subject to national security controls, except national security controlled digital computers with a Composite Theoretical Performance (CTP) of 500 Million Theoretical Operations Per Second (MTOPS) or less. Such items will generally be denied if destined to a military end-user or for military end-use. Applications for non-military end-users or end-uses will be considered on a case-by-case basis;

All items subject to chemical and biological weapons proliferation controls. Such items will generally be denied;

All dual-use items subject to missile proliferation controls. Such items will generally be denied;

All items subject to nuclear weapons proliferation controls. Such items will generally be considered on a case-by-case basis; and

All military related items (items controlled by the Commerce Control List (CCL) entries ending with the number 18. Such items will generally be denied.

This proposed rule does not reflect these 6(j) controls for Sudan on either the Country Chart or on the CCL. However, they will be incorporated into the final rule.

Additional unilateral trade restrictions under 6(a) for Sudan are currently under review within the Administration.

This Part would *not* include controls and licensing policies that apply to exports and reexports to embargoed destinations and additional controls under the EAR implementing U.N. sanctions. Currently, the embargoed countries include Cuba, Libya, North Korea, the Federal Republic of Yugoslavia (Serbia and Montenegro), and Iraq. An exporter or reexporter seeking to export or reexport items to these countries should first review Part 746, Embargoes and Other Special Controls.

Additionally, this Part would not address controls and licensing policies for items controlled for ''short supply'' reasons. These would be covered in Part 754, Short Supply Controls.

Part 744—Control Policy—End-User/ End-Use Based

This part contains prohibitions against exports, reexports, and activities related to certain end-uses and end-users. Specifically, § 744.2 would prohibit exports and reexports of items subject to the EAR, without a validated license, if at the time of the export or reexport you know or have reason to know, that the item will be used in nuclear explosive, or other safeguarded or unsafeguarded, nuclear activities. Section 744.3 would prohibit the export or reexport, without a validated license, of certain items to be used for missile end-uses. Similarly, section § 744.4 would prohibit the export or reexport of items with certain chemical and biological weapon end-uses. Next, § 744.5 would prohibit the export or reexport of items to be used for specified nuclear maritime end-uses. Finally, § 744.6 would place restrictions on certain proliferation-related activities of U.S. persons. For purposes of this prohibition the term ''U.S. person'' would mean citizens, permanent resident aliens, or protected individuals as defined in the immigration laws; any judicial person organized under the laws of the United States or any U.S. jurisdiction; and any person physically in the United States.

This part would also contain prohibitions against exports, reexports, and certain transfers to specified end-users.

Part 746—Embargoes and Other Special Controls

Part 746 of the proposed regulations contains all the control requirements that apply to embargoed destinations, including Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro), Iraq, Libya, and North Korea. It also contains the control requirements implementing U.N. sanctions that result in additional EAR controls on certain countries, such as Rwanda.

In addition, Part 746 would add provisions to reflect current policy on exports and reexports to Cuba of medical items and telecommunications equipment, and reexports to Libya of items covered by United Nations Resolutions. This Part also would include new Department of Commerce license requirements that codify existing United States policy implemented by the Treasury Department for exports and reexports to Iraq. It would also reflect current policy by clarifying certain eligibility requirements for the Humanitarian License Procedure. BXA is considering eliminating the Humanitarian License Procedure, and would therefore be particularly interested in comments on its usefulness. Finally, this Part would include Supplements containing general information on embargoes and sanctions administered by other federal agencies.

Part 748—Applications (Classification, Advisory, and License) and Documentation

Part 748 describes the process for applying for a classification request, advisory opinion, or a license. All such requests and license applications (for both exports and reexports) would be submitted on a new form, BXA–748P. The BXA–748P would replace the BXA–622P and the BXA–699P. The Form BXA–648P has been eliminated along with the Form BXA–685P. Form BXA–648P was used for notification of Delivery Verification requirement, while Form BXA–685P was required for certain amendments to outstanding licenses. When this rule becomes final, with certain exceptions, exporters and reexporters would now be required to submit a new license application when requesting modification to an outstanding license.

This change would allow BXA to ensure a complete electronic record is maintained of all licenses, classification requests, and advisory opinions. Instructional information contained on Form BXA–648P has been incorporated into the text of the regulations. BXA would notify exporters of the requirement for a Delivery Verification directly on the license, instead of a separate piece of paper. No changes have been made to the structure of the requirement.

The requirement for exporters to obtain Form BXA–629P from their purchaser and consignees would be modified under this proposed rule. BXA would permit you to obtain either a new Form BXA–711 or a letter with the same certifications that appear on the new Form BXA–711. The new Form BXA–711 would be a one-sided redraft of the current Form BXA–629P.

Items currently captured by the current basket categories, i.e., ECCNs ending in the letter ''G,'' will remain subject to the EAR as defined in Part 732 in this proposed rule even though they are not listed on the CCL at Part 774. For such items, BXA will respond to a classification request by indicating that though they are subject to the EAR, they are not listed in the CCL. This will be noted by the symbol ''NOL'', which means the items are ''not on the list'' but are subject to the EAR. For items listed on the CCL under this proposed rule, BXA will continue to respond to classification requests by indicating the appropriate ECCN. Under this Part 748 of the proposed regulation, unless items are subject to General Prohibitions Four through Ten, you need not apply for a license to export or reexport such items that are not on the list (NOL).

BXA specifically invites comments on the question of how BXA should respond to classification requests for items that are not listed on the CCL but that are subject to the EAR. Does the designator ''NOL'' appropriately replace the current ECCNs ending in the letter ''G''? Should this be the appropriate entry for the Shippers' Export Declaration (SED) as proposed? Readers should note that this topic is related to the proposed requirement to indicate ''NLR'' on the SED for listed items that do not require a license to the specific country of destination as indicated on the Country Chart.

A Supplement No. 4 to Part 748 would be added. This supplement would replace current Part 768. There are no revisions at this time to the existing text contained in this Part, which is being incorporated into this proposed rule by reference. The current Part 768 is at 15 CFR 768, and you may obtain a copy of Supplement No. 4 to Part 748 by downloading it electronically from FedWorld via Internet or through your modem by dialing (703) 321–3339. This service is

free, except for long distance telephone charges and any standard charges you already incur for the use of the Internet or other commercial online service. The current Antiboycott Regulations are not on FedWorld.

Part 750—License Processing

Part 750 describes the processing procedures of any application submitted to BXA, whether for a classification request, advisory opinion, or a license. In addition to procedures specific to each type of application, time frames (established in the draft 1994 Export Administration Act bill) associated with each are provided. This part also would provide a clear description of the interagency dispute resolution process and the interrelationship between all agencies and departments reviewing license applications. All aspects of license issuance would be addressed including, actual issuance of the license, validity periods, transfers, revocations, suspensions, and shipping tolerances.

The licensing processing procedures remain under review within the Administration and will be the subject of a separate **Federal Register** notice once a final policy is completed.

Validity periods for the various types of licenses would be synchronized. The new validity period for all licenses (except those issued for items subject to short supply controls, or those processed under emergency handling procedures) would be 2 years. This alignment would result in a validity period for all reexport and parts and components licenses, and an increase in the validity period for licenses authorizing temporary exports of items.

Part 752—Special Comprehensive License

Part 752 describes the provisions of the Special Comprehensive License (SCL). The SCL would consolidate the activities currently authorized under the Project, Distribution, Service Supply, Service Facilities, and Special Chemical Licenses and would provide for additional flexibility to BXA in shaping appropriate SCLs and internal control programs. For example, the Project and Service Supply Licenses currently authorize exports and reexports to countries of the former Soviet Union, Eastern European, and the People's Republic of China (PRC), but the Distribution License, which includes an extensive mandatory Internal Control Program that is not required for the Project License and the Service Supply Procedure, does not allow exports and reexports for distribution in these same countries. The SCL would also conform item and country eligibility.

All items subject to the EAR would be eligible for export and reexport under the SCL, except:

Items identified by the letters MT in the ''Reason for Control'' paragraph on the Commerce Control List (CCL);

Biologicals, or equipment and materials that can be used in the production of biologicals (items identified under ECCNs 1C61, 1B71, 1E61, and 1E70);

Communication intercepting devices identified under ECCN 5A80 on the CCL;

Chemicals and chemical equipment and materials that can be used in the production of chemical weapons to destinations listed in Country Group D:3; (items identified under ECCNs 1C60, 1E60, 1B70, and 1D60);

Maritime (civil) nuclear propulsion systems or associated design or production software and technology identified in § 774.5;

Items specifically identified as ineligible by BXA on your approved SCL, and

Additional items may be excluded consistent with multilateral obligations.

Exports and reexports of items identified as NP in the ''Reason for Control'' paragraph on the CCL will not generally be authorized under an approved SCL for export or reexport to countries listed in Country Group D:2.

All countries are eligible to receive exports and reexports under the SCL except:

Countries designated by the Secretary of State that have repeatedly provided support for acts of international terrorism (Cuba, Libya, Iran, Iraq, North Korea, Sudan, Syria).

Countries listed in Country Group E; and

Other countries that BXA may declare on a case-by-case basis.

SCLs are designed to allow multiple exports and reexports of controlled items. Because BXA does not review each individual transaction covered by a SCL, parties to the SCL would be required to have the mechanisms in place to ensure that each export and reexport made under a SCL meets all the terms and conditions of the license, as well as the EAR. It is through Internal Control Programs (ICPs) that the Special Comprehensive License Holder (SLH) and the Special License Consignee (SLC) assure that exports and reexports are not made contrary to the national security, nonproliferation, and foreign policy objectives of the EAR. ICPs are designed to provide that mechanism and are a pre-requisite to approval of a SCL.

There are three levels, or examples, of ICPs provided for in Part 752. The elements of each ICP would reflect the complexity of the activities authorized under the SCL, the countries involved, and the relationship between the SLH and the approved consignees. A general description of the elements of each of the three of ICPs is included, as well as guidance on which ICP you would need to establish before using the SCL.

To ensure that exports under the SCL do not jeopardize our national security and foreign policy interests, BXA would review each application for a SCL on a case-by-case basis, and may limit the scope of eligible items, countries, end-users, and end-uses. In addition, BXA may require inclusion in an ICP of any combination of elements from one or more levels, depending upon the nature of each SCL request.

The provisions of this Part would also require participating entities to audit their export control programs, and authorize BXA to conduct systems reviews. These audits and review would ensure that the exporter and any authorized consignees have fulfilled all the requirements of the SCL, and that any exports and reexports made under the SCL have not and will not jeopardize national security interests.

Part 754—Short Supply

This part would continue to implement the provisions of Section 7, ''Short Supply Controls'', of the Export Administration Act of 1979, and similar provisions in other laws that are not based on national security and foreign policy reasons. Provisions in this part include controls and licensing policies on crude oil, petroleum products, unprocessed western red cedar timber, and exports and reexports of horses by sea. This part also would include certain License Exceptions that would permit exports and reexports without a license of western red cedar and petroleum products. Provisions in the current regulations dealing with petitions for monitoring or controls on recyclable metallic materials and registration of agricultural commodities would be removed but would be incorporated in the EAR by reference.

The provisions concerning exports and reexports of crude oil and petroleum products have been reorganized and revised for clarity. Certain archaic provisions have been removed.

A recent final rule regarding certain exports of crude oil is not incorporated into the draft rule, but it will be incorporated into the final rule.

Part 756—Appeals

This part describes the procedures that would be applicable to appeals

from administrative actions taken by BXA. Administrative action is any action (not including an administrative enforcement proceeding) taken under the EAA or EAR with respect to a particular person, including denial of a license application, return of a license application for other than procedural deficiencies or additional information, or classification of an appellant's commodity. Essentially, any person directly and adversely affected by an administrative action would be allowed to appeal to the Under Secretary for Export Administration for reconsideration of that administrative action. The procedures for such an appeal would be unchanged from that currently existing in the EAR.

Part 758—General Export Clearance Requirements

This part deals with requirements imposed on exporters and others regarding the movement of items subject of the EAR out of the country. The purpose of this part would be to ensure that the movement of items subject to the EAR conforms to the requirements of the export license or other authorization for their export. Under this proposed regulation, certain items are subject to the EAR as defined in Part 732 even though they are not listed on the CCL at Part 774. If such items are not subject to any of the ten general prohibitions, the symbol ''NOL'' must be entered in the appropriate place on the Shippers Export Declaration.

Under this proposed rule, certain items are listed on the CCL but do not require a license to all destinations under General Prohibitions One, (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports). If General Prohibitions Four through Ten also do not apply, the symbol ''NLR'' must be entered in the appropriate place on the Shippers Export Declaration. The term ''NLR'' represents exports of listed items when no license is required.

BXA specifically invites comments on the use of the designators ''NOL'' and ''NLR'' for the SED. BXA currently feels that this distinction allows a separate classification of ''NOL'' for items currently in ECCNs ending in the letter ''G'', which items would not be listed on the CCL in this proposed rule. This is the rationale for distinguishing ''NOL'' from ''NLR'', which merely refers to an item on the CCL that does not require a license to the specific destination in a given export or reexport. One early comment suggested that the term ''NLR'' be the only entry required on the SED for both of these sets of items. If BXA adopted such an approach, what would then be the best alternative for classifying items subject to the EAR but not listed on the CCL, i.e. items under current ECCNs ending in the letter ''G''?

This Part imposes specific responsibilities on the persons involved in export or reexport transactions to ensure compliance with other provisions of the EAR and of the Foreign Trade Statistics Regulations (15 CFR Part 30), including exporters, freight forwarders, exporters' agents, carriers and all other persons. It prohibits any person from engaging in certain proscribed conduct.

Part 758 imposes specific responsibilities for assuring that Shipper's Export Declarations, bills of lading and air waybills are accurately filled out and are consistent with the export license or other authorization for the export to which they correspond. It restricts the conduct of exporters, forwarders, carriers and others to assure that the delivery abroad of items subject to the EAR is in accordance with the terms of the export license, exception to the licensing requirement, or other authorization. In some cases, it imposes duties on parties to the transaction to return the items to the United States or take steps to prevent them from entering the commerce of a foreign country.

This proposed rule makes several changes to the existing rule. In several instances the existing regulations require carriers to conform their documents or their routing to statements made on Shipper's Export Declarations. In recent years, more exceptions to the Shipper's Export Declaration filing requirement have been created. This proposed rule deals with the exceptions by requiring carriers to conform their documents and routing to the Shipper's Letters of Instruction if there is no Shipper's Declaration or to other written instructions if there is no Shipper's Letter of Instruction.

This proposed rule does not contain some of the specific provisions relating to who may sign the Shipper's Export Declaration, the status and duties of forwarding agents, requirements for power of attorney currently found in 15 CFR §§ 786.3(d) & (e) which duplicate provisions of the Foreign Trade Statistics Regulations.

This proposed rule replaces the terms ''commodity'' or ''commodities'' with the terms ''item'' or ''items'' in several places to reflect coverage of technology and software under the EAR. The Foreign Trade Statistics Regulations and the Shipper's Export Declaration form still refer to ''commodity'' or ''commodities'', but they are being reviewed by the Bureau of the Census for conforming changes. For shipments where items requiring a license for export are listed on the same Shipper's Export Declaration as items not requiring an export license this proposed rule eliminates the requirement that the person filling out the declaration place an asterisk next to the items being shipped under a general license and replaces it with a requirement that the license number and expiration date or symbol authorizing export without a license be shown below the description of the item. This change would make the EAR consistent with the corresponding portions of the Foreign Trade Statistics Regulations which require that the license number and expiration date or general license symbol be shown below the commodity to which it applies.

Current regulations require an exporter whose shipment under a validated export license is unloaded at an unscheduled stop to notify the Office of Export Licensing of the proposed disposition of the items. The proposed rule changes the term ''validated license'' to ''export license'' and requires the exporter to wait for a response from the Office of Exporter Services before proceeding with the disposition.

The proposed rule revises the destination control statements that exporters must place on shipping documents to place other parties to a transaction on notice of U.S. export control regulations. The revisions make the destination control statements conform with the country groups elsewhere in the proposed regulations instead of with the country groups contained in the existing regulations. The revisions would also make the destination control statements conform with the concept of export licenses, License Exceptions and other authorizations (e.g. NOL and NLR) rather than the concept of general licenses and validated licenses.

Part 760—Restrictive Trade Practices or Boycotts

This Part would replace current Part 769. There are no revisions to the existing text contained in this Part, which is being incorporated into this proposed rule by reference. The current Part 769 is at 15 CFR 769, and you may obtain a copy of Part 760 by downloading it electronically from FedWorld via Internet or through your modem by dialing (703) 321–3339. This service is free, except for long distance telephone charges and any standard charges you already incur for the use of the Internet. The current Antiboycott Regulations are not on FedWorld.

Part 762—Recordkeeping

This part has been reorganized and restated to eliminate the requirement that the regulated persons obtain BXA approval prior to destroying original documents and replacing them with electronic, magnetic, photographic or other images. It would set standards for retrieving and legibility of such records. This part would also make it clear that regulated entities may always keep the records that must be kept pursuant to this part in the form in which that person receives or creates it. In addition, this part would extend the recordkeeping to five years to coincide with the applicable statue of limitations.

Part 764—Enforcement

Part 764 has been reorganized to deal primarily with violations and sanctions. The description of sanctions has been broadened to state that conduct which constitutes a violation of the EAA or EAR may also be prosecuted under certain other sections of the United States Code (§ 764.3(b)), and such violative conduct may be subject to statutory or other sanctions or protective measures under the EAA or under other statutory or regulatory provisions (§ 764.3(c)).

Provisions dealing with denial of export privileges would be clarified so that almost all relevant information can be found in Part 764 of the EAR. Part 764 provisions are organized by violation (§ 764.2(k)), description of sanction (§ 764.3(a)(2)) and terms of a standard denial order (Supplement No. 1), and reference to the Denied Persons List (Supplement No. 2). This method of organization makes it easier for the world to understand how to comply with denial orders.

The former frequently-used § 787.6 violation of ''export, diversion, reexport, transshipment'' has been replaced by the new § 764.2(a) violation entitled ''engaging in prohibited conduct.'' The formulation of the new violation is intended to take into account the new EAR Part 734 - General Prohibitions, as well as to encompass the former § 787.6. It provides that no person may engage in any conduct prohibited by, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

The detailed provisions that set forth recordkeeping requirements have been moved to Part 762, while the violation for failing or refusing to comply with recordkeeping requirements appears in § 764.2(i), along with other defined violations.

Part 766—Administrative Enforcement Proceedings

Part 766 has been reorganized to remove descriptions of sanctions available for violations, placing them instead in Part 764 (Enforcement), and to separate the procedures for imposing sanctions for violations from the procedures for taking protective enforcement measures (temporary denial orders and denial orders authorized by § 11(h) of the EAA). Further, this Part has been re-designed to simplify and expedite proceedings, including the addition of sections specifically authorizing interlocutory review of rulings by the Under Secretary (§ 766.14) and permitting cases to be disposed of through ''summary decisions,'' such as through motions for summary judgment (§ 766.8).

Significant changes would be made to simplify and clarify the process by which cases are settled (§ 766.18). To avoid the impression that settlements are in any way one-sided, BXA would substitute the term ''settlement agreement'' for the term ''consent agreement.'' Virtually all orders approving settlement agreements would be entered by the Assistant Secretary for Export Enforcement, obviating the need for Administrative Law Judge (ALJ) and Under Secretary review. The proposal makes clear that cases can be settled even if they are before the Under Secretary for decision, and codifies case law holding that cases may be settled without a finding that violations occurred. Finally, the proposed rule would add specific guidance that any settlement relates only to claims at issue in the administrative enforcement proceeding and has no impact on any criminal prosecution.

A new section (§ 766.23) would consolidate all procedures that apply when naming or adding related persons to orders issued under Part 766. It codifies the current practice of permitting BXA to name related persons when the order is first issued and continues BXA's authority to add related persons to an order at a later date through a ''show cause'' procedure. The proposal would also provide procedures whereby related persons may appeal to the ALJ any finding that they are related to the respondent.

Part 768—Foreign Availability Determination Procedures and Criteria

Foreign availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of an export license ineffective. For a controlled country, such control or denial is ''ineffective'' when maintaining such control or denying a specific license would not restrict the availability of goods or technology that would make a significant contribution to the military potential of the controlled country or combination of countries that would prove detrimental to the national security of the United States.

There are two types of foreign availability, foreign availability to a controlled country; and foreign availability to a non-controlled country.

A foreign availability assessment is an evidentiary analysis that BXA conducts to assess the foreign availability of a given item under the assessment criteria. BXA uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that foreign availability exists, the Secretary will decontrol the item or approve the license in question, unless the President exercises a National Security Override.

The procedures by which BXA would conduct a foreign availability assessment, the criteria for control, and a National Security Override would be unchanged from that currently existing in the EAR.

Part 770—Interpretations

This part would provide commodity, technology, and software interpretations. These interpretations would clarify the scope of controls where such controls are not readily apparent for the Commerce Control List and from other provisions of the EAA.

Part 772—Definitions

This part would define terms as used in the Export Administration Regulations. Many of the terms currently defined in the EAR would be used in this part, including the addition of several new terms, such as ''export'', ''Advisory Committee on Export Policy (ACEP)'', ''Export Administration Review Board (EARB)'', and other terms that would define new concepts, such as ''License Alternatives''.

BXA is particularly interested in comments from the business community on what terms they would like defined that are not already included in this part.

Part 774—The Commerce Control List

Former Supplements 1, 2, and 3 to § 779.1 (the Commerce Control List,

General Technology and Software Notes, and Definitions to the CCL, respectively) would become Supplements 1, 2, and 3 to Part 774. Supplement No. 1 would be amended by removing the references to ECCN's ending in the letter ''G'' (basket categories). Such ECCNs would continue to remain subject to the EAR, even though they would not appear on the CCL. In addition, Supplement No. 1 would be amended by revising the ''Requirements'' section of each ECCN to reflect the new structure of the EAR. The ''List of Items Controlled'' section and Supplement Nos. 2 and 3 would not be revised and will be included with the publication of the final rule.

The current ''List of Items Controlled'' sections of each ECCN on the CCL and Supplement Nos. 2 and 3 are at 15 CFR 779, and you may obtain a copy of Part 774 by downloading it electronically from FedWorld via Internet or through your modem by dialing (703) 321–3339. This service is free, except for long distance telephone charges and any standard charges you already incur for the use of the Internet.

Summary of Comments to the ANPRM

Rulemaking Requirements

1. For purposes of Executive Order 12866, this proposed rule has been determined to be significant.

2. This proposed rule contains two new collections of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. ch. 35. The new ''Multipurpose Application'' replaces the ''Application for Export License'', ''Request for Reexport Authorization'', and the ''Request for Amendment Action'' forms. The ''Statement by Ultimate Consignee and Purchaser'' form has also been revised. There is a new ''Special Comprehensive License'' which consolidates the procedures for applying for the former project, distribution, service supply and chemical licenses. All other collections of information contained in the rulemaking have been previously approved by OMB. The public reporting burdens for the new collections of information are estimated to average 45 minutes for the Multipurpose Application and between 20 and 40 hours for the Special Comprehensive License. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Larry E. Christensen, Acting Director, Regulatory Policy Division, Bureau of Export Administration, (202) 482–2440.

3. For purposes of Executive Order 12612, this proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment.

4. Pursuant to authority at 5 U.S.C. 553(a)(1) and section 13(a) of the Export Administration Act, 50 U.S.C. 2401—2420 *et seq.*, though prior notice and an opportunity for public comment are provided, such procedures are not required for this regulatory action. As such, no Initial or Final Regulatory Flexibility Analysis is required under sections 3 and 4 of the Regulatory Flexibility Act, 5 U.S.C. 603(a) and 604(a), and none has been prepared.

5. Although the Export Administration Act expired on August 20, 1994, the President invoked his authority under the International Emergency Economic Powers Act, through Executive Order 12924, August 19, 1994, and determined that, to the extent permitted by law, the provisions of the Export Administration Act shall be extended so as to continue in full force and effect and amend, as necessary, the export control system previously implemented, as the Export Administration Regulations, pursuant to the Export Administration Act.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 732

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 736

Exports, Foreign trade.

15 CFR Part 738

Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 750

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 752

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 754

Exports, Foreign trade, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Foreign trade, Penalties.

15 CFR Part 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 760

Boycotts, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Foreign trade, Law enforcement, Penalties.

15 CFR Part 768

Administrative practice and procedure, Exports, Foreign trade,

Reporting and recordkeeping requirements.

15 CFR Part 770

Exports, Foreign trade.

15 CFR Part 772

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade.

Dated: April 10, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

For the reasons set forth in the preamble, Subchapter C, Chapter 7 of Title 15, Code of Federal Regulations is proposed to be amended as follows:

1. Parts 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756 and 758 are added to read as follows:

PART 730—GENERAL INFORMATION

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C 466(c); E.O. 12924.

§ 730.1 What these regulations cover.

These Export Administration Regulations (EAR) (15 CFR, subchapter C, chapter 7) are issued by the Bureau of Export Administration (BXA) of the United States Department of Commerce under laws relating to the control of certain exports, reexports, and activity. In addition, the EAR implement antiboycott law provisions requiring regulations to prohibit specified conduct by United States persons that has the effect of furthering or supporting boycotts fostered or imposed by a country against a country friendly to United States.

§ 730.2 Statutory authority.

The EAR have been designed primarily to implement the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401–2420 (EAA). There are numerous other legal authorities underlying the EAR. These are listed in the **Federal Register** Notices promulgating the EAR and at the beginning of each Part of the EAR in the Code of Federal Regulations. 15 CFR parts 730–774. From time to time, the President has exercised authority under the International Emergency Economic Powers Act with respect to the EAR. 50 U.S.C. 1701–1706 (IEEPA). The EAA is not permanent legislation, and when it has lapsed due to the failure to enact a timely extension, Presidential executive orders under IEEPA have directed and authorized the continuation in force of the EAR.

§ 730.3 Dual-use exports.

The convenient term ''dual-use'' is sometimes used to distinguish the types of items covered by the EAR from those that are covered by the regulations of certain other export licensing agencies. In general, the term dual-use serves to distinguish EAR-controlled items that can be used both in sensitive (e.g., military or nuclear) and other, non-sensitive applications from those that are (a) weapons or military-related in use or design and subject to the controls of the Department of State (22 CFR parts 120 through 130) or (b) subject to the nuclear-related controls of the Department of Energy or the Nuclear Regulatory Commission (10 CFR part 110). Note, however, that although the short-hand term dual-use may be employed to refer to the entire scope of the EAR, the EAR also apply to some items that have solely civil uses.

§ 730.4 Other control agencies and departments.

In addition to the agencies mentioned in the preceding section that license the export of nuclear and military-related items, there are other agencies with jurisdiction over certain narrower classes of exports. These include the Department of Treasury's Office of Foreign Assets Control (OFAC) (31 CFR parts 500 through 590), which administers controls against certain countries which are the object of sanctions affecting not only exports, but also imports and financial dealings. (Some OFAC regulations provide for the licensing by BXA of exports and reexports which are permitted as exceptions to the embargo.) For your convenience, the list that follows identifies agencies with regulatory jurisdiction over certain types of exports and reexports. This is not a comprehensive list, and the brief descriptions are intended are only generally indicative of the types of controls administered and/or enforced by each agency.

Defense Services and Defense Articles

Department of State, Office of Defense Trade Controls, Tel. (703) 875–6644, 22 CFR parts 120 through 130

Foreign Assets and Transactions Controls

Department of Treasury, Office of Foreign Assets Control, Tel. (202) 622–2420, 31 CFR parts 500 through 590

Narcotics, Dangerous Drugs, Processing Equipment

Drug Enforcement Administration, Tel. (703) 307–1000, 21 CFR parts 1311 through 1313

Natural Gas and Electric Power

Department of Energy, Tel. (202) 586–1000, 10 CFR Part 305, 320 [reserved]; 18 CFR Part 34

Nuclear; Nuclear Materials, Reactor Vessels, Specially Designed Commodities

Nuclear Regulatory Commission, Tel. (301) 492–7000, 10 CFR Part 110

Nuclear; Technical Data for Nuclear Weapons/Special Nuclear Materials

Department of Energy, Tel. (202) 586–5000, 10 CFR Part 810

Patent Filing Data Sent Abroad

Patent and Trademark Office, Tel. (703) 557–4636, 37 CFR 5.11; 15 CFR 732.3(b)(4) and 732.10

Watercraft

U.S. Coast Guard documented watercraft of 5 net tons or more—export or transfer to foreign interest, U.S. Maritime Administration, Tel. (202) 366–5807, 46 App. U.S.C. 808, 839

§ 730.5 Coverage of more than exports.

The core of the export control provisions of the EAR concerns exports from the United States. You will find, however, that some provisions give broad meaning to the term ''export'', apply to transactions outside of the United States, or apply to activities other than exports.

(a) *Reexports.* Commodities, technology, and software (referred to collectively in the EAR as ''items'') that have been exported from the United States are generally subject to the EAR with respect to reexport. Many such reexports, however, will qualify for an exception from licensing requirements.

(b) *Foreign products.* In some cases, authorization to export technology from the United States will be subject to assurances that items produced abroad that are the direct product of that technology will not be exported to certain destinations without authorization from BXA.

(c) *Deemed exports.* Certain actions that you might not regard as an ''export'' in other contexts do constitute an export subject to the EAR. For example: the electronic transmission of non-public

data that will be received abroad; the release of technology to a foreign national in the United States through such means as demonstration or oral briefing; shipments that might not be deemed ''exports'' for other purposes, such as the return of foreign equipment to its country of origin after repair in the United States or shipments from a U.S. foreign trade zone.

(d) *U.S. person activities.* To counter the proliferation of weapons of mass destruction, the EAR restrict the involvement of ''United States persons'' (as defined in the EAR) anywhere in the world in exports of foreign-origin items, or in providing services or support, that may contribute to such proliferation.

§ 730.6 Control purposes.

The export control provisions of the EAR are intended to serve the national security, foreign policy, nonproliferation, and short supply interests of the United States and, in some cases, to carry out its international obligations. Some controls are designed to restrict access to dual-use items by countries or persons that might apply such items to uses inimical to U.S. interests. These include controls designed to stem the proliferation of weapons of mass destruction and controls designed to limit the military and terrorism-support capability of certain countries designated by reason of their support of terrorist activity. The effectiveness of many of the controls under the EAR is enhanced by their being maintained as part of a multilateral system of controls. Multilateral export control cooperation is sought through arrangements such as the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime. The EAR also includes some export controls to protect the United States from the adverse impact of the unrestricted export of commodities in short supply.

§ 730.7 License requirements and exceptions.

A relatively small percentage of exports and reexports subject to the EAR require an application to BXA for a License. Most such activity is permitted by one or more of the License Exceptions described in the EAR, in which case no application need be made to BXA. In such a case, reference to the pertinent License Exception is to be entered on the Shipper's Export Declaration, a document that is to be submitted to the Customs office at the port of export.

§ 730.8 How to proceed and where to get help.

(a) *Self-help.* In order to determine what the rules are and what you need to do, review the titles and the introductory sections of the parts of the EAR. By referring next to part 736, Steps for Determining Licensing Requirements, you will find guidance to enable you to tell whether or not your transaction is subject to the EAR and, if it is, whether it qualifies for a License Exception or must be authorized through issuance of a license.

(b) *Why the EAR are so detailed.* Some people will find the great length of the EAR and their extensive use of technical terms intimidating. BXA believes, however, that such detail and precision can and does serve the interests of the public. The detailed listing of technical parameters in the Commerce Control List (contained in Supplement No. 1 to part 774 of this subchapter) establishes precise, objective, criteria. This, should, in most cases, enable the exporter to ascertain control status. Broader, more subjective criteria would leave exporters more dependent upon interpretations and rulings by BXA officials. Moreover, much of the detail in the Commerce Control List is derived from multilaterally adopted lists, and the specificity serves to enhance the uniformity and effectiveness of international control practices and to promote the ''level playing field.'' The detailed presentation of such elements as licensing and export clearance procedures enables exporters to find in one place what they need to know to comply with pertinent requirements. Of special importance is the detailed listing of License Exception criteria, as these enable an exporter to determine quickly, and with confidence, that a transaction can go forward without delay. Finally, some of the detail results from the need to draft the EAR with care in order to avoid loop-holes and to permit effective enforcement.

(c) *Where to get help.* Throughout the EAR you will find information on offices you can contact for various purposes and types of information. General information, information on how to obtain forms and publications, and information on training programs offered by BXA, is available from the Office of Exporter Services through both its:

Exporter Counselling Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room H1099D, Washington, D.C., 20230, Telephone number: (202) 482–4811, FAX number: (202) 482–3617.

and

Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198, Telephone number (714) 660–0144, FAX number (714) 660–9347.

§ 730.9 Boycott.

Part 760, Restrictive Trade Practices or Boycotts, implements the antiboycott provisions of the EAA. There are also boycott-related rules in section 999 of the Internal Revenue Code which deny tax benefits for certain types of boycott-related agreements. The EAR prohibits certain discriminatory or boycott-supporting conduct, including the furnishing of information in a boycott context. The Internal Revenue Code penalizes many of the same activities by denying the benefit of certain tax code provisions otherwise available for foreign operations. The EAA and Internal Revenue Code provisions are not completely parallel. Both laws also require reporting of boycott-related requests. The Internal Revenue Code, additionally, requires reports of operations in, with, or related to a boycotting country or its nationals.

§ 730.10 Caution.

The General Information in this Part is just that—general. To achieve brevity, so as to give you a quick overview, the information in this Part is selective, incomplete and not expressed with regulatory precision. The controlling language is the language of succeeding parts of the EAR and of any other laws or regulations referred to or applicable. The content of this Part is not to be construed as modifying or interpreting any other language. You should not take any action based solely on what you read in this Part.

PART 732—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C 466(c); E.O. 12924.

§ 732.1 Introduction.

(a) This part sets forth the scope of the Export Administration Regulations (EAR) (15 CFR, subchapter C, chapter 7). Specifically, this part covers the following subjects:

(1) It explains the usage in the EAR of the terms ''subject to the EAR,'' ''item,'' ''you,'' and ''export and reexport of technology and software.'' (§ 732.2 of this part)

(2) It describes the kinds of items of U.S. origin that are subject to the EAR (§§ 732.3, 732.7, 732.8, 732.9, 732.10, and 732.11 of this part). It also describes when foreign-made products are subject to the EAR and sets forth specific guidance for determining whether certain technology and software are subject to the EAR. (§ 732.4 of this part)

(3) It describes the activities of U.S. persons and foreign persons that are subject to the EAR. (§ 732.5 of this part)

(4) It notes that assistance to the public is available from BXA for determining whether an item or activity is within BXA's jurisdiction. (§ 732.6 of this part)

(5) It sets forth the special policies under the EAR that apply to exports involving Canada. (§§ 732.6 and 732.12 of this part) (§ 748.3 of this subchapter)

(6) It describes how the EAR deal with exports from U.S. foreign trade zones. (§ 732.13 of this part)

(7) It makes clear that items moving in transit through the United States are subject to the EAR. (§ 732.14 of this part)

(8) It describes how the EAR deal with shipments to the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and U.S. territories, dependencies, and possessions. (§ 732.15 of this part)

(9) It makes clear that compliance with the EAR does not relieve any responsibilities under foreign laws or regulations. (§ 732.16 of this part)

(b) This part does not address any of the provisions set forth in Part 760 of this subchapter, Restrictive Trade Practices or Boycotts.

(c) This part does not define the scope of legal authority to regulate exports, including reexports, or activities found in the Export Administration Act and other statutes. What this part does do is set forth the extent to which such legal authority has been exercised through the EAR.

§ 732.2 Important EAR terms and principles.

(a) *Subject to the EAR—Definition.* (1) ''Subject to the EAR'' is a term used in the EAR to describe those items and activities over which BXA exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are *not* subject to the EAR are outside the regulatory jurisdiction of the EAR and are not affected by the regulations in this subchapter. The items and activities subject to the EAR are described in § 732.2 through § 732.5 of this part. You should review the Commerce Control List and any applicable parts of the EAR to determine whether an item or activity is subject to the EAR. However, if you need help in determining whether an item or activity is subject to the EAR, see § 732.6 of this part. Publicly available technology and software not subject to the EAR are described in § 732.7 through § 732.11 and Supplement No. 1 to this part.

(2) Items and activities subject to the EAR may also be controlled under export-related programs administered by other agencies. Items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BXA and other agencies which maintain controls for national security and foreign policy reasons (see Supplement No. 2 to Part 732) try to minimize overlapping jurisdiction, you should be aware that in some instances you may have to comply with more than one regulatory program.

(3) The term ''subject to the EAR'' should not be confused with licensing or other requirements imposed in other parts of the EAR. Just because an item or activity is subject to the EAR does not mean that a license or other requirement automatically applies. A license or other requirement applies only in those cases where other parts of the EAR impose a licensing or other requirement on such items or activities.

(b) *Use of the term ''item''.* The term ''item'' is used in the EAR to mean ''commodities, technology, and software.'' The two terms are used interchangeably. When the EAR intend to refer specifically to commodities, technology, or software, the text will use the specific reference.

(c) *Use of the term ''you''.* Unless otherwise indicated, the prohibitions and duties under the regulations in this subchapter apply to all persons and firms and the term ''you'' means any person, including a natural person or a firm. Moreover, firms are responsible for the acts of their employees and agents that violate the prohibitions and duties imposed by the EAR; and persons acting as employees or agents are also individually liable for such violations.

(d) *Export and reexport of technology and software.* (1) ''Export'' of technology or software means:

(i) An actual shipment or transmission of technology or software out of the United States;

(ii) Any release of technology or source code to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Note that the release of any item to any party with knowledge or reason to know a violation is about to occur is prohibited by § 734.2(b)(8) of this subchapter; or

(iii) Any release of technology or software of U.S.-origin in a foreign country.

(2) ''Release'' of technology or software. Technology or software is released for export through:

(i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;

(ii) Oral exchanges of information in the United States or abroad; or

(iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

(3) ''Reexport'' of technology or software means an actual shipment or transmission from one foreign country to another. In addition, any release of technology or source code to a foreign national of another country is a deemed reexport to the home country or countries of the foreign national. However, this deemed reexport definition does not apply to persons lawfully admitted for permanent residence. The term ''release'' is defined in paragraph (d)(2) of this section. Note that the release of any item to any party with knowledge or reason to know a violation is about to occur is prohibited by § 734.2(b)(8) of this subchapter.

§ 732.3 Items subject to the EAR.

All *U.S. origin* items and certain foreign-made products as described in § 732.4 of this Part, are subject to the EAR, *except* the following:

(a) Items that are exclusively controlled for export or reexport by another department or agency of the U.S. Government which regulates exports or reexports for national security or foreign policy purposes (see Supplement No. 2 to part 742). For assistance in determining whether an item is subject to the EAR, see § 732.6 of this part. See part 730 of this subchapter for a listing of other departments and agencies that administer export and reexport controls.

(b) Technology and software that:

(1) Are already publicly available or will be made publicly available as described in § 732.7 of this part;

(2) Arise during or result from fundamental research, as described in § 732.8 of this part;

(3) Are educational, as described in § 732.9 of this part;

(4) Are included in certain patent applications, as described in § 732.10 of this part; or

(5) Are classified by being assigned a security classification (e.g., ''top secret,'' ''secret,'' or ''confidential'') by an officer or agency of the U.S. government.[1]

§ 732.4 Foreign-made products subject to the EAR.

(a) *Items subject to the EAR.* The following are included among the items that are subject to the EAR:

(1) U.S.-origin parts, components, materials, or other commodities incorporated abroad into foreign-made products, in quantities exceeding *de minimis* levels as set forth in paragraph (b) of this section;

(2) Certain foreign-made direct products of U.S. origin technology or software, as set forth in § 734.2(b)(3) of this subchapter. The term ''direct product'' means the immediate product (including processes and services) produced directly by the use of technology or software; and

(3) Certain commodities produced by any plant or major component of a plant that is a direct product of U.S. origin technology or software, as set forth in § 734.2(b)(3) of this subchapter.

(b) *De minimis U.S. content.* (1) There is no *de minimis* level for the export from a foreign country of a foreign-made supercomputer containing U.S. origin parts, components, or materials that are controlled to the new destination.

(2) Except for supercomputers, for embargoed countries at part 746 of this subchapter and for countries named as terrorist-supporting countries at part 744 of this subchapter the following are *not* subject to the EAR:

(i) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at 10% or less of the total value of the foreign-made commodity;

(ii) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 10% or less of the total value of the foreign-made software; or

(iii) Reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology.

(3) Except for supercomputers, for all other countries, the following are *not* subject to the EAR:

(i) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at 25% or less of the total value of the foreign-made commodity;

(ii) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 25% or less of the total value of the foreign-made software; or

(iii) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 25% or less of the total value of the foreign technology.

(4) For purposes of determining *de minimis* levels, technology and source code used to design or produce foreign-made commodities or software are not considered to be incorporated into such foreign-made commodities or software. Commodities subject only to short supply controls are not included in calculating U.S. content.

(5) You are responsible for making the necessary calculations to determine whether the *de minimis* provisions apply to your situation. See Supplement No. 3 to part 742 for guidance regarding calculation of U.S. controlled content.

§ 732.5 Activities of U.S. and foreign persons subject to the EAR.

The following kinds of activities are subject to the EAR:

(a) Certain activities of U.S. persons related to the proliferation of chemical or biological weapons or of missile technology as set forth in § 744.6 of this subchapter.

(b) Activities of U.S. or foreign persons prohibited by any order issued under the EAR, including a Denial Order issued pursuant to part 766 of this subchapter.

§ 732.6 Assistance available from BXA for determining licensing and other requirements.

(a) If you are not sure whether a commodity, technology, or software, or activity is subject to the EAR, or is subject to licensing or other requirements under the EAR, you may ask BXA for an advisory opinion, classification, or a determination whether a particular item or activity is subject to the EAR. In many instances, including those where the item is specially designed, developed, configured, adapted, or modified for military application, the item may fall under the licensing jurisdiction of the Department of State and may be subject to the controls of the International Traffic in Arms Regulations (22 CFR parts 120 to 130) (ITAR). In order to determine if the Department of State has licensing jurisdiction over an item, you should submit a request for a commodity jurisdiction determination to the Department of State, Office of Defense Trade Controls. Exporters should note that in a very limited number of cases, the categories of items may be subject to both the ITAR and the EAR. The relevant departments are working to eliminate any *unnecessary* overlaps that may exist.

(b) As the agency responsible for administering the EAR, BXA is the only agency that has the responsibility for determining whether an item or activity is subject to the EAR and, if so, what licensing or other requirements apply under the EAR. Such a determination only affects EAR requirements, and does not affect the applicability of any other regulatory programs.

(c) If you need help in determining BXA licensing or other requirements you may ask BXA for help by following the procedures set forth in § 748.3 of this subchapter.

§ 732.7 Publicly available.

(a) Information is made public and so becomes ''publicly available'' when it becomes generally accessible to the interested public in any form, including:

(1) Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution (See Supplement No. 1 to part 732, Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (See Supplement No. 1 to part 732, Question A(6));

[1] The export of classified technology and software is controlled by the Center for Defense Trade of the U.S. Department of State or the U.S. Department of Energy.

(3) Patents and open (published) patent applications available at any patent office; and

(4) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or gathering is ''open'' if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations.

(ii) All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding:

(A) A registration fee reasonably related to cost and reflecting an intention that all interested and technically qualified persons be able to attend, or a limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility (See Supplement No. 1 to Part 732, Questions B(1) through B(6)).

(B) Reserved.

(iii) ''Publicly available'' includes submission of papers to domestic or foreign editors or reviewers of journals, or to organizers of open conferences or other open gatherings, with the understanding that the papers will be made publicly available if favorably received. (See Supplement No. 1 to Part 732, Questions A(1) and A(3)).

(b) Reserved.

§ 732.8 Information resulting from fundamental research.

(a) *Fundamental research.* Paragraphs (b) through (d) of this section and § 732.11 of this part provide specific rules that will be used to determine whether research in particular institutional contexts qualifies as ''fundamental research''. The intent behind those provisions is to identify as ''fundamental research'' basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in § 732.10 of this part. (See Supplement No. 1 to part 732, Question D(8)).

(b) *University based research.* (1) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described in this paragraph (b). (''University'' means any accredited institution of higher education located in the United States.)

(2) Prepublication review by a sponsor of university research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of the research as fundamental research. However, release of information from a corporate sponsor to university researches where the research results are subject to prepublication review, is subject to the EAR. (See Supplement No. 1 to part 732, Questions D(7), D(9), and D(10)).

(3) Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the status of fundamental research, so long as the review causes no more than a temporary delay in publication of the research results.

(4) However, the initial transfer of information from an industry sponsor to university researchers is subject to the EAR where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided. (See Supplement No. 1 to this part, Question D(2)).

(5) University based research is not considered ''fundamental research'' if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed. (See Supplement No. 1 to part 732, Questions D(7) and D(9)).

(6) The provisions of § 732.11 of this part will apply if a university or its researchers accept specific national security controls (as defined in § 732.11 of this part) on a research project or activity sponsored by the U.S. Government. (See Supplement No. 1 to part 732, Questions E(1) and E(2)).

(c) *Research based at Federal agencies or FFRDCs.* Research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC) may be designated as ''fundamental research'' within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers. (See Supplement No. 1 to part 732, Questions D(8) and D(11)).

(d) *Corporate research.* (1) Research conducted by scientists or engineers working for a business entity will be considered ''fundamental research'' at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls as defined in § 732.11 of this part.

(2) Prepublication review by the company solely to ensure that the publication would compromise no proprietary information provided by the company to the researchers is not considered to be a proprietary restriction under paragraph (d)(1) of this section. However, paragraph (d)(1) of this section does not authorize the release of information to university researchers where the research results are subject to prepublication review. (See Supplement No. 1 to part 732, Questions D(8), D(9), and D(10)).

(3) Prepublication review by the company solely to ensure that prepublication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of the research results.

(4) However, the initial transfer of information from a business entity to researchers is not authorized under the ''fundamental research'' provision where the parties have agreed that the business entity may withhold from publication some or all of the information so provided.

(e) *Research based elsewhere.* Research conducted by scientists or engineers who are not working for any of the institutions described in paragraphs (b) through (d) of this section will be treated as corporate research, as described in paragraph (d) of this section. (See Supplement No. 1 to part 732, Question D(8)).

§ 732.9 Educational information.

''Educational information'' referred to in § 732.3(b)(3) of this part is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is discussed in § 732.8(b) of this part. (See Supplement No. 1 to part 732, Questions C(1) through C(6)).

§ 732.10 Patent applications.

The information referred to in § 732.3(b)(4) of this part is:

(a) Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;

(b) Information contained in a patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5;[2] or

(3) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

§ 732.11 Government-sponsored research covered by contract controls.

(a) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, § 732.3(b)(2) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.

(b) Examples of ''specific national security controls'' include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a ''specific national security control''. (See Supplement No. 1 to part 732, Questions E(1) and E(2).)

§ 732.12 Exports involving Canada.

(a) Exports of items to Canada are subject to the EAR.

(b) Recognizing the special relationship between the United States and Canada, the general policy under the EAR is to permit most shipments of items to Canada for consumption or use in that country without a license.

(c) When the items leaving the United States will transit Canada or are intended for reexport from Canada to another foreign destination and such shipment would require a license if made directly from the United States to that destination, a license is required under the EAR. The licensing policy will be based on the policy applicable to a direct shipment from the United States to such other destination. Please see § 758.1(d) of this subchapter for special documentation provisions that apply to exports from the United States that transit Canada.

§ 732.13 Exports from U.S. foreign trade zones.

(a) Items exported from U.S. foreign trade zones are subject to the EAR.

(b) EAR licensing requirements apply to items originating in the United States and located in a foreign trade zone, as well as foreign origin items that, as a result of processing, manufacturing, or assembly while in a U.S. foreign trade zone, have been so altered that they have either been substantially enhanced in value or have lost their original identity with respect to form.

(c) Shipments of items of foreign origin that have not been altered as described in paragraph (b) of this section, for which no customs entry has been made and that enter a U.S. foreign trade zone may be exported from the foreign trade zone without a license, *except* the following:

(1) Exports to Country Group D:1 and E:2 (see supplement No. 1 to part 740 of this subchapter), if a shipment of similar items of U.S. origin could not be made from the customs territory of the United States to such a destination without a license. Items of Canadian origin require a license only if the shipment of the items would require a license to virtually all destinations, including Country Group B, if exported directly from the United States.

(2) Items shipped to the United States under International Import Certificates, Form BXA 645P/ATF–4522/DSP–53, in accordance with the procedure described in Supplement No. 4 to part 748 of this subchapter.

(3) The export and reexport of any commodity listed in Part 754, Short Supply, as requiring a license if the commodity were exported from the custom territory of the United States.

(d) Commodities of U.S. or foreign origin disposed of by the U.S. Government under a foreign excess property disposal program that enter a U.S. foreign trade zone without a customs entry require a license if the same shipment would require a license if the export were made directly from the customs territory of the United States.

§ 732.14 Intransit shipments through the United States.

(a) Items moving intransit through the United States are subject to the EAR.

(b) Items shipped on board a conveyance and passing through the United States in transit from one foreign country to another do not require a license under the EAR provided that:

(1) While passing its transit through the United States, such items have not been unladen from the conveyance on which they entered; and

(2) They are not originally manifested to the United States.

(c) If you determine that an item moving intransit through the United States requires a license under the EAR, see § 740.8 of this subchapter, Exception 6, Exports of Items Temporarily in the United States (TUS), for a description of specific exceptions to licensing requirements for intransit shipments.

§ 732.15 Shipments to territories, possessions, dependencies, or departments.

(a) *Shipments to Puerto Rico, the Mariana Islands and U.S. territories, dependencies, and possessions.* The EAR do not require a license or other authorization for shipments from the United States to the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedules C & E, Classification of Country and Territory Designations for U.S. Export Statistics, issued by the Bureau of the Census.

(b) *Shipments to the territories, possessions, or departments of other destinations.* There are a number of destinations that are not listed in the Commerce Country Chart contained in Supplement No. 1 to Part 738 of this subchapter, or in the Country Groups contained in Supplement No. 1 to part 740 of this subchapter. If your destination is not listed on the Commerce Country Chart or in the Country Groups and such destination is a territory, possession, or department of another country, the EAR accords your proposed destination the same licensing treatment as the country to which it is a territory, possession, or department. For example, if your destination is the Cayman Islands, a dependent territory of the United Kingdom, consult the United Kingdom on the Commerce Country Chart and in the Country Groups.

[2] Regulations issued by the Patent and Trademark Office in 37 CFR Part 5 provide for the export to a foreign country of unclassified technical data in the form of a patent application or an amendment, modification, or supplement thereto or division thereof.

§ 732.16 Effect on foreign laws and regulations.

Any person who complies with any of the license or other requirements of the EAR is not relieved of the responsibility of complying with applicable foreign laws and regulations. Conversely, any person who complies with the license or other requirements of a foreign law or regulation is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR.

Supplement No. 1—Questions and Answers—Technology and Software Subject to the EAR

This Supplement No. 1 contains explanatory questions and answers relating to technology and software that is subject to the EAR. It is intended to give the public guidance in understanding how BXA interprets this part, but is only illustrative, not comprehensive. In addition, facts or circumstances that differ in any material way from those set forth in the questions or answers will be considered under the applicable provisions of the EAR.

This Supplement is divided into nine sections according to topic as follows:

Section A: Publication of technology [and software] and exports and reexports of technology that has been or will be published.

Section B: Release of technology at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

Section E: Federal contract controls.

Section F: Commercial consulting.

Section G: Software.

Section H: Availability in a public library.

Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR do not cover technology that is already publicly available, as well as technology that is made public by the transaction in question. (§§ 732.3 and 732.7 of this part) Your research results would be made public by the planned publication. You would not need a license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the result would be different if your employer or another sponsor of your research imposed restrictions on its publication. (§ 732.8 of this part)

Question (A)3: Would I need a license to send the paper to the editors of a foreign journal for review to determine whether it will be accepted for publication?

Answer: No. This export transaction is not subject to the EAR because you are submitting the paper to the editors with the intention that the paper will be published if favorably received. (§ 732.7(d)(3) of this part)

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy (DOE). The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No, the transaction is not subject to the EAR. But if you published in violation of any Department of Energy controls you have accepted in the grant, you may be subject to appropriate administrative, civil, or criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects on the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be $500; the typical sales price is about $15,000. Is the publication and sale of such handbooks or manuals subject to the EAR?

Answer: Yes. The price is above the cost of reproduction and distribution. (§ 732.7(a) of this part) Thus, you would need to obtain a license or qualify for a License Exception before you could export or reexport any of these handbooks or manuals.

Question A(6): My Ph.D. thesis is on technology, listed in the EAR as requiring a license to all destination except Canada, which has never been published for general distribution. However, the thesis is available at the institution from which I took the degree. Do I need a license to send another copy to a colleague overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g., by filing in open stacks with a reference in the catalog), it is not ''publicly available'' and the export or reexport would be subject to the EAR on that ground. The export or reexport would not be subject to the EAR if your Ph.D. research qualified as ''fundamental research'' under § 732.8 of this Part. If not, however, you will need to obtain a license or qualify for a License Exception before you can send a copy out of the country.

Question A(7): We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize sales to persons in those fields. Do we need a license to sell our products to foreign customers?

Answer: You would not need a license for otherwise controlled technology or software if the technology and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community. Even if priced at a higher level, the export or reexport of the technology or software source code in a library accessible to the public is not subject to the EAR. (§ 732.7(a) of this part)

Section B: Conferences

Question B(1): I have been invited to give a paper at a prestigious international scientific conference on a subject listed as requiring a license under the EAR to all countries, except Canada. Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a license to give my paper?

Answer: No. Release of information at an open conference and information that has been released at an open conference is not subject to the EAR. The conference you describe fits the definition of an open conference. (§ 732.7(d) of this part)

Question B(2): Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an ''open'' conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records is altogether prohibited, the conference would not be considered ''open''.

Question B(3): Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend. (§ 732.7(d)(2)(i) of this part).

Question B(4): Would it make any difference if the conference were to take place in another country?

Answer: No.

Question B(5): Must I have a license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. A license is not required under the EAR to submit papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received. The submission of the papers is not subject to the EAR. (§ 732.7(d)(3) of this part)

Question B(6): Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

Answer: No. You may export and reexport the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the EAR relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

Section C: Educational Instruction

Question C(1): I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a license to teach this course?

Answer: No. Release of information by instruction in catalog courses and associated

teaching laboratories of academic institutions is not subject to the EAR. (§ 732.9 of this part)

Question C(2): Would it make any difference if some of the students were from countries to which export licenses are required?

Answer: No.

Question C(3): Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question C(4): Even if that research is funded by the Government?

Answer: Even then, but you would not be released from any separate obligations you have accepted in your grant or contract.

Question C(5): Would it make any difference if I were teaching at a foreign university?

Answer: No.

Question C(6): We teach proprietary courses on design and manufacture of high-performance machine tools. Is the instruction in our classes subject to the EAR?

Answer: Yes. That instruction would not qualify as ''release of educational information'' under § 732.9 of this part because your proprietary business does not qualify as an ''academic institution'' within the meaning of § 732.9 of this part. Conceivably, however, the instruction might qualify as ''release at an open * * * seminar, * * * or other open gathering'' under § 732.7(d) of this part. The conditions for qualification of such a seminar or gathering as ''open'', including a fee ''reasonably related to costs (of the conference, not of producing the data) and reflecting an intention that all interested and technically qualified persons be able to attend,'' would have to be satisfied.

Section D: Research, Correspondence, and Informal Scientific Exchanges

Question D(1): Do I need a license in order for a foreign graduate student to work in my laboratory?

Answer: Not if the research on which the foreign student is working qualifies as ''fundamental research'' under § 732.8 of this part. In that case, the research is not subject to the EAR.

Question D(2): Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a PRC national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the PRC scientist. Do we need to obtain a license to protect against that possibility?

Answer: No. The EAR do not cover the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between the firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must obtain a license or qualify for a License Exception before transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary authorization prior to transferring the information to the research team.

Question D(3): My university will host a prominent scientist from the PRC who is an expert on research in engineered ceramics and composite materials. Do I require a license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of the research, your research would qualify as ''fundamental research'' (§ 732.8(b) of this part). Information arising during or resulting from such research is not subject to the EAR (§ 732.3(b)(2) of this part).

You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though permitted, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044.

Question D(4): Would it make any difference if I were proposing to talk with a PRC expert in China?

Answer: No, if the information in question arose during or resulted from the same ''fundamental research.''

Question D(5): Could I properly do some work with him in his research laboratory inside China?

Answer: Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export may be subject to the EAR. If any of the knowledge or experience you export in this way requires a license under the EAR, you must obtain such a license or qualify for a License Exception.

Question D(6): I would like to correspond and share research results with an Iranian expert in my field, which deals with technology that requires a license to all destinations except Canada. Do I need a license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as ''fundamental'' under the rules spelled out in § 732.8 of this part.

Question D(7): Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as ''fundamental'' would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as ''fundamental.'' But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as ''fundamental.'' As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as ''fundamental'' and so is not subject to the EAR.

Question D(8): In determining whether research is thus open and therefore counts as ''fundamental,'' does it matter where or in what sort of institution the research is performed?

Answer: In principle, no. ''Fundamental research'' is performed in industry, Federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, that identifies ''fundamental research'', not the institutional locus. (§ 732.8 of this part)

Question D(9): I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from Vietnam and discuss the results of the research with her when she visits the United States. Do I need a license to do so?

Answer: You probably do need a license (§ 732.8(d) of this part). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered ''fundamental research,'' in which case you may be able to share information because it is not subject to the EAR. Note that the information will be subject to the EAR if the prepublication review is intended to withhold the results of the research from publication.

Question D(10): Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

Answer: If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the information is not subject to the EAR. (§ 732.8(d) of this part)

Question D(11): I work as a researcher at a Government-owned, contractor-operated

research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the EAR?

Answer: That is up to the sponsoring agency and the center's management. If your research is designated ''fundamental research'' within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the research will not be subject to the EAR. Otherwise, you would need to obtain a license or qualify for a License Exception, except to publish or otherwise make the information public. (§ 732.8(c) of this part).

Section E: Federal Contract Controls

Question E(1): In a contract for performance of research entered into with the Department of Defense (DOD), we have agreed to certain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as ''fundamental research'' section under § 732.8 of this part. Is the information arising during or resulting from this sponsored research subject to the EAR?

Answer: Under § 732.11 of this part, any export or reexport of information resulting from government-sponsored research that is inconsistent with contract controls you have agreed to will not qualify as ''fundamental research'' and any such export or reexport would be subject to the EAR. Any such export or reexport that is consistent with the controls will continue to be eligible for export and reexport under the ''fundamental research'' rule set forth in § 732.8 of this part. Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the EAR. If you violate those controls and export or reexport information as ''fundamental research'' under § 732.8 of this part, you may subject yourself to the sanctions provided for under the EAR, including criminal sanctions, in addition to administrative and civil penalties for breach of contract under other law.

Question E(2): Do the Export Administration Regulations restrict my ability to publish the results of my research?

Answer: The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

Section F: Commercial Consulting

Question F(1): I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a ''third-world'' company that wishes to manufacture such devices. Do I need a license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations. If any part of the knowledge or experience your export or reexport deals with technology that requires a license under the EAR, you will need to obtain a license or qualify for a License Exception.

Section G: Software [1]

Question G(1): Is the export or reexport of software in machine readable code subject to the EAR when the source code for such software is publicly available?

Answer: If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and therefore not subject to the EAR.

Question G(2): Is the export or reexport of software sold at a price that does not exceed the cost of reproduction and distribution subject to the EAR?

Answer: Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

Question G(3): Is the export or reexport of software subject to the EAR if it is sold at a price BXA concludes in a classification letter to be sufficiently low so as not to subject it to the EAR?

Answer: In response to classification requests, BXA may choose to classify certain software as not subject to the EAR even though it is sold at a price above the costs of reproduction and distribution as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BXA.

Section H: Available in a Public Library

Question H(1): Is the export or reexport of information subject to the EAR if it is available in a library and sold through an electronic or print service?

Answer: Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library—itself accessible to the public—or has been published in any way, that information is ''publicly available'' for those reasons, and the information itself continues not to be subject to the EAR even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

Question H(2): Is the export or reexport of information subject to the EAR if the information is available in an electronic form in a library at no charge to the library patron?

Answer: Information available in an electronic form at no charge to the library patron in a library accessible to the public is information publicly available even though the library pays a substantial subscription fee for the electronic retrieval service.

Question H(3): Is the export or reexport of information subject to the EAR if the information is available in a library and sold for more than the cost of reproduction and distribution?

Answer: Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public is not subject to the EAR. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is ''publicly available'' even though the author makes a profit on your particular purchase for the inherent value of the information.

Section I: Miscellaneous

Question I(1): The manufacturing plant that I work at is planning to begin admitting groups of the general public to tour the plant facilities. We are concerned that a license might be required if the tour groups include foreign nationals. Would such a tour constitute an export? If so, is the export subject to the EAR?

Answer: The EAR define exports and reexports of technology to include release through visual inspection by foreign nationals of U.S.-origin equipment and facilities. Such an export or reexport qualifies under the ''publicly available'' provision and would not be subject to the EAR so long as the tour is truly open to all members of the public, including your competitors, and you do not charge a fee that is not reasonably related to the cost of conducting the tours. Otherwise, you will have to obtain a license, or qualify for a License Exception, prior to permitting foreign nationals to tour your facilities. (§ 732.7 of this part).

Question I(2): Is the export or reexport of information subject to the EAR if the information is not in a library or published, but sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Information that is not in a library accessible to the public and that has not been published in any way, may nonetheless become ''publicly available'' if you make it both available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition costs of the technology or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

Question I(3): Is the export or reexport of information contributed to an electronic bulletin board subject to the EAR?

[1] Exporters should note that these provisions do not apply to software controlled under the International Traffic in Arms Regulations (e.g., certain encryption software).

Answer: (1) Assume each of the following:

(i) Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;

(ii) That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and

(iii) The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.

(2) Such information is ''publicly available'' and therefore not subject to the EAR even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

Question I(4): Is the export or reexport of patented information fully disclosed on the public record subject to the EAR?

Answer: Information to the extent it is disclosed on the patent record open to the public is not subject to the EAR even though you may use such information only after paying a fee in excess of the costs of reproduction and distribution. In this case the seller does receive a fee for the inherent value of the technical data; however, the export or reexport of the information is nonetheless not subject to the EAR because any person can obtain the technology from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.

Supplement No. 2 to Part 732—Other Departments and Agencies With Foreign Policy and National Security Based Controls

(a) *Department of State.* Regulations administered by the Office of Defense Trade Controls within the Center for Defense Trade, U.S. Department of State, govern the export and reexport of defense articles and defense services on the U.S. Munitions List included in the International Traffic in Arms Regulations (ITAR) (22 CFR part 121). These regulations are issued under the authority of section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Treasury Department, Office of Foreign Assets Control (OFAC).* Regulations administered by OFAC implement broad controls and embargoes transactions with certain foreign countries, which include controls on exports and reexports, as appropriate to such countries (31 CFR part 500). These regulations are issued under a grandfather provision in the Trading With the Enemy Act for Cuba and North Korea (50 U.S.C. App. Section 1 *et seq.*), and under the International Emergency Economic Powers Act for other countries (50 U.S.C. Section 1701, *et seq.*)

(c) *U.S. Nuclear Regulatory Commission (NRC).* Regulations administered by NRC control the export and reexport of commodities related to nuclear reactor vessels (10 CFR Part 110). These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. Part 2011 *et seq.*).

(d) *Department of Energy (DOE).* Regulations administered by DOE control the export and reexport of technology related to the production of special nuclear materials (10 CFR Part 810). These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. Part 2011 *et seq.*).

(e) *Patent and Trademark Office (PTO).* Regulations administered by PTO provide for the export to a foreign country of unclassified technology in the form of a patent application or an amendment, modification, or supplement thereto or division thereof (37 CFR Part 5). BXA has delegated authority under the Export Administration Act to the PTO to approve exports and reexports of such technology which is subject to the EAR. Exports and reexports of such technology not approved under PTO regulations must comply with the EAR.

Supplement No. 3 to Part 732—Calculation of Values for De Minimis Rules

Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(a) U.S. content value.

(1) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect ''fair market'' prices that would normally be charged to similar, unaffiliated customers.)

(2) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination without a license or License Exception GBS.

(b) The foreign-made product value is the normal selling price f.o.b. factory (excluding value added taxes or excise taxes).

PART 734—GENERAL PROHIBITIONS

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C 466(c); E.O. 12924.

§ 734.1 Introduction.

A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in part 734 and the License Exceptions set forth in part 740 must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of this subchapter regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of this subchapter regarding export clearance requirements.

(a) In this part 734 we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon five types of information and facts or information described in § 734.2(a) of this part and upon the general prohibitions described in § 734.2(b) of this part. Note that the ten general prohibitions contain cross-references to other parts of this subchapter that further define the breadth of the general prohibitions, and, for that reason, part 734 is not freestanding. In part 736, we provide certain steps you must follow in proper order to understand the general prohibitions and their relationship to other parts of this subchapter.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of this subchapter regarding enforcement, you will be subject to any of the sanctions described in that part.

§ 734.2 General prohibitions and determination of applicability.

(a) *Information or facts that determine the applicability of the general prohibitions.* The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) *Destination.* The country of ultimate destination for an export or reexport (see parts 738 and 774 of this subchapter concerning the country chart and the Commerce Control List);

(2) *End-user.* The ultimate end-user (see General Prohibition Four (paragraph (b)(4) of this section) and parts 744 and 764 of this subchapter for a reference to the list of persons you may not deal with);

(3) *End-use.* The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of this subchapter for general end-use restrictions);

(4) *Classification of the item.* The classification of the item on the Commerce Control List (see part 774 of this subchapter); and

(5) *Conduct.* Conduct such as contracting, financing, and freight forwarding in support of a proliferation

project as described in part 744 of this subchapter.

(b) *General prohibitions.* The following ten general prohibitions proscribe certain exports, reexports, and other conduct, subject to the scope of the EAR, you may not engage in unless you either have a license from the Bureau of Export Administration (BXA) or qualify under part 740 of this subchapter for a License Exception from each applicable general prohibition below. The License Exceptions at part 740 of this subchapter apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of this subchapter concerning embargo destinations and other special destinations.

(1) *General Prohibition One—Export and reexport controlled items to listed countries (Exports and Reexports in the Form Received).* You may not, without a license or License Exception, export or reexport any item subject to the EAR to another country if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN).

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of this subchapter. (The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart.) [1]

(iii) Each License Exception described at part 740 of this subchapter supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(2) *General Prohibition Two—Reexport and export from abroad foreign-made items incorporating more than a de minimis amount of controlled U.S. content (Parts and Components Reexports).* (i) You may not, without a license or License Exception, export, reexport or export from abroad any foreign-made commodity, software, or technology incorporating U.S.-origin commodities, software, or technology respectively that is controlled to the country of ultimate destination if the foreign-made item meets all three of the following conditions:

(A) It incorporates more than the de minimis amount of controlled U.S. content, as defined in § 732.4 of this subchapter concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the country chart.)

(ii) Each License Exception described at part 740 of this subchapter supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) *General Prohibition Three—Reexport and export from abroad the foreign-produced direct product of U.S. technology and software (Foreign Produced Direct Product Reexports).*

(i) *Country scope of prohibition.* You may not export, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, North Korea, Libya, or a destination in Country Group D:1 (See Supplement No. 1 to part 740 of this subchapter).

(ii) *Product scope of foreign-made items subject to prohibition.* (A) Foreign-made items are subject to this General Prohibition 3 if they meet both of the following conditions:

(*1*) They are the direct product of technology or software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR at § 740.19 of this subchapter, and

(*2*) They are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of this subchapter.

(B) Foreign-made items are also subject to this General Prohibition 3 if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(*1*) Such plant or component is the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR at § 740.19 of this subchapter, and

(*2*) Such foreign-made direct products of the plant or component are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of this subchapter.

(iii) *License exceptions.* Each License Exception described at part 740 of this subchapter supersedes this General Prohibition Three if all terms and conditions of a given exception are met by the exporter or reexporter.

(4) *General Prohibition Four—Engage in actions prohibited by a denial order.* (i) You may not take any action that is prohibited by a denial order issued under part 766 of this subchapter, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country either in the United States or abroad by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. The names of persons denied export privileges are published in the **Federal Register** and are also included on the Denied Persons List, which is referenced in Supplement No. 2 to part 764 of this subchapter, Enforcement. The terms of the standard denial order are set forth in Supplement No. 1 to part 764. You should note that some denial orders differ from the standard denial order. BXA may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(3) of this subchapter.

(ii) There are no License Exceptions described in part 740 of this subchapter that authorize conduct prohibited by this General Prohibition Four.

(5) *General Prohibition Five—Export or reexport to prohibited end-users or end-uses (End Use).* You may not, without a license, export or reexport any item subject to the EAR to an end-user of end-use that is prohibited by part 744 of this subchapter.

(6) *General Prohibition Six—Export or reexport to embargoed destinations (Embargo).* (i) You may not, without a license or License Exception authorized under part 746, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls as both are described at part 756 of this subchapter.

(ii) License Exceptions to this General Prohibition Six are described at part 746 of this subchapter on Embargo Destinations and Special Destinations

[1] The following export and reexport prohibitions are not described on the Country Chart. The scope of this prohibition for super computers and certain listening devices, and the country scope for such controls is defined in the relevant ECCN. The prohibition on exports and reexports and the related country scope for short supply controls are in part 574 and relevant ECCNs. The prohibition on exports concerning certain UN sanctions and other embargoes and the related country scope of those controls are contained in part 746 and General Prohibition Six (paragraph (b)(6) of this section).

and unless a License Exception is authorized in part 746 of this subchapter the License Exceptions at part 740 of this subchapter are not available to overcome this general prohibition.

(7) *General Prohibition Seven—Support Proliferation Activities (U.S. Person Proliferation Activity).* If you are a U.S. Person as that term is defined at § 744.6 of this subchapter, you may not perform any financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further at part 744 of this subchapter. There are no License Exceptions to this General Prohibition Seven in part 740 of this subchapter unless specifically authorized in that part.

(8) *General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit).* (i) *Unlading and shipping in transit.* If an item to be exported or reexported would require a license to one of the countries listed in paragraph (b)(8)(ii) of this section, you may not ship that item on an aircraft or vessel that will be unladen in or that will move in transit through any of those countries en route to some other destination unless a license specifically authorizes such transshipment or unlading.

(ii) *Country scope.* This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekeistan, Vietnam.

(9) *General Prohibition Nine—Violate any order, terms, and conditions (Orders, Terms, and Conditions).* You may not violate the orders, terms, or conditions of a license or of a License Exception issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of this subchapter.

(10) *General Prohibition Ten—Proceed with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).* You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur. Nor may you rely upon any license or exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of this subchapter.

PART 736—STEPS FOR DETERMINING LICENSE REQUIREMENTS

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C 466(c); E.O. 12924.

§ 736.1 STEP ONE: Publicly available technology and software.

Determine if your technology or software is publicly available as defined and explained at part 732 of this subchapter concerning the scope of the EAR.

(a) If your technology or software is outside the scope of the EAR, then you may proceed with the export.

(b) If your technology or software does not qualify as publicly available and is therefore within the scope of the EAR, you must consider all of the general prohibitions as described in part 734 of this subchapter.

(c) Supplement No. 1 to part 732 of this subchapter contains several practical examples describing the scope of publicly available technology and software that is outside the scope of the EAR. The examples are illustrative, not comprehensive.

§ 736.2 STEP TWO: Country of ultimate destination and embargoed countries.

Determine the country of ultimate destination. If your destination for any item is an embargoed country or other country listed in part 746 of this subchapter, you may not make the export or reexport without a license unless you are exporting only publicly available technology or software or unless you qualify for a License Exception described in part 746 of this subchapter concerning embargoed destinations. You may not use a License Exception described at part 740 of this subchapter to overcome General Prohibition 6 (§ 734.2(b)(6) of this subchapter) unless it is specifically authorized in part 746 of this subchapter.

§ 736.3 STEP THREE: Persons denied export privileges.

(a) Determine whether your transferee, ultimate end-user, any intermediate consignee, and any other party to a transaction is a person denied export privileges. (See part 764 of this subchapter). While it is not a violation of General Prohibition Four (§ 734.2(b)(4) of this subchapter) to fail to check the Denied Persons List prior to a transfer, it is nonetheless a *per se* violation of the regulations in this subchapter to deal with a denied person in any activity that is prohibited by the terms or conditions of a denial order.

(b) There are no License Exceptions to General Prohibition Four (end-user) (§ 734.2(b)(4) of this subchapter) concerning certain end-users described in part 744 of this subchapter. The prohibitions concerning persons denied export privileges may be overcome only by a specific authorization from BXA, something that is rarely granted.

§ 736.4 STEP FOUR: Prohibited end-uses and end-users.

(a) Review the end-uses and end-users prohibited under General Prohibitions Four (end-user) and Five (end-use) (§ 734.2(b)(4) and (b)(5) of this subchapter) as described at part 744 of this subchapter.

(b) There are no License Exceptions to General Prohibitions Four (end-user) and Five (end-use) (§ 734.2(b)(4) and (b)(5) of this subchapter) described in part 740 of this subchapter.

§ 736.5 STEP FIVE: Classification.

(a) You must classify your items, and you may do so on your own without the assistance of BXA. You are responsible for doing so correctly, and your failure to correctly classify your items does not

relieve you of the duty to obtain a license.

(b) You have a right to request the applicable classification of your item from BXA, and BXA has a duty to provide that classification to you. For further information on how to obtain classification assistance from BXA, see part 748 of this subchapter for procedures and contact persons.

§ 736.6 STEP SIX: Reason for control and the country chart.

(a) *Reason for control within the Export Control Classification Number (ECCN).* The applicable ECCN will indicate the reason or reasons for control for items within that ECCN. For example, ECCN 6A07 is controlled for both national security and missile technology reasons.

(b) *Reason for control within the country chart.* Once you determine the reason for control from the proper ECCN, look up your country of destination on the country chart.

(1) A check mark in the box or boxes for the relevant country and reason(s) for control indicates that a license is required for General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports). (See § 734.2(b)(1), (b)(2), and (b)(3) of this subchapter).

(2) If one or more boxes have a check, a license is required unless you qualify for a License Exception under part 740 of this subchapter. If a box does not have a mark for your destination in one relevant reason for control, a license is not required under the CCL and the country chart unless another box is marked as requiring a license for another reason for control identified in the appropriate ECCN.

(3) Additional controls may apply to your export. You must go on to steps Seven and Eight described in §§ 736.7 and 736.8 of this Part to identify whether additional limits described in § 734.2, paragraphs (b)(2) (foreign made items incorporating U.S.-origin parts and components) and (b)(3) (the foreign produced direct product of U.S. technology and software) of this subchapter apply.

§ 736.7 STEP SEVEN: Foreign-made items incorporating U.S.-origin items and the de minimis rule.

If your foreign-made item is described in an entry on the CCL and the country chart requires a license to your export or reexport destination, you must determine whether the controlled U.S.-origin commodities, software, or technology incorporated into the foreign-made item exceeds the de minimis level applicable to the ultimate destination of the foreign-made item, as follows:

(a) A 10% de-minimis level to embargoed and terrorist-supporting countries; or

(b) A 25% de-minimis level to all other countries.

(c) For guidance on how to calculate the U.S. controlled content, refer to part 732 of this subchapter.

§ 736.8 STEP EIGHT: Foreign produced direct product.

(a) If your foreign produced item is described in an entry on the CCL and the country chart requires a license to your export or reexport destination for national security reasons, you must determine whether your item is subject to General Prohibition Three (Foreign Produced Direct Product Reexports) (§ 734.2(b)(3) of this subchapter). Your item is subject to this general prohibition if your transaction meets each of the following conditions:

(1) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba, North Korea, Libya, or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter) (reexports of foreign produced direct products exported to other destinations are not subject to General Prohibition Three);

(2) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign produced direct product, and such technology or software that was subject to the EAR and required a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR at § 740.19 of this subchapter (reexports of foreign produced direct products created with other technology and software are not subject to General Prohibition Three); and

(3) *Scope of direct products subject to the prohibition.* The foreign produced direct products are subject to national security controls as designated on the proper ECCN of the Commerce Control List at part 774 of this subchapter (reexports of foreign produced direct products not subject to national security controls are not subject to General Prohibition Three).

(b) *License Exceptions.* Each License Exception described at part 740 of this subchapter overcomes this General Prohibition Three (foreign produced direct product) if all terms and conditions of a given exception are met by the exporter or reexporter.

§ 736.9 STEP NINE: Review the ''Know Your Customer'' Guidance.

License requirements under the regulations in this subchapter are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 3 to part 744 of this subchapter is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end uses, and end users.

§ 736.10 STEP TEN: Proliferation conduct of U.S. persons unrelated to exports and reexports.

(a) First, review the scope of activity prohibited by General Prohibition Seven (U.S. Person Proliferation Activity) (§ 734.2(b)(7) of this subchapter) as that activity is described in § 744.6 of this subchapter. Keep in mind that such activity is not limited to exports and reexports and is not limited to items subject to General Prohibition One (exports and reexports in the form received), Two (parts and components reexports), and Three (foreign produced direct product reexports) (§ 734.2(b)(1), (b)(2), and (b)(3) of this subchapter). Moreover, such activity extends to services and dealing in wholly foreign-origin items in support of the specified proliferation activity.

(b) Second, review the definition of ''U.S. Person.''

§ 736.11 STEP ELEVEN: Review of order, terms, and conditions.

Review the orders, terms, and conditions applicable to your transaction. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (§ 734.2(b)(1) through (b)(10) of this subchapter) and the License Exceptions (part 740 of this subchapter) impose terms and conditions or limitations on your proposed transactions and use of License Exceptions. A given license or License Exception may not be used unless each relevant term or condition is met.

§ 736.12 STEP TWELVE: Intransit.

Shippers and operators of vessels or aircraft should review General Prohibition Ten to determine the countries in which you may not unladen items or ship them intransit.

§ 736.13 STEP THIRTEEN: Review of the remaining general prohibitions and License Exceptions.

After completion of Steps described in this part 736, and review of all ten general prohibitions, including cross-referenced regulations in this subchapter, you will know which, if any, of the ten general prohibitions in

part 734 of this subchapter apply to you and your contemplated transaction or activity.

§ 736.14 STEP FOURTEEN: Miscellaneous duties.

Sections 736.1 through 736.13 of this part are useful in determining the license requirements that apply to you. Other portions of the EAR impose other duties and requirements. Some of them are:

(a) Requirements relating use of a license in § 758.2 of this subchapter.

(b) Requirements pertaining to the preparation and use of a Shipper's Export Declaration in § 758.3 of this subchapter.

(c) Duties of carriers, forwarders, and exporters and others to take specific steps and prepare and deliver certain documents to assure that items subject to the regulations in this subchapter are delivered to the destination to which they are licensed or authorized by a License Exception or some other provision of the regulations in §§ 758.4 through 785.6 of this subchapter.

(d) Duty of Carriers to return or unload shipments at the direction of U.S. Government officials (see § 758.8 of this subchapter).

(e) Specific duties imposed on parties to special comprehensive licenses by part 752 of this subchapter.

(f) Recordkeeping requirements imposed by Part 762 of this subchapter.

(g) Part 764 requirements to disclose facts that may come to your attention after you file a license application or make other statement to the government concerning a transaction or proposed transaction that is subject to the EAR.

(h) Certain duties imposed by Part 760 of this subchapter on parties who receive requests to take actions related to foreign boycotts and prohibits certain actions relating to those boycotts.

§ 736.15 Inapplicability of general prohibitions.

If none of the ten general prohibitions described in part 734 of this subchapter apply to your export, reexport or conduct, you may proceed without a license and you need not and should not examine part 740 of this subchapter for License Exceptions.

§ 736.16 Review of License Exceptions.

If any of the ten general prohibitions described in part 734 of this subchapter apply, then you should determine whether there is a License Exception at part 740 of this subchapter from those general prohibitions or licensing requirements on the appropriate ECCN. In considering these License Exceptions you need only qualify for any one of them to rely upon that given License Exception for your transaction. Moreover, you may rely upon any License Exception that authorizes your transaction. Note especially that you should not assume that if you cannot qualify for one License Exception you are unable to export or reexport under another applicable License Exception. For example, assume you do not qualify for License Exception 13: Operating Technology and Software (OTD), and you plan to export maintenance manuals to the United Kingdom. The manuals are classified under ECCN 4E94, and they are not subject to General Prohibition One (Exports and Reexports in the Form Received). Under these circumstances and if you are not subject to any of the nine other general prohibition, you may export the maintenance manuals even though your export or reexport does not qualify for any License Exception. This is so because your transaction is not subject to any of the ten general prohibitions.

PART 738—COMMERCE CONTROL LIST AND THE COUNTRY CHART

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C 466(c); E.O. 12924.

§ 738.1 Introduction.

(a) *Commerce Control List scope.* (1) The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL) within the Export Administration Regulations (EAR), which includes all items (i.e., commodities, software, and technology) subject to the export licensing authority of BXA. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. In instances where agencies other than the Department of Commerce administer controls over related items, entries in the CCL contain a reference to these controls.

(2) The CCL is contained in Supplement No. 1 to part 774 of this subchapter. Supplement No. 2 to part 774 of this subchapter contains the General Technology and Software Notes relevant to entries contained in the CCL, and Supplement No. 3 to part 774 of this subchapter contains definitions of terms used in the CCL.

(b) *Commerce Country Chart scope.* BXA also maintains the Commerce Country Chart. The Commerce Country Chart, located in Supplement No. 1 to part 738, contains licensing requirements based on destination and Reason for Control. In combination with the CCL, the Commerce Country Chart allows you to determine whether a license is required for all items on the CCL (with two exceptions identified in § 738.3(a) of this part) to any country in the world.

§ 738.2 CCL structure.

(a) *Categories.* The CCL is divided into 10 categories, numbered as follows:

1—Materials
2—Materials Processing
3—Electronics
4—Computers
5—Telecommunications and Information Security
6—Sensors
7—Avionics and Navigation
8—Marine Technology
9—Propulsion Systems and Transportation Equipment
0—Miscellaneous

(b) *Groups.* Within each category, items are arranged by group. Each category contains the same five groups. Each Group is identified by the letters A through E, as follows:

A—Equipment, Assemblies and Components
B—Test, Inspection and Production Equipment
C—Materials
D—Software
E—Technology

(c) *Order of review.* In order to classify your item against the CCL, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate category on the CCL. Once the appropriate category is identified, you should match the particular characteristics and functions of your item to a specific ECCN. After you have identified the correct ECCN you should review the List of Items Controlled to determine within which subparagraph(s) your items are listed.

(d) *Entries*—(1)(i) *Composition of an entry.* Within each group, individual items are identified by an Export Control Classification Number (ECCN). Each number consists of a set of digits and a letter. The first digit identifies the general category within which the entry falls (e.g., *3*A01). The letter immediately following this first digit identifies which of the five groups the item is listed under (e.g., 3*A*01). The final two digits

differentiate the individual entries and identify the type of controls that affect the item (e.g., 3A*01*). The following list identifies the numbers associated with each Reason for Control:

01–19 National Security, Regional Stability, Supercomputers
20–39 Missile Technology, Regional Stability
40–59 Nuclear Non-proliferation
60–79 Chemical and Biological Weapons
80–99 Other Controls, including Crime Control, Anti-terrorism, UN Sanctions, Short Supply, etc.

(ii) Since Reasons for Control are not mutually exclusive, numbers are assigned in order of precedence. As an example, if an item is controlled for both National Security and Missile Technology, the entry will have a number in the 01–19 range. If the item is controlled only for Missile Technology the number will fall within the 20–39 range.

(2) *Reading an ECCN.* A brief description is provided next to each ECCN. Following this description is the actual entry containing ''License Requirements'', ''License Alternatives'', and ''List of Items Controlled'' sections. A brief description of each section and its use follows:

(i) *''License Requirements''.* This section contains two columns entitled ''Controls'' and ''Country Chart''.

(A) The ''Controls'' columns lists all applicable Reasons for Control, in order of restrictiveness, and to what extent each applies (e.g., to the entire entry or only to certain subparagraphs). Those requiring licenses for a larger number of countries and/or items are listed first. As you read across the columns the number of countries and/or items requiring a license declines. Since Reasons for Control are not mutually exclusive, items controlled within a particular ECCN may be controlled for more than one reason. The following is a list of all possible Reasons for Control:

AT Anti-Terrorism
CB Chemical & Biological Weapons
CC Crime Control
MT Missile Technology
NS National Security
NP Nuclear Non-proliferation
RS Regional Stability
SC Supercomputers
SS Short Supply
UN United Nations Sanctions

(B) The ''Country Chart'' column identifies, for each applicable Reason for Control, a column name and number (e.g., CB Column 1). These column identifiers are used to direct you from the CCL to the appropriate column identifying the countries requiring a license.

(ii) *''License Alternatives''.* This section identifies ECCN-driven alternatives to applying for a license and a brief eligibility statement for each. The information in this section is provided to assist you in deciding which alternative related to your particular item and destination you should explore prior to submitting an application. This section should be consulted only AFTER you have determined a license is required based on an analysis of the entry and Country Chart. (See part 740 of this subchapter for a discussion of all License Exceptions, or part 752 of this subchapter for a discussion of the Special Comprehensive License.)

(iii) *''List of Items Controlled''.* This section contains a positive list of all items controlled by a particular entry and must be reviewed to determine whether your item is controlled by that entry. In instances where there are no items identified in the List of Items Controlled, the entry controls only those items specifically identified in the description next to the ECCN.

(A) *Units of measure.* Most measurements used in the CCL are expressed in metric units with an inch-pound conversion where appropriate. In instances where other units are in general usage or specified by law, these will be used instead of metric. Generally, when there is a difference between the metric and inch-pound figures, the metric standard will be used for classification and licensing purposes. Exceptions will have the inch-pound unit first with a metric conversion (e.g., shotguns).

(B) *The abbreviation ''n.e.s.''.* Entries within the CCL may contain the abbreviation ''n.e.s.'', meaning ''not elsewhere specified''. If an item you intend to export is controlled by an entry containing ''n.e.s.'' in the description, you should not use that particular ECCN until you have determined that no other entry specifically controls that item.

§ 738.3 Commerce Country Chart structure.

(a) *Scope.* The Commerce Country Chart (Country Chart) allows you to determine, based on the Reason(s) for Control attributed to your item, if you need a license to export your item to a particular destination. There are only two instances where the chart cannot be used for this purpose:

(1) *Items controlled for short supply reasons.* Due to the unique nature of these controls, the ECCN will send you directly to part 754 of this subchapter in order to determine whether a license is required for your product to a specific destination and the licensing policy relevant to these types of applications.

(2) *Items controlled by ECCN 5A80.* A license is required for all destinations of items controlled under this ECCN. No License Exceptions apply; accordingly, if your item is controlled by 5A80 you should proceed directly to part 748 of this subchapter for license application instructions and § 742.13 of this subchapter for information on the licensing policy relevant to these types of applications.

(b) *Countries.* The first column of the Country Chart lists all countries in alphabetical order. There are a number of destinations that are not listed in the Country Chart contained in Supplement No. 1 to part 738. If your destination is not listed on the Country Chart and such destination is a territory, possession, or department of a country included on the Country Chart, the EAR accords your destination the same licensing treatment as the country of which it is a territory, possession, or department. For example, if your destination is the Cayman Islands, a dependent territory of the United Kingdom, consult the United Kingdom on the Country Chart.

(c) *Columns.* Stretching out to the right are horizontal headers identifying the various Reasons for Control. Under each Reason for Control header are diagonal column identifiers capping individual columns. Each column identifier consists of the two letter Reason for Control and a column number.(e.g., CB Column 1). The column identifiers correspond to those listed in the ''Country Chart'' column within the ''License Requirements'' section of each ECCN.

(d) *Cells.* The symbol ''X'' is used to denote licensing requirements on the Country Chart. If an ''X'' appears in a particular cell, transactions subject to that particular Reason for Control/Destination combination require a license. There is a direct correlation between the number of ''X''s applicable to your transaction and the number of licensing reviews your application will undergo. Part 742 of this subchapter describes the licensing policy associated with each column on the Country Chart.

§ 738.4 Determining whether a license is required.

(a) *Using the CCL and the Country Chart.*

(1) *Overview.* Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the ''License Requirements'' section of that ECCN in combination with the Country Chart to decide whether a license is required.

(2) *License decision making process.* The following decision making process must be followed in order to determine whether a license is required to export or reexport a particular item to a specific destination:

(i) *Examine the appropriate ECCN in the CCL.* Is the item you intend to export or reexport controlled for a single Reason for Control?

(A) If *yes*, identify the single Reason for Control and the relevant Country Chart column identifier (e.g., CB Column 1).

(B) If *no*, identify the Country Chart column identifier for each applicable Reason for Control (e.g., NS Column 1, NP Column 1, etc.).

(ii) With each of the applicable Country Chart Column Identifiers noted, turn to the Country Chart (Supplement No. 1 to this part 738). Locate the correct Country Chart column identifier on the horizontal heading, and determine whether an ''X'' is marked in the box next to the country in question.

(A) If *yes*, a license application must be submitted unless a License Alternative applies. All applicable ECCN-driven ''License Alternatives'' are identified in each entry. If the brief eligibility statement contained in the ''License Exceptions'' line appears to cover your transaction you should consult part 740 of this subchapter to determine whether you can use a License Exception to effect shipment, rather than applying for a license. Other License Exceptions, not related to the CCL, may also apply to your transaction (See part 740 of this subchapter).

(B) If *no*, a license is not required.

(iii) In situations where more than one Reason for Control applies, repeat the step in paragraph (a)(2)(ii) for each Country Chart column identifier noted in the step in paragraph (a)(2)(i).

(A) If an ''X'' is *NOT* found under any of the applicable columns, a license application is not required.

(B) If an ''X'' is found under any of the applicable columns, and no License Exception applies, a license application must be submitted.

Note: Though you may stop after determining a license is required based on the first Reason for Control, it is best to work through each applicable Reason for Control. A full analysis of every possible licensing requirement based on each applicable Reason for Control will provide you with the information necessary to determine the most advantageous License Exception available for your particular transaction and, if a license is required, ascertain the scope of review conducted by BXA.

(b) *Sample analysis using the CCL and Country Chart*—(1) *Scope.* The following sample entry and related analysis is provided to illustrate the type of thought process you must complete in order to determine whether a license is required to export a particular item to a specific destination using the CCL in combination with the Country Chart.

(2) *Sample CCL entry.*

2A00: ECCN Description.

License Requirements

Reason for Control: NP

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

License Alternatives

License Exceptions

LVS: $5,000

CSR: N/A

GBS: Yes

NSG: N/A

CIV: N/A

Special Comprehensive License: (To be determined in the final rule).

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

(3) *Sample analysis.* After consulting the CCL I determine my item is classified under ECCN 2A00. I read that the entire entry is controlled for nuclear non-proliferation reasons, noting that the appropriate Country Chart column identifier is NP Column 1. Turning to the Country Chart, I locate my specific destination, India, and see that an ''X'' appears in the NP Column 1 box for India. I understand that a license is required, unless my transaction qualifies for a License Alternative (i.e., License Exception or Special Comprehensive License). Since I am not a Special Comprehensive License holder, I turn directly to the License Exceptions described in part 740 of this subchapter to determine whether a License Exception applies to my particular item/destination combination.

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Supplement No. 1 to Part 738

Commerce Country Chart

Countries	Reason for Control																			
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stability		Crime Control			Anti-Terrorism		UN Sanctions
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1
Afghanistan	X	X	X	X		X	X	X	X	X		X			
Albania															
Algeria	X	X		X	X	X	X	X	X	X		X			
Andorra															
Angola[1]	X	X		X	X	X	X	X	X	X		X			
Antigua & Barbuda															
Argentina	X			X		X	X	X	X	X		X			
Armenia															
Australia	X			X		X	X	X							
Austria															
Azerbaijan	X	X	X	X		X	X	X	X	X	X				
Bahamas, The															
Bahrain	X	X	X	X		X	X	X	X	X		X			
Bangladesh															
Barbados	X	X		X		X	X	X	X	X		X			
Belarus															
Belgium	X			X		X	X	X							
Belize															
Benin	X	X		X		X	X	X	X	X		X			
Bhutan															
Bolivia	X	X		X		X	X	X	X	X		X			
Bosnia & Herzegovina[1]															
Botswana	X	X		X		X	X	X	X	X		X			
Brazil															
Brunei	X	X		X		X	X	X	X	X		X			
Bulgaria															
Burkina Faso	X	X		X		X	X	X	X	X		X			
Burma															

[1] This country is subject to United Nations Sanctions. See §746 for additional OFAC licensing requirements that may apply to your proposed transaction.

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Commerce Country Chart

Countries	Reason for Control																					
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stability		Crime Control			Anti-Terrorism		UN Sanctions
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1
Burundi	X	X		X		X	X	X	X	X		X			
Cambodia															
Cameroon	X	X		X		X	X	X	X	X		X			
Canada	See §742.3 to determine whether a license is required to export or reexport to this destination.														
Cape Verde	X	X		X		X	X	X	X	X		X			
Central African Republic															
Chad	X	X		X		X	X	X	X	X		X			
Chile															
China	X	X	X	X		X	X	X	X	X		X			
Colombia															
Comoros	X	X		X	X	X	X	X	X	X		X			
Congo															
Costa Rica	X	X		X		X	X	X	X	X		X			
Cote d'Ivoire															
Croatia[1]	X	X		X		X	X	X	X	X		X			
Cuba	See §746 to determine whether a license is required in order to export or reexport to this destination.														
Cyprus	X	X		X		X	X	X	X	X		X			
Czech Republic															
Denmark	X			X		X	X	X							
Djibouti															
Dominica	X	X		X		X	X	X	X	X		X			
Dominican Republic															
Ecuador	X	X		X		X	X	X	X	X		X			
Egypt															
El Salvador	X	X		X		X	X	X	X	X		X			
Equatorial Guinea															
Eritrea	X	X		X		X	X	X	X	X		X			
Estonia															
Ethiopia	X	X		X		X	X	X	X	X		X			

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Commerce Country Chart

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stability		Crime Control			Anti-Terrorism		UN Sanctions
	Reason for Control														
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1
Fiji															
Finland	X			X		X	X	X	X	X		X			
France															
Gabon	X	X		X		X	X	X	X	X		X			
Gambia, The															
Georgia	X	X	X	X		X	X	X	X	X	X				
Germany															
Ghana	X	X		X		X	X	X	X	X		X			
Greece															
Grenada	X	X		X		X	X	X	X	X		X			
Guatemala															
Guinea	X	X		X		X	X	X	X	X		X			
Guinea-Bissau															
Guyana	X	X		X		X	X	X	X	X		X			
Haiti															
Holy See	X	X		X		X	X	X	X	X		X			
Honduras															
Hong Kong	X	X		X		X	X	X	X	X		X			
Hungary															
Iceland	X			X		X	X	X							
India															
Indonesia	X	X		X		X	X	X	X	X		X			
Iran															
Iraq[1]	X	X	X	X	X	X	X	X	X	X		X			
Ireland															
Israel	X	X	X	X	X	X	X	X	X	X		X			
Italy															
Jamaica	X	X		X		X	X	X	X	X		X			
Japan															

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Commerce Country Chart

Countries	Reason for Control																							
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stablity		Crime Control			Anti-Terrorism		UN Sanctions
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1
Jordan	X	X	X	X		X	X	X	X	X		X			
Kazakhstan															
Kenya	X	X		X		X	X	X	X	X		X			
Kiribati															
Korea, North	See §746 to determine whether a license is required in order to export or reexport to this destination.														
Korea, South															
Kuwait	X	X	X	X		X	X	X	X	X		X			
Kyrgyzstan															
Laos	X	X		X		X	X	X	X	X	X				
Latvia															
Lebanon	X	X	X	X		X	X	X	X	X		X			
Lesotho															
Liberia	X	X		X		X	X	X	X	X		X			
Libya	See §746 to determine whether a license is required in order to export or reexport to this destination.														
Liechtenstein	X	X		X		X	X	X	X	X		X			
Lithuania															
Luxembourg	X			X		X	X	X							
FYROM (Macedonia)															
Madagascar	X	X		X		X	X	X	X	X		X			
Malawi															
Malaysia	X	X		X		X	X	X	X	X		X			
Maldives															
Mali	X	X		X		X	X	X	X	X		X			
Malta															
Marshall Islands	X	X		X		X	X	X	X	X		X			
Mauritania															
Mauritius	X	X		X		X	X	X	X	X		X			
Mexico															
Micronesia	X	X		X	X	X	X	X	X	X		X			

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Commerce Country Chart

Countries	Reason for Control																					
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stability		Crime Control			Anti-Terrorism		UN Sanctions
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1
Moldova	X	X	X								X				
Monaco	X	X		X		X	X	X	X	X		X			
Mongolia	X	X	X								X				
Morocco	X	X		X		X	X	X	X	X		X			
Mozambique															
Namibia	X	X		X		X	X	X	X	X		X			
Nauru															
Nepal	X	X		X		X	X	X	X	X		X			
Netherlands															
New Zealand	X			X		X	X	X							
Nicaragua															
Niger	X	X		X		X	X	X	X	X		X			
Nigeria															
Norway	X			X		X	X	X							
Oman															
Pakistan	X	X	X	X	X	X	X	X	X	X		X			
Palau															
Panama	X	X		X		X	X	X	X	X		X			
Papua New Guinea															
Paraguay	X	X		X		X	X	X	X	X		X			
Peru															
Philippines	X	X		X		X	X	X	X	X		X			
Poland															
Portugal	X			X		X	X	X							
Qatar															
Romania	X	X	X	X		X	X	X	X	X	X				
Russia															
Rwanda[1]	X	X		X		X	X	X	X	X	X	X			X
St. Kitts & Nevis															

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Commerce Country Chart

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		Reason for Control: National Security	Missile Tech	Regional Stability		Crime Control			Anti-Terrorism		UN Sanctions
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1
St. Lucia	X	X		X		X	X	X	X	X		X			
St. Vincent & Grenadines															
San Marino	X	X		X		X	X	X	X	X		X			
Sao Tome & Principe															
Saudi Arabia	X	X	X	X		X	X	X	X	X		X			
Senegal															
Serbia & Montenegro[1]	X	X		X		X	X	X	X	X		X			
Seychelles															
Sierra Leone	X	X		X		X	X	X	X	X		X			
Singapore															
Slovakia	X	X		X		X	X	X	X	X		X			
Slovenia[1]															
Solomon Islands	X	X		X		X	X	X	X	X		X			
Somalia															
South Africa	X	X	X	X		X	X	X	X	X		X			
Spain															
Sri Lanka	X	X		X		X	X	X	X	X		X			
Sudan															
Surinam	X	X		X		X	X	X	X	X		X			
Swaziland															
Sweden	X	X		X		X	X	X	X	X		X			
Switzerland															
Syria	X	X	X	X		X	X	X	X	X		X	X		
Taiwan															
Tajikistan	X	X	X	X		X	X	X	X	X	X				
Tanzania															
Thailand	X	X		X		X	X	X	X	X		X			
Togo															
Tonga	X	X		X		X	X	X	X	X		X			

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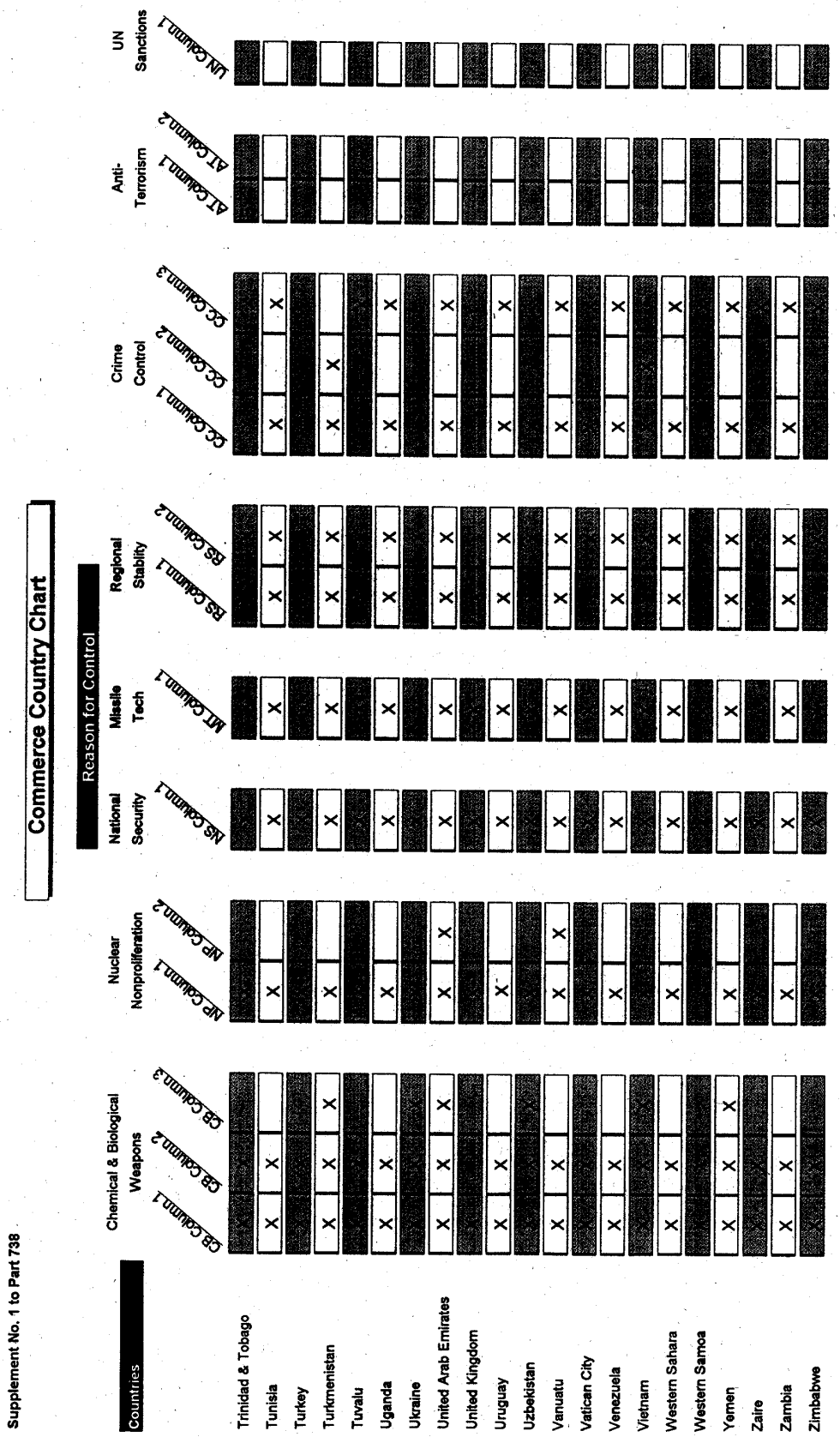

BILLING CODE 3510–DT–C

PART 740—LICENSE EXCEPTIONS

Sec.
740.1 Introduction.
740.2 Restrictions on all License Exceptions.
740.3 Shipments of Limited Value (LVS).
740.4 COCOM Successor Regime (CSR).
740.5 Shipments to Group B Countries (GBS).
740.6 Nuclear Suppliers Group (NSG).
740.7 Civil end-users (CIV).
740.8 Temporary exports (TMP).
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740.10 Parts (PTS).
740.11 Servicing and Replacement (S&R).
740.12 Baggage (BAG).
740.13 Aircraft and Vessels (A&V).
740.14 International safeguards (SAF).
740.15 Governments (GOV).
740.16 Gift parcels (GFT).
740.17 Operating Technology and Software (OTS).
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740.19 Software updates (SUD).
740.20 General Software Note (GSN).
740.21 Technology and Software under Restriction (TSR).
740.22 Additional Permissive Reexports (APR).

Supplement No. 1 to Part 740—Country Groups

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 740.1 Introduction.

(a) *Overview*—(1) *Scope.* A ''License Exception'' is an authorization contained in this part that allows you to export or reexport, under stated conditions, items subject to the Export Administration Regulations (EAR) that otherwise require a license under one or more of the Export Control Classification Numbers (ECCN) in the Commerce Control List (CCL) in part 774 of this subchapter.

(2) *Steps.* If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports) in § 732.2(b)(1), (b)(2), or (b)(3) of this subchapter, consider the steps listed in this paragraph (a)(2). If your export or reexport is subject to General Prohibitions 4, 5, 7, 8, 9, or 10, there are no available License Exceptions for your export or reexport. If your export or reexport is subject to General Prohibition 6 (Embargo), consult part 746 of this subchapter for applicable License Exceptions.

(i) *Step One—Applicability of General Prohibitions.* Determine whether any one or more of the general prohibitions described in § 734.2(b) of this subchapter apply to your export or reexport. If no general prohibition applies to your export or reexport, then you may proceed with your export or reexport and need not review this License Exceptions chapter. You are reminded of your recordkeeping obligations and duties related to the clearance of the U.S. Customs Service provided at parts 762 and 758 of this subchapter. If your export or reexport is subject to General Prohibition 6 for embargoed destinations, refer only to part 746 of this subchapter concerning embargoed destinations to determine the availability of any License Exception.

(ii) *Step Two—Applicability of restrictions on all License Exceptions.* Determine whether any one or more of the restrictions in § 740.2 applies to your export or reexport. If any one or more of these restrictions apply, there are no License Exceptions available to you, and you must either obtain a license or refrain from the export or reexport.

(iii) *Step Three—Terms and conditions of the License Exceptions.* If none of the restrictions in § 740.2 applies, then review each of the License Exceptions to determine whether any one of them authorizes your export or reexport. Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception. You may meet the conditions for more than one License Exception. Moreover, although you may not qualify for some License Exceptions you may qualify for others. Review the broadest License Exceptions first; and use any License Exception available to you. You are not required to use the most restrictive applicable License Exception. If you fail to qualify for the License Exception that you first consider, you may consider any other License Exception until you have determined that no License Exception is available. License Exceptions TMP, TUS, PTS, S&R, BAG, A&V, SAF, GOV, OTS, and STS authorize exports notwithstanding the provisions of the CCL. License Exceptions LVS, CSR, GBS, NSG, CIV, and TSR are available only to the extent specified on the CCL. This part 740 provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

(iv) *Step Four—Scope.* Some License Exceptions are limited by country or by type of commodity.

(A) Countries are arranged in country groups for ease of reference. For a listing of country groups, please refer to Supplement No. 1 to part 740. Unless otherwise indicated in a License Exception, License Exceptions do not apply to any exports or reexports to embargoed destinations. If your export or reexport is subject to General Prohibition 6 for embargoed destinations, License Exceptions are only available to the extent specifically provided in part 746 of this subchapter concerning embargoed destinations.

(B) Special commodity controls apply to short supply items. No License Exceptions in this part 740 may be used for items listed on the CCL as controlled for Short Supply reasons. Exceptions for short supply items are found in part 754 of this subchapter.

(v) *Step Five—Compliance with all terms and conditions.* If a License Exception is available, you may proceed with your export or reexport. However, you must meet all the terms and conditions required by the License Exception that you determined authorized your export or reexport. You must also determine your recordkeeping and documentation requirements at parts 758 and 762 of this subchapter.

(vi) *Step Six—License requirements.* If no License Exception is available, then you must either obtain a license before proceeding with your export or reexport or you must refrain from the proposed export or reexport.

(b) *Certification.* By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception set forth in the EAR have been met. Please refer to part 758 of this subchapter for clearance of shipments and documenting the use of License Exceptions.

(c) *Shipper's Export Declaration.* A person exporting any item under any License Exception must enter on any required Shipper's Export Declaration (SED) the letter code (e.g., CIV, PTS) of the License Exception. In the case of License Exceptions LVS, CSR, GBS and CIV the ECCN of the item being exported must also be entered. Please refer to § 758.2 of this subchapter for the use of SEDs. Certain items are listed on the CCL but do not require a license to all destinations under General Prohibitions One, (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports) (§ 732.2(b)(1), (b)(2), or (b)(3) of this subchapter). If General Prohibitions Four through Ten (§ 732.2(b)(4) through (b)(10) of this subchapter) also do not apply, you must

clear exports of such items through the U.S. Customs Service by entering the symbol ''NLR'' in the appropriate place on the Shippers Export Declaration. The term ''NLR'' represents exports of listed items when no license is required. Such exports do not require that you qualify for a License Exception.

(d) *Destination Control Statement.* A person exporting any item under any License Exception is required to enter an appropriate Destination Control Statement on commercial documents in accordance with the Destination Control Notice requirements of § 758.5 of this subchapter.

(e) *Recordkeeping.* Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the recordkeeping requirements of part 762 of this subchapter.

§ 740.2 Restrictions on all License Exceptions.

(a) You may not use *any* License Exception if any one or more of the following apply:

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended export does not qualify for a License Exception.

(2) The export is contrary to a Denial Order. See part 766 of this subchapter for a description of Denial Orders. See the **Federal Register** for the text of any particular Denial Order.

(3) You know that the item will be reexported and such reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BXA.

(4) You know that the export will be used for certain end-uses or is for certain end-users as set forth and prohibited in part 744 of this subchapter.

(5) The item is for surreptitious interception of wire or oral communications as set forth in ECCN 5A80, unless you are a U.S. Government agency (see § 740.15, Governments (GOV)).

(6) The commodity you are shipping is a specially designed crime control and detection instrument or equipment as described in § 742.7 of this subchapter and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740), unless the shipment is authorized under License Exception BAG, § 740.12(e) (shotguns and shotgun shells).

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BXA to stop a shipment or an export transaction at any stage of its progress, e.g., in order to prevent an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of the shipment at any port of call.

§ 740.3 Shipments of Limited Value (LVS).

(a) *Scope.* A License Exception designated *License Exception LVS* is established authorizing the export in a single shipment of eligible commodities as described on the CCL.

(b) *Eligible Destinations.* This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) *Definitions*—(1) *Order.* The term ''order'' as used in this § 740.5 means a communication from a person in a foreign country or that person's representative expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be presented for export under this License Exception.

(2) *Net value: for LVS shipments.* The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded. The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the ''net value'' of the contained commodity immediately below the description of the commodity.

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even, though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) *Additional eligibility requirements and restrictions*—(1) *Eligible orders.* To be eligible for this License Exception, orders must meet the following criteria:

(i) *Orders must not exceed the applicable ''LVS'' dollar value limits.* An order is eligible for shipment under this License Exception (LVS) when the ''net value'' of the commodities controlled under the same entry on the CCL does not exceed the amount specified in the ''LVS'' paragraph for that entry. An LVS shipment may include more than one eligible order because LVS eligibility is based on the ''net value'' of the commodities in each order, instead of the ''net value'' of the commodities in the shipment.

(ii) *Orders may not be split to meet the applicable LVS dollar limits.* An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments.

(iii) *Orders must be legitimate.* Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) *Restriction on annual value of LVS orders.* Shipments of items in a single ECCN on the CCL may not exceed 12 times the LVS value limit for that ECCN per calendar year to the same ultimate consignee or intermediate consignee. This annual value limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) *Orders where two or more LVS dollar value limits apply.* An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS

dollar value limit specified for that entry.

Example: An order includes commodities valued at $8,000. The order consists of commodities controlled under two ECCN entries. Commodities in the order controlled under one ECCN are valued at $3,000 while those controlled under the other ECCN are valued at $5,000. Since the net value of the commodities controlled under each entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) *Prohibition against evasion of license requirements.* Any device involving the use of this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1) (ii) and (iii) of this section.

(e) *Reexports.* Commodities may be reexported under this License Exception, provided that they could be exported from the United States to the new country of destination under LVS.

§ 740.4 COCOM Successor Regime (CSR).

(a) *Scope.* A License Exception designated *License Exception CSR* is established authorizing exports to eligible countries of all commodities controlled for national security reasons, except those specifically excluded by the CSR paragraphs on the CCL. Reexports of additional commodities may be authorized by paragraph (d) of this section. Exports may be made under this License Exception only when intended for use or consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the EAR.

(b) *Eligible countries.* The countries that are eligible to receive exports under this License Exception are the countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740), as well as the cooperating countries indicated by footnote to Country Group A. Note, however, that generally there is no license requirement for shipments to Canada (see § 732.12 of this subchapter).

(c) *Restrictions on commodities re-directed en route.* Commodities exported under the provisions of this section may not be re-directed en route to a new country of destination without prior authorization from BXA,*unless* the new ultimate country of destination is also an eligible country under this License Exception.

(d) *Reexports*—(1) *Reexports from Country Group A:1 (COCOM Successor Regime) and cooperating countries.* Reexports may be made from Country Group A:1 (COCOM Successor Regime) or from cooperating countries, provided that:

(i) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(ii) The commodities being reexported are not controlled for Nuclear Nonproliferation, Missile Technology or Crime Control reasons; and

(iii) The reexport is destined to *either:*

(A) A country in Country Group B, Cambodia, or Laos and the commodity being reexported is both controlled for national security reasons and eligible for this License Exception; or

(B) A country in Country Group D:1 *only* (National Security) (see Supplement No. 1 to part 740), other than Cambodia or Laos, and the commodity being reexported is controlled for national security reasons.

(2) *Reexports to and among Country Group A:1 (COCOM Successor Regime) and cooperating countries.* Reexports may be made to and among Country Group A:1 (COCOM Successor Regime) and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities except the following are eligible for reexport to and among Country Group A:1 and cooperating countries:

(i) Supercomputers;

(ii) Commodities controlled for Nuclear Nonproliferation reasons; and

(iii) Electronic, mechanical or other devices, as described in ECCN 5A80, primarily useful for surreptitious interception of wire or oral communications.

§ 740.5 Shipments to Country Group B countries (GBS).

(a) *Scope.* A License Exception designated *License Exception GBS* is established authorizing exports and reexports to Country Group B (see Supplement No. 1 to part 740) of certain commodities controlled for national security reasons.

(b) *Eligible commodities.* Eligible commodities identified by the ''GBS'' paragraph in the Requirements section of each entry on the CCL.

§ 740.6 Nuclear Suppliers Group (NSG).

(a) *Scope.* A License Exception designated *License Exception NSG* is established authorizing exports and reexports to eligible countries of commodities, software, and technology described below. Exports may be made under this License Exception only when intended for use or consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the EAR.

(b) *Eligible countries.* The countries listed in Country Group A:4 (Nuclear Suppliers Group) (see Supplement No. 1 to part 740) are eligible for this License Exception. Note, however, that generally there is no license requirement for shipments to Canada (see § 732.12 of this subchapter).

(c)(1) *Eligible commodities, software, and technology.* The eligible commodities, software, and technology are indicated in the NSG paragraph under the Requirements heading in applicable ECCNs on the CCL. In addition, the following items are not eligible for this License Exception:

(i) Items that are subject to missile technology controls; and

(ii) Items for export to Bulgaria, Romania, or Russia that are controlled for national security reasons.

(2) In addition, for shipments to Russia under NSG, General Prohibition 8 (transit) does not apply to commodities, software, and technology that are not controlled for national security reasons.

(d) *Reexports.* Commodities, software and technology eligible for this License Exception may be reexported to, among, and from countries eligible for this License Exception, except:

(1) Reexports from countries other than those in Country Group A:1 of commodities, software or technology controlled for national security reasons to destinations in Country Group D:1 (see Supplement No. 1 to part 740); or

(2) Reexports to destinations in Country Group D:2 or E:2.

§ 740.7 Civil end-users (CIV).

(a) *Scope.* This License Exception, designated *License Exception CIV*, authorizes certain exports and reexports as set forth in this section.

(b) *Eligibility.* License Exception CIV is available *only* for exports and reexports of certain specified items to civil end-users for civil end-uses in Country Group D:1. (See Supplement No. 1 to part 740.) CIV may not be used for exports and reexports to military end-users or to known military uses. Such exports and reexports will continue to require a license and be considered on a case-by-case basis. In addition to conventional military activities, military uses include any proliferation activities described and prohibited in part 744 of this

subchapter. Retransfer to military end-users or end-uses in eligible countries is strictly prohibited without prior authorization. The items eligible for this License Exception are those indicated on the CCL.

§ 740.8 Temporary exports (TMP).

(a) *Scope.* A License Exception designated *License Exception TMP* is established authorizing the export and reexport of commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in this section. Commodities and software shipped under this License Exception must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BXA.

(b) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under License Exception TMP:

(1) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include, but are not limited to, such equipment as is necessary to commission or service goods, provided that the equipment is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2, and only equipment necessary to commission or service goods may be taken as tools of trade to Country Group D:1. (See Supplement No. 1 to part 740.)

(2) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported under this section to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(i) The parts would qualify for shipment under License Exception PTS if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of PTS and the defective parts returned.

(3) *Exhibition and demonstration in Country Group B.* Commodities and software for exhibition or demonstration in Country Group B (see Supplement No. 1 to part 740) may be exported or reexported under this provision provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BXA. However, before or after an exhibition or demonstration, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over disposition of the commodities and software, pending movement to another site, return to the United States or the foreign reexporter, or BXA approval for other disposition. The export documentation for this type of transaction must show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(4) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad.

(5) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this License Exception does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(6) *Broadcast material.* (i) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(ii) Blank video tape (raw stock) for use in recording program material abroad.

(7) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquilladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(8) *News media.* (i) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany ''accredited'' news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2 (see Supplement No. 1 to part 740) if the commodities:

(A) Are retained under ''effective control'' of the exporting news gathering firm;

(B) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (b)(8), *news media*, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this section from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of Export Administration, Office of Enforcement Support, Room H4069, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that this License Exception is being used properly.

(iii) Commodities necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (b)(1), *tools of trade*, of this section if owned by the news gathering firm, or under § 740.12, License Exception BAG if they are personal property of the individual news media personnel.

(**Note:** paragraphs (b)(1), *tools of trade* and (b)(8)(iii), *news media*, of this section do not preclude independent ''accredited'' contract personnel, who are under control of news

gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(c) *Special restrictions*—(1) *Destinations.* (i) No commodity or software may be exported under this License Exception to Country Group E:2 (see Supplement No. 1 to part 740) except as permitted by paragraph (b)(8), news media, of this section;

(ii) No commodity or software may be exported under this License Exception to Country Group D:1 (see Supplement No. 1 to part 740) except:

(A) Commodities and software exported under paragraph (b)(8), *news media*, of this section;

(B) Commodities and software exported under paragraph (b)(1), *tools of trade*, of this section; and

(C) Commodities exported as kits of replacement parts, consistent with the requirements of paragraph (b)(2) of this section.

(iii) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(2) *Commodities.* The following commodities may *not* be exported or reexported to any destination under this License Exception:

(i) Supercomputers;

(ii) Commodities that will be used outside of Country Group A:4 (Nuclear Suppliers Group) (see Supplement No. 1 to part 740) either directly or indirectly in any sensitive nuclear activity as described in § 744.2 of this subchapter.

(iii) Electronic, mechanical, or other devices, as described in ECCN 5A80, primarily useful for surreptitious interception of wire or oral communications.

(3) *Use or disposition.* No commodity or software may be exported or reexported under this License Exception if:

(i) An order to acquire the commodity or software has been received before shipment;

(ii) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms of this License Exception; or

(iii) The commodity or software is for lease or rental abroad.

(d) *Return or disposal of commodities and software.* All commodities and software exported or reexported under this License Exception must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were exported under this License Exception, or shall be disposed of or retained in one of the following ways:

(1) *Authorization under Form BXA–748P.* If the U.S. exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting Form BXA–748P, Multipurpose Application, to BXA at the address listed in part 748 of this subchapter. (See part 748 of this subchapter for more information on reexport authorizations.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination. BXA will advise the exporter of its decision.

(2) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the License Exception described in this section, provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(3) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized in § 740.8(a), the exporter must request authorization by submitting Form BXA–748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BXA at the address listed in part 748 of this subchapter and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BXA approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BXA normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (d)(1) of this section.

§ 740.9 Exports of items temporarily in the United States (TUS).

(a) *Scope.* This License Exception, designated *License Exception TUS*, describes the conditions for exporting foreign-origin items temporarily in the United States. Specifically, this License Exception includes the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

(**Note:** A commodity withdrawn from a bonded warehouse in the United States under a ''withdrawal for export'' customs entry is considered as ''moving in transit''. It is not considered as ''moving in transit'' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.)

(b) *Items moving in transit through the United States.* Subject to the following conditions, this License Exception authorizes export of items moving in transit through the United States under a Transportation and Exportation (T. & E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(1) Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this License Exception.

(2) Items may not be exported to Country Group E:2 under this License Exception.

(3) The following may *not* be exported in transit from the United States under TUS:

(i) Commodities shipped to the United States under an International Import Certificate, Form BXA–645P;

(ii) Chemicals controlled under ECCN 1C60; or

(iii) Horses for export by sea (refer to short supply controls in part 754 of this subchapter).

(4) The provisions of this License Exception apply to *all* shipments from Canada moving in transit through the United States to *any* foreign destination, regardless of the nature of the commodities or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B–13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is exempt from U.S. licensing,

or made under a U.S. license or applicable U.S. License Exception other than this License Exception, or is valued at less than $50.00. The commodity description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B–13, as on Commerce Form 7513,[1] or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B–13 authorizing the shipment is required.

(c) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, License Exception TUS authorizes the export of items that were imported into the United States for display at an exhibition or trade fair *and* were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(1) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba or North Korea may not be exported unless the U.S. Government had licensed the import from that country.

(2) Items may be exported to any destination other than the country from which imported except:

(i) Items imported into the United States under an International Import Certificate;

(ii) Exports to Country Group E:2 (see Supplement No. 1 to part 740); or

(iii) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons, respectively.

(d) *Return of unwanted shipments.* A foreign-origin item may be returned under this License Exception to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba, Libya, or North Korea.

(e) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or any other U.S. Government agency may be returned to the country of origin, except to:

(1) A destination in Cuba, Libya, or North Korea; or

(2) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

§ 740.10 Parts (PTS).

(a) *Scope.* This License Exception, designated *License Exception PTS,* authorizes the export and reexport of one-for-one replacement parts for previously exported equipment.

(b) *One-for-one replacement of parts.* (1) The term ''replacement parts'' means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term ''subassembly'' means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult TMP, § 740.8(b)(2).

(2) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction.

(3) The parts to be replaced must either be destroyed abroad or returned promptly to the party who supplied the replacement parts, or to a foreign firm that is under the effective control of that party.

(c) *Exclusions.* (1) No replacement parts may be exported under this License Exception to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(2) No parts may be exported under this License Exception to be held abroad as spare parts or equipment for future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(3) No parts may be exported under this License Exception to any destination except Iceland, New Zealand, or the countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740) if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(b) of this subchapter.

(4) No replacement parts shall be exported under this License Exception to Cuba, Iran, Iraq, Sudan, Syria, Libya, or North Korea (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an aircraft, helicopter, or national security controlled commodity.

(5) The conditions set forth in this paragraph (c) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in § 732.4(b)(2)(ii) and (iii) of this subchapter.

(d) *Reexports.* Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (b) and (c) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

§ 740.11 Servicing and Replacement (S&R).

(a) *Scope.* This License Exception, designated *License Exception S&R,*

[1] The complete names of these forms are: Commerce Form 7513, ''Shipper's Export Declaration for Intransit Goods''; Customs Form 7512, ''Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.''

authorizes export of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(b) *Items sent to a United States or foreign party for servicing*—(1) *Definition*. ''Servicing'' means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(2) *Return of serviced items*. When the serviced item is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(3) *Items imported from Country Group D:1 except the PRC*. Items legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC)) (see Supplement No. 1 to part 740) that are sent to the United States or a foreign party for servicing may be returned under this License Exception to the country from which it was sent, provided that both of the following conditions are met:

(i) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(ii) The end-use and the end-user of the serviced item and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(4) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. No repaired item may be exported or reexported to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria under this section.

(c) *Replacements for defective or unacceptable U.S.-origin equipment*. (1) Subject to the following conditions, certain items may be exported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(i) The item to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BXA.

(ii) No item may be exported to replace equipment that is worn out from normal use, nor may any item be exported to be held in stock abroad as spare equipment for future use.

(iii) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the item as originally approved for export or reexport under a license issued by BXA.

(iv) No shipment may be made to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(2) *Special conditions applicable to exports to Country Group B and Country Group D:1*. (See Supplement No. 1 to part 740.) In addition to the general conditions set forth in paragraph (c)(1) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B and Country Group D:1:

(i) By making such an export or reexport, the exporter represents that all the requirements of paragraph (c) have been met and undertakes to destroy or return the replaced parts as set forth in paragraph (c)(2)(iii) of this section.

(ii) The defective or otherwise unusable item must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the item within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(iii) The item to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the U.S. exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(iv) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used.

§ 740.12 Baggage (BAG).

(a) *Scope*. This License Exception, designated License Exception BAG, authorizes individuals leaving the United States and crew members of exporting carriers to take to any destination, as personal baggage, the classes of commodities set forth in this section.

(b) *Eligibility*. Individuals leaving the United States may export any of the following items to any destination or series of destinations. Crew members may export only items described in paragraphs (b)(1) and (b)(2) of this section to any destination.

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

(2) *Household effects*. Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

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

(4) *Tools of trade*. Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, vocation, or hobby of the traveler.

(c) *Limits on eligibility*. The export of any commodity may be limited or prohibited, if the kind or quantity is in excess of the limits set forth in this section. In addition, the commodities must be:

(1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;

(2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families, or by the crew members of exporting carriers;

(3) Not intended for sale.

(4) Not exported under a bill of lading as cargo if exported by crew members.

(d) *Special provision: unaccompanied baggage*. Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked ''BAGGAGE.'' Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Items of personal baggage controlled for Chemical and Biological Weapons (CB), Missile Technology (MT), National Security (NS) or Nuclear Nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS

or NP may not be exported under this License Exception to Country Group D or Country Group E:2. (See Supplement No. 1 to part 740.)

(e) *Special provisions: shotguns and shotgun shells.* (1) A United States citizen or a permanent resident alien leaving the United States may export or reexport shotguns with a barrel length of 18 inches or over and shotgun shells under this License Exception, subject to the following limitations:

(i) Not more than three shotguns may be taken on any one trip.

(ii) The shotguns and shotgun shells must be with the person's baggage but they may not be mailed.

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. Accordingly, except as provided in paragraph (e)(2) of this section, shotguns may not be exported permanently under this License Exception. All shotguns and unused shotgun shells must be returned to the United States.

(2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of Department of Treasury Regulations (27 CFR 178.115(d)).

§ 740.13 Aircraft and Vessels (A&V).

(a) *Scope.* A License Exception designated *License Exception A&V* is established authorizing the departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents.

(b) *Aircraft on temporary sojourn*—(1) *Foreign registered aircraft.* An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the aircraft to nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria; and

(iii) It does not carry from the United States any commodity for which export authorization is required and has not been granted by the appropriate U.S. Government agency.

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to 14 CFR Part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination, provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad; and

(D) The aircraft does not carry any commodity from the United States for which export authorization has not been granted by the appropriate U.S. Government agency.

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to Cuba, Iran, Iraq, Sudan, Syria, Libya, and North Korea (flights to these destinations require a license), provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad;

(D) The aircraft does not carry any commodity from the United States for which export authorization is required and has not been granted by the appropriate U.S. Government agency; and

(E) The aircraft will be operated while abroad by a U.S. licensed pilot, except that during domestic flights within a foreign country, the aircraft may be operated by a pilot currently licensed by that foreign country.

(3) *Criteria.* The following nine criteria each must be met if the flight is to qualify as a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. An export is for the transfer of operational control unless the exporter retains each of the following indicia of control:

(i) *Hiring of cockpit crew.* Right to hire and fire the cockpit crew.

(ii) *Dispatch of aircraft.* Right to dispatch the aircraft.

(iii) *Selection of routes.* Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) *Location of spares.* Spares are not located in Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(vi) *Place of registration.* The place of registration is not changed to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(vii) *No transfer of technology.* No technology is transferred to a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.

(viii) *Color and logos.* The aircraft does not bear the livery, colors, or logos of a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(ix) *Flight number.* The aircraft does not fly under a flight number issued to a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria as such a number appears in the Official Airline Guide.

(4) *Reexports.* Civil aircraft legally exported from the United States may be reexported under this section, provided the restrictions described in this paragraph (b) are met.

(c) *Equipment and spare parts for permanent use on a vessel or aircraft*—(1) *Vessel.* Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported for use on board a vessel of any registry, except a vessel registered in Country Group D:1 (see Supplement No. 1 to part 740), Cuba, or North Korea, or owned or controlled by, or under charter or lease to any of these countries or their nationals. In addition, other equipment and services for necessary repair to fishing and fishery support vessels of

Country Group D:1 or North Korea may be exported for use on board such vessels when admitted into the United States under governing international fishery agreements.

(2) *Aircraft.* Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported for use on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, Cuba, Libya, or North Korea, or a national of any of these countries.

(d) *Shipments to U.S. or Canadian vessels, planes and airline installations or agents*—(1) *Exports to vessels or planes of U.S. or Canadian registry.* Export may be made of the commodities set forth in paragraph (d)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Cuba, North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are all of the following: [2]

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian airline's installation or agent.* Exports of the commodities set forth in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's [3] installation or agent in any foreign destination except Cuba, North Korea, or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Cuba, North Korea or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This paragraph (d) applies to the following commodities, subject to the provisions in paragraph (d)(1) and (d)(2) of this section:

Note: For fuel and related commodities, refer to short supply controls in part 754 of this subchapter;

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies; and

(vi) Equipment and spare parts.

§ 740.14 International safeguards (SAF).

(a) *Scope.* This License Exception, designated *License Exception SAF*, authorizes exports to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom), and reexports by IAEA and Euratom for official international safeguard use, as follows:

(1) Commodities consigned to the IAEA at its headquarters in Vienna, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to non-peaceful purposes.

(2) Commodities consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to non-peaceful purposes.

(3) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1) and (a)(2) of this section when they become obsolete, are no longer required, or are replaced.

(4) Commodity shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(5) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited nuclear activities described in § 744.2(a) of this subchapter.

(6) When commodities originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in this subchapter.

(b) *Exclusions.* No supercomputers may be exported under this License Exception.

§ 740.15 Governments (GOV).

(a) *Scope.* This License Exception, designated *License Exception GOV*, authorizes exports and reexports of the items listed in paragraph (b) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(b) *Eligibility*—(1) *Items for personal use by personnel and agencies of the U.S. Government.* License Exception GOV is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants. Items for personal use include household effects, food, beverages, and other daily necessities.

(2) *Items for official use by personnel and agencies of the U.S. Government.* GOV is available for items consigned to and for the official use of any agency of the U.S. Government.

(3) *Items for official use within national territory by agencies of cooperating governments.* GOV is available for all items except supercomputers consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government.

(4) *Diplomatic and consular missions of a cooperating government.* GOV is

[2] Where a validated license is required, see §§ 748.2 and 748.4(g).

[3] See Part 772 for definitions of United States and Canadian airlines.

available for all items except supercomputers consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B. (See Supplement No. 1 to part 740.)

(c) *Definitions.* (1) ''Agency of the U.S. Government'' includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made under this License Exception to these non-government national or international agencies, except as provided in (b)(1) of this section for U.S. representatives to these organizations.

(2) ''Agency of a cooperating government'' includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Ireland, Korea (Republic of), Singapore, Sweden, and Switzerland.

§ 740.16 Gift parcels (GFT).

(a) *Scope.* This License Exception, designated *License Exception GFT*, is established to authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of ''gift parcel.'' [4]

Note: A gift parcel, within the context of this License Exception, does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in § 734.2(b) of this subchapter, must be licensed by BXA. (See § 748.9(e) of this subchapter for licensing of multiple gift parcels).

(b) *Commodity, value and other limitations*—(1) *Eligible commodities.* The commodities eligible for this License Exception are as follows:

(i) The commodity must not be controlled for Chemical and Biological Weapons (CB), Missile Technology (MT), National Security (NS), or Nuclear Proliferation (NP) (See Commerce Control List, part 774 of this subchapter.)

(ii) *Type and quantity.* The commodity must be of a type and in quantities normally given as gifts between individuals.

(A) For Cuba, the only commodities that may be included in a gift parcel are the following items from Supplement No. 1 to part 746 of this subchapter: food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and in addition receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment.

(B) For all other destinations, eligible commodities include all items described in paragraph (b)(2)(ii)(A) of this section as well as all other items normally sent as gifts. Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

Example. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not quality for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(C) For purposes of paragraph (b)(2)(ii) of this section, clothing is appropriate, except that export of military wearing apparel to Country Group D:1 or E:2 under this License Exception is specifically prohibited, regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(2) *Import requirements.* The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(3) *Frequency.* Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month. Parties seeking authorization to exceed this limit due to compelling humanitarian concerns (e.g., gifts of medicine to relatives) should submit a license application (BXA–748P) with complete justification.

(4) *Value.* The combined total domestic retail value of all commodities included in a gift parcel may not exceed $400, except for gift parcels to Cuba where the value of non-food items may not exceed $200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(c) *How to export gift parcels.* (1) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(2) Each parcel must have the notation ''GIFT—Export License Not Required'' written on the addressee side of the package and the symbol ''GFT'' written on any required customs declaration.

§ 740.17 Operating technology and software (OTS).

A License Exception designated *License Exception OTS* is established to permit exports and reexports of operation technology and software.

(a) *Scope.* ''Operation technology'' is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products that are lawfully exported or reexported under a License Exception or license. The ''minimum necessary'' operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology under this general authorization.

(b) *Provisions and Destinations*—(1) *Provisions.* Operation software may be exported or reexported under License Exception OTS provided that both of the following conditions are met:

(i) The operation software is the minimum necessary to operate

[4] Many foreign countries permit the entry, duty-free, of gift parcels that conform to regulations regarding contents and marking. To secure this advantage, the sender should show the words ''U.S.A. Gift Parcel'' on the addressee side of the package and on any required customs declarations. Information regarding the foreign postal regulations is available at local post offices. Senders of gift parcels who wish information regarding import duties of a foreign country should contact the nearest Commercial Office, Consulate or Embassy of the country concerned.

equipment authorized for export or reexport; and

(ii) The operation software is in object code.

(2) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

§ 740.18 Sales technology (STS).

A License Exception designated *License Exception STS* is established to authorize exports and reexports of sales technology.

(a) *Scope.* ''Sales technology'' is defined as data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(b) *Provisions and destinations.* (1) *Provisions.* Sales technology may be exported or reexported under License Exception STS provided that:

(i) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(ii) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(2) *Destinations.* Sales technology may be exported or reexported to all destinations.

Note: Neither this authorization nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Export Administration.

§ 740.19 Software updates (SUD).

A License Exception designated *License Exception SUD* is established to authorize exports and reexports of software updates that are intended for and are limited to correction of errors (''fixes'' to ''bugs'') in software lawfully exported or reexported under a License Exception or license (original software). Such software updates may be exported only to the same consignee for whom the original software was authorized by a license or License Exception, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

§ 740.20 General Software Note (GSN).

A License Exception designated *License Exception GSN* is established to authorize exports and reexports of software subject to the General Software Note (see Supplement No. 2 to part 774 of this subchapter).

(a) *Scope.* License Exception GSN is available for ''mass market'' software as described in the General Software Note and referenced in this section.

(b) *Provisions and destinations*—(1) *Destinations.* GSN is available to all destinations except Cuba, Iran, Libya, North Korea, and Syria.

(2) *Provisions.* GSN is available for software that is generally available to the public by being:

(i) Sold from stock at retail selling points, without restriction, by means of:

(A) Over the counter transactions;

(B) Mail order transactions; or

(C) Telephone call transactions; *and*

(ii) Designed for installation by the user without further substantial support by the supplier.

§ 740.21 Technology and software under restriction (TSR).

(a) A License Exception designated *License Exception TSR* is hereby established to permit exports and reexports of technology and software. Individual technology and software entries on the CCL indicate eligibility for this License Exception by the symbol TSR. A written assurance is required from the consignee before exporting under this License Exception, and this License Exception authorizes exports only to the destinations in Country Group B. (See Supplement No. 1 to part 740.)

(1) *Required assurance for export of technology.* No export or reexport of technology is authorized under this License Exception until the exporter has received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

(i) Reexport the technology to or release the technology to a national of a country in Country Groups D:1 or E:2;

(ii) Export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, § 732.2(b)(3) of this subchapter); nor

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

(2) *Required assurance for export of software.* No export or reexport of software is authorized under this License Exception until the exporter has received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

(i) Reexport the software to or release the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 and E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three at § 732.2(b)(3) of this subchapter).

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, or the assurance may be incorporated into a licensing agreement that specifically includes the appropriate assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, this License Exception is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) *Other license exceptions.* The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) Reserved.

§ 740.22 Additional permissive reexports (APR).

(a) *Scope.* This License Exception, designated *License Exception APR,* allows the following reexports.

(b) *Permissive reexports.* (1) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as

exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of this subchapter for recordkeeping requirements.)

(2) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(3) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(4) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(5) Reexports between Switzerland and Liechtenstein.

(6) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product. (See § 732.4 of this subchapter.)

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Country Group A

Country	[A: 1] Coco[illegible]	[A: 2] [illegible]	[A: 3] [illegible]	[A: 4] Nuclear Suppliers Group
Argentina		X	X	X
Australia		X	X	X
Austria[1]		X	X	X
Belgium	X	X	X	X
Bulgaria				X
Canada		X	X	X
Czech Republic			X	X
Denmark		X	X	X
Finland[1]		X	X	X
France	X	X	X	X
Germany	X	X	X	X
Greece		X	X	X
Hong Kong[1]				
Hungary		X	X	X
Iceland		X	X	
Ireland		X	X	X
Italy	X	X	X	X
Japan		X	X	X
Korea, South[1]				
Luxembourg		X	X	X
Netherlands	X	X	X	X
New Zealand		X	X	X
Norway	X	X	X	X
Poland		X	X	X
Portugal	X	X	X	X
Romania				X
Russia				X
Slovakia				X
Spain	X	X	X	X
Sweden		X	X	X
Switzerland[1]		X	X	X
Turkey		X	X	X
United Kingdom	X	X	X	X
United States		X	X	X

[1] Cooperating Countries

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Country Group B

Countries

Afghanistan
Algeria
Andorra
Angola
Antiqua
Argentina
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Barbuda
Belgium
Belize
Benin
Bermuda
Bhutan
Bolivia
Bosnia & Herzegovina
Botswana
Brazil
Brunei
Burkina Faso
Burma
Burundi
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Eritea
Ethiopia
Fiji
Finland
France
Gabon
Gambia, The
Germany
Ghana
Greece
Greenland
Grenada
Grenadines, The
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kiribati
Korea, South
Kuwait
Lebanon
Lesotho
Liberia
Liechtenstein
Luxembourg
Macedonia, the Former Yugoslav Republic of
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Maruitania
Mauritius
Mexico
Micronesia, Federated States of
Monaco
Morocco
Mozambique
Namibia
Nauru
Nepal
Netherlands
Nevis
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Palau
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Principe
Puerto Rico
Qatar
Saint Kitts
Saint Lucia
Saint Vincent
San Marino
Sao Tome
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Slovakia
Slovenia
Solomon Islands
Somalia
South Africa
Spain
Sri Lanka
Surinam
Swaziland
Sweden
Switzerland
Taiwan
Tanzania
Thailand
Tobago
Togo
Tonga
Trinidad
Tunisia
Turkey
Tuvalu
Uganda
United Arab Emirates
United Kingdom
United States
Uruguay
Vanuatu
Vatican City
Venezuela
Western Sahara
Western Samoa
Yemen
Zaire
Zambia
Zimbabwe

Country Group C

[Reserved]

BILLING CODE 3510–DT–P

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Country Group D

Country	[D: 1]	[D: 2]	[D: 3]	[D: 4]
Afghanistan			X	
Algeria		X		
Angola		X		
Azerbaijan	X		X	
Belarus	X		X	
Bulgaria	X		X	
Cambodia	X			
Comoros		X		
Djibouti		X		
Egypt			X	X
India		X	X	X[1]
Iraq		X	X	X
Jordan			X	X
Korea, North		X	X	X[1]
Kyrgyzstan	X		X	
Latvia	X			
Libya		X	X	X
Micronesia, Federated States of		X		
Mongolia	X			
Pakistan		X	X	X[1]
Romania	X		X	
Saudi Arabia			X	X
Syria			X	X
Tajikistan	X		X	
Ukraine	X		X	
Uzbekistan	X		X	
Vietnam	X		X	

[1] Certain Missile Technology projects have been identified in the following countries:

Brazil	Sonda III & IV, SS-300 & SS-1000, MB/EE Series Missile, VLS Space Launch Vehicle
China	M Series Missiles, CSS-2
India	Agni, Prithvi, SLV-3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).
Iran	Surface-to-Surface Missile Project, Scud Development Project
Korea, North	No Dong I, Scud Development Project
Pakistan	Hatf Series Missiles
South Africa	Surface-to-Surface Missile Project, Space Launch Vehicle

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Country Group E

Country	[E:1]	[E:2]
Angola	X	
Bosnia & Herzegovina		
Croatia	X	
Cuba		
Iraq	X	
Korea, North		
Libya	X	X
Macedonia		
Montenegro	X	
Serbia	X	
Slovenia		

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PART 742—CONTROL POLICY—CCL BASED CONTROLS

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 742.1 Introduction.

(a) Scope. This Part sets forth the controls and the licensing policies for all the items that are listed on the Commerce Control List (CCL), except the following:

(1) *Exports and reexports involving Cuba, Libya, North Korea, Iraq, and the Federal Republic of Yugoslavia (Serbia and Montenegro).* This Part does not cover controls and licensing policies that apply to exports and reexports to embargoed destinations. If you are exporting or reexporting to Cuba, Libya, North Korea, Iraq, or the Federal Republic of Yugoslavia (Serbia and Montenegro) you should first review part 746 of this subchapter, Embargoes and Other Special Controls. The Country Chart (Supplement No. 1 to part 738 of this subchapter) will direct you to part 746 of this subchapter for these countries.

(2) *Controls implementing U.N. sanctions.* The United Nations imposes sanctions, short of complete embargoes, against certain countries and destinations which may result in controls that supplement those otherwise maintained under the EAR for that particular country. When the Country Chart (Supplement No. 1 to part 738 of this subchapter) has a check in UN Column No. 1, you should review part 746 of this subchapter, Embargoes and Other Special Controls, for any supplemental controls that may apply to exports and reexports involving these countries.

(3) *Commodities that are covered under part 754 of this subchapter, Short Supply Controls.* This Part does not address controls and licensing policies for commodities controlled for short supply reasons. These commodities contain the symbol ''SS'' in the ''Reason for Control'' part of the ''License Requirements'' section of the applicable ECCNs on the CCL. These ECCNs are the following: 0A80 (Horses for export by sea); 1C80 (Inorganic chemicals); 1C81 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil); 1C82 (Other petroleum products); 1C83 (Natural gas liquids and other natural gas derivatives); 1C84 (Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy); and 1C88 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane).

(b) This part lists all the reasons for control reflected in the Country Chart in Supplement No. 1 to part 738 of this subchapter except UN sanctions and Short Supply. In addition, it includes licensing requirements and licensing policy for communications intercepting devices and supercomputers, which are not reflected on the Chart. This part is organized so that it lists each reason for control in the order (reading left to right) in which the control appears on the Chart. In listing the reasons for control and licensing policies, this part includes a description of any multilateral regime under which specific controls are maintained and any applicable contract sanctity provisions that may apply to specific controls.

(c) *List of controls described in this part.* Specifically, this part describes controls and licensing policies that further the U.S. policies relating to the following:

(1) Chemical and biological weapons (CB). (§ 742.2 of this part)

(2) Nuclear non-proliferation (NP). (§ 742.3 of this part)

(3) National security (NS). (§ 742.4 of this part)

(4) Missile technology (MT). (§ 742.5 of this part)

(5) Regional stability (RS). (§ 742.6 of this part)

(6) Crime control (CC). (§ 742.7 of this part)

(7) Anti-terrorism (AT): Iran. (§ 742.8 of this part)

(8) Anti-terrorism (AT): Syria. (§ 742.9 of this part)

(9) Supercomputers (SC). (§ 742.12 of this part)

(10) Communications intercepting devices (CI). (§ 742.13 of this part)

(d) *Overlapping license policies.* Many items are specified on the CCL as being subject to more than one type of control (e.g., national security, missile technology, nuclear non-proliferation, regional stability). In addition, applications for all items on the CCL, other than those controlled for short supply reasons, may be reviewed for missile technology (see § 742.5(b)(3) of this part), nuclear non-proliferation (see § 742.3(b)(2) of this part), or chemical and biological weapons (see § 742.3(b)(3) of this part) and all national security items may be reviewed for anti-terrorism reasons (see §§ 742.8(b) and 742.9(b) of this part). Your application for a license will be reviewed under all applicable licensing policies. A license will be issued only if an application can be approved under all applicable licensing policies.

§ 742.2 Proliferation of chemical and biological weapons.

(a) *License requirements.* The following controls are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons:

(1) If CB Column 1 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to all destinations except Canada for the following:

(i) Viruses, viroids, bacteria, fungi, and protozoa identified in ECCN 1C61 (Microorganisms and toxins).

(ii) Technology for the production and or disposal of microbiological commodities described in paragraph (a)(1)(i) of this section (1E61).

(2) If CB Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to all destinations *except* countries in Country Group A:3 (see Supplement No. 1 to part 740 of this subchapter) (Australia Group members) for the following:

(i) Chemicals identified in ECCN 1C60 (precursor and intermediate chemicals used in the production of chemical warfare agents).

(A) This licensing requirement includes chemical mixtures containing any chemicals identified in ECCN 1C60,

except as specified in Note 2 to that ECCN.

(B) This licensing requirement does not include chemical compounds created with any chemicals identified in ECCN 1C60, unless those compounds are also identified in ECCN 1C60.

(ii) Software (ECCN 1D60) for process control that is specifically configured to control or initiate production of the chemical precursors controlled by ECCN 1C60.

(iii) Technology (ECCN 1E60) for the production and/or disposal of chemical precursors described in ECCN 1C60, and technology involving the following for facilities designed or intended to produce chemicals described in ECCN 1C60:

(A) Overall plant design:

(B) Design, specification, or procurement of equipment;

(C) Supervision of construction, installation, or operation of complete plant or components thereof;

(D) Training of personnel;

(E) Consultation on specific problems involving such facilities.

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter) for the following:

(i) Equipment and materials identified in ECCN 1B70 on the CCL, which can be used in the production of chemical weapons precursors or chemical warfare agents, and equipment and materials identified in ECCN 1B71, which can be used in the production of biological agents.

(ii) Technology for production of the commodities covered in paragraph (a)(3)(i) of this section (ECCN 1E70).

(b) *Licensing policy.* (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export or reexport is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual license applications:

(i) The specific nature of the end-use;

(ii) The significance of the export and reexport in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country;

(iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract.

(3) BXA will review license applications in accordance with the licensing policy described in paragraph (b)(2) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than ''short supply'';

(ii) Are destined to any country *except* countries in Country Group A:3 (see Supplement No. 1 to part 740 of this subchapter) (Australia Group members); and

(iii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Contract sanctity.* Contract sanctity dates are set forth in Supplement No. 1 to part 742. Applicants who wish that a pre-existing contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of such a contract.

(d) *Australia Group.* The Australia Group, a multilateral body that works to halt the spread of chemical and biological weapons, has developed common control lists of items specifically related to chemical and biological weapons. Australia Group members are listed in Country Group A:3 (see Supplement No. 1 to part 740 of this subchapter). The list of items controlled in paragraph (a) of this section are consistent with lists agreed to in the Australia Group.

§ 742.3 Nuclear non-proliferation.

(a) *License requirements.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 requires BXA to identify items subject to the EAR that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export or reexport. ECCNs on the CCL that include the symbols ''NP 1'' or ''NP 2'' in the ''Country Chart'' column of the ''License Requirements'' section identify items that could be of significance for nuclear explosive purposes and are therefore subject to licensing requirements under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These items are referred to as ''The Nuclear Referral List'' and are subject to the following licensing requirements:

(1) If NP Column 1 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to all destinations, except Canada.

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter).

(3) Other nuclear-related license requirements are described in §§ 744.3 and 744.4 of this subchapter.

(b) *Licensing policy.* (1) To implement the controls in paragraph (a) of this section, the following factors are among those used to determine what action should be taken on individual applications:

(i) Whether the items to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(ii) The significance for nuclear purposes of the particular item;

(iii) Whether the items to be exported or reexported are to be used in research on, or for the development, design, manufacture, construction, operation, or maintenance of, any reprocessing or enrichment facility;

(iv) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(v) Whether any party to the transaction has been engaged in clandestine or illegal procurement activities;

(vi) Whether an application for a license to export or reexport to the end-user has previously been denied, or whether the end-user has previously diverted items received under a general license, a License Exception, or a validated license to unauthorized activities;

(vii) Whether the export or reexport would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.2(a) of this subchapter; and

(viii) The non-proliferation credentials of the importing country, based on consideration of the following factors:

(A) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (see Supplement No. 2 to part 742), or to a similar international legally-binding nuclear non-proliferation agreement.

(B) Whether the importing country has all of its nuclear activities, facilities, or installations that are operational,

being designed, or under construction under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(C) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(D) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of non-proliferation;

(E) The degree to which the government of the importing country cooperates in non-proliferation policy generally (e.g., willingness to consult on international non-proliferation issues);

(F) Information on the importing country's nuclear intentions and activities.

(2) In addition, BXA will review license applications in accordance with the licensing policy described in paragraph (b) of this section for items not on the Nuclear Referral List that:

(i) Require a license on the CCL for reasons other than ''short supply;'' and

(ii) Are intended for a nuclear related end-use or end-user.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *Nuclear Suppliers Group.* Most items on the Nuclear Referral List that require a license under NP Column No. 1 on the Country Chart (see Supplement No. 1 to part 738 of this subchapter) are contained in the Annex to the ''Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology'' (the Annex), as published by the International Atomic Energy Agency in INFCIRC/254/Revision 1/Part 2. The adherents to INFCIRC/254/Revision 1/Part 2, which includes the Nuclear Suppliers Guidelines, have agreed to establish export licensing procedures for the transfer of items identified in the Annex. Items that are listed as requiring a license under NP Column No. 2 on the Country Chart (see Supplement No. 1 to part 738 of this subchapter) are not included in the Annex and are controlled only by the United States.

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, if NS Column 1 of the Country Chart (see Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter) that would prove detrimental to the national security of the United States.

(b) *Licensing policy.* (1) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(2) Except as described for certain countries in paragraphs (b)(5) through (8) of this section, the general policy for exports and reexports of items to Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter) is to approve applications when BXA determines, on a case-by-case basis, that the items are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

(3) To permit such policy judgments to be made, each application is reviewed in the light of prevailing policies with full consideration of all aspects of the proposed transaction. The review generally includes:

(i) An analysis of the kinds and quantities of items to be shipped;

(ii) Their military or civilian uses;

(iii) The unrestricted availability abroad of the same or comparable items;

(iv) The country of destination;

(v) The ultimate end-users in the country of destination; and

(vi) The intended end-use.

(4) Although each proposed transaction is considered individually, items described in Advisory Notes on the Commerce Control List are more likely to be approved than others.

(5) In recognition of efforts made to adopt safeguard measures for exports and reexports, Bulgaria, Latvia, Kazakhstan, Lithuania, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

(6) Romania has been determined to present a lesser strategic threat, and has adopted safeguard measures to protect against the diversion of national security controlled items. In recognition of these facts, the Commerce Control List includes several Advisory Notes that indicate likelihood of approval or favorable consideration for export to satisfactory end-users in Romania. Items not eligible for favorable consideration will be reviewed on a case-by-case basis.

(7) The general policy for Cambodia and Laos is to approve license applications when BXA determines, on a case-by-case basis, that the items are for an authorized use in Cambodia or Laos and are not likely to be diverted to another country or use contrary to the national security or foreign policy controls of the United States.

(8) For the People's Republic of China, the general licensing policy is to approve applications, except that for those items that would make a direct and significant contribution to nuclear weapons and their delivery systems, electronic and anti-submarine warfare, intelligence gathering, power projection, and air superiority receive extended review or denial. Each application will be considered individually. Items may be approved even though they may contribute to Chinese military development or the end-user or end-use is military.

Note: The Advisory Notes in the CCL headed ''Note for the People's Republic of China'' provide guidance on equipment likely to be approved more rapidly for China.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *Interim regime.* The licensing requirements described in paragraph (a) of this section reflect multilaterally agreed lists that were in effect when the Coordinating Committee (COCOM) ceased operating in March 1994. COCOM members agreed to maintain controls based on this list on an interim basis, pending the development of new lists and policies to be applied by the COCOM successor regime.

§ 742.5 Missile technology.

(a) *License requirements.* (1) In support of U.S. foreign policy to limit the proliferation of missiles, a license is required to export and reexport items related to the design, development, production, or use of missiles. These items are identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section. Licenses for these items are required to all destinations, except Canada, as indicated by MT Column 1 of the Country Chart (see Supplement No. 1 to part 738 of this subchapter).

(2) The term ''missiles'' is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of a least 300 kilometers (km).

(b) *Licensing policy.* (1) Applications to export and reexport items identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the proliferation of missiles. Applications for exports and reexports of such items contained in Category 7A or described by ECCN 9A21 on the CCL will be considered more favorably if such exports or reexports are determined to be destined to a manned aircraft, satellite, land vehicle, or marine vessel, in quantities appropriate for replacement parts for such applications. When an export or reexport is deemed to make a material contribution to the proliferation of missiles, the license will be denied.

(2) The following factors are among those that will be considered in reviewing individual applications.

(i) The specific nature of the end-use;

(ii) The significance of the export and reexport in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production, or use of missiles that are given in a particular case; and

(vi) The existence of a pre-existing contract.

(3) *Controls on other items.* BXA will review license applications, in accordance with the licensing policy described in paragraph (b)(1) of this section, for items *not* described in paragraph (a) of this section that:

(i) Require a validated license for reasons other than short supply; and

(ii) Could be destined for the design, development, production, or use of missiles, or for a facility engaged in such activities.

(c) *Contract sanctity.* The following contract sanctity dates have been established:

(1) License applications for batch mixers specified in ECCN 1B28.a involving contracts that were entered into prior to January 19, 1990, will be considered on a case-by-case basis.

(2) License applications subject to paragraphs (b) or (c) of this section that involve a contract entered into prior to March 7, 1991, will be considered on a case-by-case basis.

(3) Applicants who wish that a pre-existing contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of a contract.

(d) *Missile Technology Control Regime.* Missile Technology Control Regime (MTCR) members are listed in Country Group A:2 (see Supplement No. 1 to part 740 of this subchapter). Controls on items identified in paragraph (a) of this section are consistent with the list agreed to in the MTCR and included in the MTCR Annex.

§ 742.6 Regional stability.

(a) *License requirements.* The following controls are maintained in support of U.S. foreign policy to maintain regional stability:

(1) As indicated in the CCL and in RS Column 1 of the Country Chart (see Supplement No. 1 to part 738 of this Subchapter), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 6A02.a.1, a.2, a.3, or c; 6A03.b.3 and b.4; 6D21 (only software for development of items in 6A02.a.1, a.2, a.3 or c); 6E01 (only technology for development of items in 6A02.a.1, a.2, a.3, and c, or 6A03.b.3 and b.4); 6E02 (only technology for production of items in 6A02.a.1, a.2, a.3, or c, or 6A03.b.3 or b.4); 7D01 (only software for development or production of items in 7A01, 7A02, or 7A03); 7E01 (only technology for the development of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E02 (only technology for the production of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); and, 7E21 (only technology for the development or production of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft).

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of this subchapter), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter), Iceland and New Zealand for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A18.c, 1B18.a, 2B18, and 9A18.b.

(b) *Licensing policy.* (1) Applications to export and reexport items described in paragraph (a)(1) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.

(2) Applications to export and reexport commodities described in paragraph (a)(2) of this section will generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport would contribute significantly to the destabilization of the region to which the equipment is destined.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining regional stability controls, at this time these controls are maintained only by the United States.

§ 742.7 Crime control.

(a) *License requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export and reexport crime control and detection equipment, related technology and software as follows:

(1) Crime control and detection instruments and equipment and related technology and software identified in the appropriate ECCNs on the CCL under CC Column No. 1 in the Country Chart column of the ''License Requirements'' section. A license is required to countries listed in CC Column 1 (Supplement No. 1 to part 738 of this subchapter), i.e., all countries except those listed in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter) and Iceland and New Zealand. Items affected by this requirement are identified on the CCL under the following ECCNs: 0A82; 0A84 (shotguns with barrel length over 18 but less than 24 inches, regardless of end-user); 0E84; 1A84; 3A80; 3A81; 3D80; 3E80; 4A03 (fingerprint computers only); 4A80; 4D01 (for fingerprint computers only); 4D80; 4E01 (for fingerprint computers only); 4E80; 6A02 (police-model infrared viewers only); 6E01 (for police-model infrared viewers only); 6E02 (for police-model infrared viewers only); and 9A80.

(2) Shotguns with a barrel length of 24 inches or more identified in ECCN 0A84 on the CCL under CC Column No. 2 in the Country Chart column of the ''License Requirements'' section regardless of end-user to countries listed in CC Column 2 (Supplement No. 1 to part 738 of this subchapter), which are the same as those countries listed in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter).

(3) Shotguns with barrel length over 24 inches, identified in ECCN 0A84 on the CCL under CC Column No. 3 in the Country Chart column of the ''License Requirements'' if for sale or resale to police or law enforcement entities to countries listed in CC Column 2 (Supplement No. 1 to part 738 of this subchapter) except countries in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter), and Iceland and New Zealand.

(b) *Licensing policy.* The licensing policies are as follows:

(1) Applications for licenses to export or reexport ''specially designed implements of torture'' will be denied.

(2) Applications for other items controlled under paragraph (a) of this section will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining controls on crime control and detection items, at this time these controls are maintained only by the United States.

§ 742.8 Anti-terrorism: Iran.

(a) *License requirements.* In support of U.S. foreign policy on terrorism designated countries, BXA maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement No. 3 to part 742. Of these controls, items described in paragraph (a)(i) through (a)(v) of Supplement No. 3 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA). Items listed in paragraph (a)(vi) through (a)(xxxviii) of Supplement No. 1 to part 742 are controlled under section 6(a) of the EAA.

(1) If AT Column 1 or AT Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for export to Iran for anti-terrorism purposes.

(2) If AT Column 1 or AT Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for reexport to Iran of such items, *except* for ECCNs 2A94, 3A93, 5A92, 5A95, 6A90, 6A94, 7A94, 8A92, 8A94, 9A90, 9A92, and 9A94. In addition, items in these ECCNs are not counted as controlled US content for the purposes of determining license requirements for foreign made products containing US parts and components. However, the export of these items from the U.S. to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Iran is prohibited without a validated license.

(b) *Licensing policy.* The Iran-Iraq Arms Non-Proliferation Act requires BXA to deny license applications for Iran. License applications for which contract sanctity is established are considered under policies in effect prior to the enactment of that Act (for Iran the effective date is October 23, 1992). Otherwise, licenses for Iran are subject to a policy of denial. License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Iran, including its military logistics capability, or could enhance Iran's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified thirty days before issuance of a license to export or reexport such items.

(c) *Contract sanctity.* Contract sanctity dates and licensing policies in effect prior to October 23, 1992 are listed in Supplement No. 3 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

§ 742.9 Anti-terrorism: Syria.

(a) *License requirements.* In support of U.S. foreign policy on terrorism designated countries, BXA maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement No. 3 to part 742. Of these controls, items described in paragraph (a)(i) through (a)(v) of Supplement No. 3 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA). Items listed in paragraph (a)(vi) through (a)(xxxviii) of Supplement No. 1 to part 742 are controlled under section 6(a) of the EAA. If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for export and reexport to Syria for anti-terrorism purposes.

(b) *Licensing policy.* (1) Applications for export and reexport to Syria of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination (i.e., that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL).

(ii) Military-related items controlled for national security reasons to any destination containing NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL and ending with the number ''18''.

(iii) Items that are controlled for missile proliferation reasons to any destination (i.e., that have an MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL).

(iv) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components controlled to any destination for national security reasons and containing an NS in the Reason for Control column on the CCL; or controlled to Syria and containing an AT 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

Note: Consistent with the general rule that applies to computing U.S. parts and components content incorporated in foreign made products, all aircraft-related items that require a license to Syria will be included as controlled US content for purposes of such license requirements.

(v) Cryptographic, cryptoanalytic, and cryptologic items controlled to any destination for national security reasons and containing an NS Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL; or controlled to Syria and containing an AT Column 1 in the Country Table Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(2) Items that are controlled for nuclear non-proliferation reasons to any destination and have an NP Column 1 or NP Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL will be considered on a case-by-case basis.

(3) Applications for export and reexport to Syria of all other items described in paragraph (a) of this section, and not controlled by paragraphs (b)(1) or (b)(2) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(4) Notwithstanding the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section, applications for Syria will be considered on a case-by-case basis if:

(i) The transaction involves the reexport to Syria of items where Syria was not the intended ultimate destination at the time of original export from the United States, provided that the exports from the U.S. occurred prior to the applicable contract sanctity date (or, where the contract sanctity date is December 16, 1986, prior to June 18, 1987).

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical equipment.

Note: Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(5) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Syria, including its military logistics capability, or could enhance Syria's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified thirty days before issuance of a validated license to export or reexport such items.

(c) *Contract sanctity.* Contract sanctity dates and related licensing policies for Syria are set forth in Supplement No. 3 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

§ 742.10 Anti-terrorism: Sudan.

(a) *License requirements.* In support of U.S. foreign policy on terrorism designated countries, BXA maintains anti-terrorism controls on the export and reexport of items described in paragraph (a)(1) through (a)(v) of Supplement No. 3 to part 742. These items are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(b) *Licensing policy.* (1) Applications for export and reexport to Sudan of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination (i.e., that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL).

(ii) Military-related items controlled for national security reasons to any destination (i.e., that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL and ending with the number ''18'').

(iii) Items that are controlled for missile proliferation reasons to any destination (i.e., that contain a MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL).

(2) Items that are controlled for nuclear non-proliferation reasons to any destination (i.e., that contain a NP Column 1 or NP Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL) will be considered on a case-by-case basis.

(3) Applications for the export and reexport of national security controlled items to any destination (i.e., that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL) will be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(4) Notwithstanding the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section, applications for Sudan will be considered on a case-by-case basis if:

(i) The transaction involves the reexport to Sudan of items where Sudan was not the intended ultimate destination at the time of original export from the United States, provided that the exports from the U.S. occurred prior to the contract sanctity date of December 28, 1993).

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical equipment.

Note: Applicants who wish any of the factors described in paragraph (b)(4) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(c) *Contract sanctity.* Contract sanctity dates and related licensing information for Sudan are set forth in Supplement No. 3 part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

§ 742.11 [Reserved]

§ 742.12 Supercomputers.

(a) *License requirements.* (1) This section contains special provisions for exports, reexports, and certain intra-country transfers of supercomputers. A supercomputer is any computer with a Composite Theoretical Performance (CTP) equal to or exceeding 1,500 MTOPS (million theoretical operations per second). For the calculation of CTP, see the Technical Note that follows the Advisory Notes for Category 4 in the Commerce Control List.

(2) In recognition of the strategic significance of supercomputers, in particular their potential to make substantial contributions to activities of national security and weapons proliferation concern, a license is required for the export or reexport of supercomputers to all destinations, except Japan and Canada and for intra-country transfers within such destinations, except that no license is required for export from Japan. These license requirements are not reflected on the Country Chart (Supplement No. 1 to part 738 of this subchapter).

(b) *Licensing policy.* Supercomputer licensing policies described in this section vary according to the country of destination. Generally licenses are subject to security conditions or safeguard plans. Security conditions, safeguard plans, and related information are provided in Supplement No. 4 to part 742.

(1) License applications for exports, reexports, or in-country transfers of supercomputers to Australia, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, and the United Kingdom generally will be approved subject to Minimum Security Conditions (see Supplement No. 4 to part 742), unless otherwise stated on the license.

(2) License applications for exports, reexports, or in-country transfers of supercomputers to Austria, Finland, Iceland, Mexico, Singapore, South Korea, Sweden, Switzerland, and Venezuela will be considered on a case-by-case basis and, if approved, will be subject to Level 1 Safeguards Plans (see Supplement No. 4 to part 742), unless otherwise stated on the license. The following factors will be considered in reviewing applications for these countries:

(i) Strategic trade control cooperation between the importing government and the United States;

(ii) The ultimate consignee's participation in, or support of, any activities that involve national security concerns (e.g., cryptography, anti-submarine, and strategic defense concerns); or

(iii) The ultimate consignee's participation in, or support of, the following prohibited activities:

(A) The design, development, production, or use of:

(*1*) Nuclear explosive devices, including any components or subsystems of such devices;

(*2*) Complete rocket systems or unmanned air vehicle systems capable of delivering nuclear weapons, including any components or subsystems of such devices;

(B) The design, development, production, use, or maintenance of nuclear fuel cycle facilities (including facilities related to nuclear propulsion) or heavy water production plants in countries in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter);

(C) Any projects or facilities for the design, development, production, stockpiling, or use of chemical or biological weapons;

(D) A violation of the export laws and regulations of a supplier country or involvement in clandestine procurement activities or other activities where there is a significant risk of diversion from the authorized end-uses or a likelihood that supercomputer security safeguards would not be effectively implemented.

(3) License applications for export, reexport, or in-country transfers of supercomputers to the following countries will be considered on a case-by-case basis and, if approved, will be subject to Level 2 Safeguards Plans (see Supplement No. 4 to part 742), unless otherwise stated on the license: Bahrain, Czech Republic, Egypt, Jordan, Lebanon, Poland, Qatar, Slovakia, Taiwan, and Yemen and countries in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter), excluding Iran. The factors that will be considered in reviewing applications to these countries are the same as those set forth in paragraph (b)(2) of this section.

Note: The number and nature of the safeguards required to approve an application will depend on whether the end-use is single-purpose or multiple-purpose (fewer safeguards will generally be required to approve an application when the end-use is single-purpose).

(4) License applications for exports, reexports, or in-country transfers of supercomputers to the following countries will generally be denied: countries in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter), Cuba, Iran, Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro), Libya, North Korea, Sudan, and Syria. Should an application be considered for approval to any such destinations, an appropriate safeguards plan will be developed including appropriate security conditions described under the Level 2 Safeguards Plans (see Supplement No. 4 to part 742).

(5) License applications for exports, reexports, or in-country transfers of supercomputers to other countries will be reviewed on a case-by-case basis and will be evaluated to determine which safeguards requirements would be most appropriate. In addition to the factors set forth in paragraph (b)(2) of this section, the following criteria will be considered in the review of these applications:

(i) The presence and activities of countries and end-users of national security and proliferation concern and the relationships that exist between the government of the importing country and such countries and end-users; and,

(ii) The extent to which the importing country has cooperated with the United States in stemming nuclear, chemical or biological weapons, or missile proliferation activities.

Note: The number and nature of the safeguards required to approve an application will depend on whether the end-use is single-purpose or multiple-purpose (fewer safeguards will generally be required to approve an application when the end-use is single-purpose).

(6) Exports, reexports, or in-country transfers of supercomputers involving countries listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section that are solely dedicated to the following non-scientific and non-technical commercial and business uses may be eligible for a less restrictive set of security safeguards than those normally applicable to such countries:

(i) Financial services (e.g., banking and securities and commodity exchanges);

(ii) Insurance;

(iii) Reservation systems;

(iv) Point-of-sales systems;

(v) Mailing list maintenance for marketing purposes;

(vi) Inventory control for retail/wholesale distribution.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of supercomputers.

(d) *Supercomputer regime.* The United States and Japan participate in a supercomputer regime. Other countries are expected to join. The regime provides uniform and effective safeguards to protect supercomputers from unauthorized end-users and unauthorized end-uses, including those associated with proliferation. Under the regime, supercomputer controls apply on a world-wide basis.

§ 742.13 Communications intercepting devices.

(a) *License requirement.* (1) As set forth in ECCN 5A80, a license is required for the export or reexport to any destination, including Canada, of any electronic, mechanical, or other device primarily useful for surreptitious interception of wire or oral communications. This control implements a provision of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub.L. 90–361). This license requirement is not reflected on the Country Chart (Supplement No. 1 to part 738 of this subchapter).

(2) Communications intercepting devices are electronic, mechanical, or other devices that can be used for interception of wire or oral communications if their design renders them primarily useful for surreptitious listening even though they may also have innocent uses. A device is not restricted merely because it is small or may be adapted to wiretapping or eavesdropping. Some examples of devices to which these restrictions apply are: the martini olive transmitter; the infinity transmitter; the spike mike; and the disguised microphone appearing as a wristwatch, cufflink, or cigarette pack; etc. The restrictions do not apply to devices such as the parabolic microphone or other

directional microphones ordinarily used by broadcasters at sports events, since these devices are not primarily useful for surreptitious listening.

(b) *Licensing policy.* (1) License applications will generally be approved for:

(i) A provider of wire or electronic communication services or an officer, agent, or employee of, or person under contract with, such a provider in the normal course of the business of providing that wire or electronic communication service; and

(ii) Officers, agents, or employees of, or person under contract with the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

(2) Other applications will generally be denied.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of communications interception devices.

(d) *U.S. controls.* Controls on this equipment are maintained by the United States government in accordance with the Omnibus Crime Control and Safe Streets Act of 1968.

Supplement No. 1 to Part 742—Nonproliferation of Chemical and Biological Weapons

Note: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this Supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application.

(1) The contract sanctity date for exports to Syria of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, thiodiglycol, dimethylamine hydrochloride, dimethylamine, ethylene chlorohydrin (2-chloroethanol), and potassium fluoride is April 28, 1986.

(2) The contract sanctity date for exports to Iran or Syria of dimethyl phosphite (dimethyl hydrogen phosphite), methyl phosphonyldichloride, 3-quinuclidinol, N,N-diisopropylaminoethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, 3-hydroxy-1-methylpiperidine, trimethyl phosphite, phosphorous trichloride, and thionyl chloride is July 6, 1987.

(3) The contract sanctity date for exports to Iran or Syria of items in ECCN 1C61 is February 22, 1989.

(4) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, methylphosphonyl difluoride, phosphorus oxychloride, and thiodiglycol is February 22, 1989.

(5) The contract sanctity date for exports to Iran, Libya, or Syria of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N -diethylethanolamine is December 12, 1989.

(6) The contract sanctity date for exports to all destinations (except Iran or Syria) of phosphorus trichloride, trimethyl phosphite, and thionyl chloride is December 12, 1989. For exports to Iran or Syria, paragraph (2) of this Supplement applies.

(7) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of 2-chloroethanol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Syria, paragraph (1) of this Supplement applies. For exports of triethanolamine to Iran, Libya, or Syria, paragraph (6) of this Supplement applies.

(8) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of chemicals controlled by ECCN 1C60 is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorus oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride triethanolamine, and trimethyl phosphite. (See also paragraphs (6) and (7) of this Supplement.) For exports to Iran, Libya, or Syria, see paragraphs (1) through (6) of this Supplement.

(9) The contract sanctity date for exports and reexports of the following commodities and technical data is March 7, 1991:

(i) Equipment for producing chemical weapon precursors and chemical warfare agents described in ECCN 1B70;

(ii) Equipment and materials for producing biological agents) described in ECCN 1B71; and

(iii) Technology for the production of 1B70 and 1B71 described in 1E70.

(10) The contract sanctity date for license applications subject to § 742.2(b)(3) of this Part is March 7, 1991.

(11) The contract sanctity date for reexports of chemicals controlled under ECCN 1C60 is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran, Libya, or Syria is December 12, 1989.

(12) The contract sanctity date for reexports of viruses, viroids, bacteria, fungi, and protozoa controlled by ECCN 1C61 is March 7, 1991.

Supplement No. 2 to Part 742—Countries That Are Party to the Nuclear Non-Proliferation Treaty and/or the Treaty for the Prohibition of Nuclear Weapon in Latin America (Treaty of Tlatelolco)

[This Supplement is redesignated from Supplement No. 2 to Part 778 elsewhere in this proposed rule. The text for this Supplement will be set out in the final rule.]

Supplement No. 3 to Part 742—Iran, Sudan and Syria Contract Sanctity Dates and Related Policies

(a)(1) The current licensing policies for Iran, Sudan, and Syria are set forth in §§ § 742.8, 742.9, and 742.10 of this part. The following list provides guidance on licensing policies and related contract sanctity dates that may be available for transactions involving pre-existing contracts involving Iran, Sudan, and Syria.

(i) *All items subject to national security controls. (A) Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of items valued at $7 million or more: January 23, 1984.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other national security controlled items: September 28, 1984.

(*3*) Contract sanctity date for exports and reexports to non-military end-users or end-uses: October 23, 1992, *unless* otherwise specified in this paragraph (a)(1)(i) of this Supplement.

(B) *Sudan.* Applications for export and reexport to Sudan of these items will generally be denied if the export or reexport is destined to a military end-user or military end-use. Applications for exports and reexports to non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: December 28, 1993.

(C) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or military end-use. Applications for exports and reexport to non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in this paragraph (a)(1)(i) of this Supplement.

(*1*) No contract sanctity date for exports and reexports to military end-users or end-uses of items valued at $7 million or more.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other items: December 16, 1986.

(ii) *All items subject to chemical and biological weapons proliferation controls.* Applications for export and reexport to Iran, Sudan, or Syria of these items will generally be denied to all end-users. Contract sanctity date for Sudan: December 28, 1993 (See Supplement No. 1 to Part 742 for contract sanctity dates for Iran and Syria).

(iii) *All items subject to missile proliferation controls (MTCR).* Applications for export and reexport to Iran, Sudan, or Syria of these items will generally be denied to all end-users. Contract sanctity date for Sudan: December 28, 1993. Contract sanctity provisions for Iran and Syria are not available.

(iv) *All items subject to nuclear weapons proliferation controls (NRL). (A) Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users. Contract sanctity date: October 23,

1992, unless otherwise specified in this paragraph (a)(1) of this Supplement.

(B) *Sudan.* Applications for export and reexport to Sudan of these items will generally be denied if destined to a military end-user or end-use. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: December 28, 1993.

(C) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if destined to a military end-user or end-use. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: October 23, 1992.

(v) *All military-related items, i.e., applications for export and reexport of items controlled by CCL entries ending with the number ''18''.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users. Contract sanctity date: see paragraph (a)(1)(i)(A) of this Supplement.

(B) *Sudan.* Applications for export and reexport to Sudan of these items will generally be denied to all end-users. Contract sanctity date: December 28, 1993.

(C) *Syria.* Applications for export and reexport to Syria of these items will generally be denied to all end-users. Contract sanctity date: see paragraph (a)(1)(i)(B) of this Supplement.

(vi) *All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. (A) Iran.* Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more: January 23, 1984.

(*2*) Contract sanctity date for other helicopters and aircraft and gas turbine engines therefor: September 28, 1984.

(*3*) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A91, 9A94, or 9A95: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied to all end-users.

(*1*) There is no contract sanctity for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more; except that passenger aircraft, regardless of value, have a contract sanctity date of August 28, 1991, if destined for a regularly scheduled airline with assurance against military use.

(*2*) Contract sanctity date for helicopters with 10,000 lbs. empty weight or less: April 28, 1986.

(*3*) Contract sanctity date for other aircraft and gas turbine engines therefor: December 16, 1986.

(*4*) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A91 or 9A94: August 28, 1991.

(vii) *Heavy duty, on-highway tractors.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users. Contract sanctity date: August 28, 1991.

(B) *Syria.* Applications for export or reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for military end-users or end-uses: August 28, 1991.

(viii) *Off-highway wheel tractors of carriage capacity 9t (10 tons) or more.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for military end-users or end-uses: August 28, 1991.

(ix) *Large diesel engines (greater than 400 horsepower) and parts to power tank transporters.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) Reserved.

(x) *Cryptographic, cryptoanalytic, and cryptologic equipment.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of any such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment: October 22, 1987.

(B) *Syria.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for export and reexport to Syria will generally be denied.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to non-military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that were subject to national security controls on August 28, 1991: December 16, 1986.

(*3*) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment to all end-users: August 28, 1991.

(xi) *Navigation, direction finding, and radar equipment.*

(A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of navigation, direction finding, and radar equipment that were subject to national security controls on August 28, 1991: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other navigation, direction finding, and radar equipment: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of navigation, direction finding, and radar equipment that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for all other navigation, direction finding, and radar equipment for military end-users or end-uses: August 28, 1991.

(xii) *Electronic test equipment.*

(A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of electronic test equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other electronic test equipment for all end-users: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexport to military end-users or end-uses of electronic test equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexport to military end-users or end-uses of all other electronic test equipment: August 28, 1991.

(xiii) *Mobile communications equipment.*

(A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexport of mobile communications equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other mobile communications equipment for all end-users: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-

military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of mobile communications equipment that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other mobile communications equipment: August 28, 1991.

(xiv) *Acoustic underwater detection equipment.*

(A) *Iran.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other acoustic underwater detection equipment for all end-users: October 22, 1987.

(B) *Syria.* A license is required for national security-controlled acoustic underwater detection equipment. Applications for export and reexport to Syria will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses for all other acoustic underwater detection equipment: August 28, 1991.

(xv) *Portable electric power generators.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) Reserved.

(xvi) *Vessels and boats, including inflatable boats.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of vessels and boats that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(2) Contract sanctity date for all other vessels and boats for all end-users: October 22, 1987.

(B) *Syria.* A license is required for only national security-controlled vessels and boats. Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexport to military end-users or end-uses of vessels and boats that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for all other vessels and boats: August 28, 1991.

(xvii) *Marine and submarine engines (outboard/inboard, regardless of horsepower).* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of marine and submarine engines that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for outboard engines of 45 HP or more for all end-users: September 28, 1984.

(*3*) Contract sanctity date for all other marine and submarine engines for all end-users: October 22, 1987.

(B) *Syria.* A license is required for all national security controlled marine and submarine engines. Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of marine and submarine engines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for all other marine and submarine engines: August 28, 1991.

(xviii) *Underwater photographic equipment.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of underwater photographic equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other underwater photographic equipment for all end-users: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of underwater photographic equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other underwater photographic equipment: August 28, 1991.

(xix) *Submersible systems.* (A) *Iran.* Applications for export and reexport to Iran of such systems will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of submersible systems that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other submersible systems for all end-users: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such systems will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of submersible systems that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other submersible systems: August 28, 1991.

(xx) *Scuba gear and related equipment.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users. No contract sanctity for Iran.

(xxi) *Pressurized aircraft breathing equipment.* (A) *Iran.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) Reserved.

(xxii) *Computer numerically controlled machine tools.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other computer numerically controlled machine tools: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications to Syria for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other computer numerically controlled machine tools: August 28, 1991.

(xxiii) *Vibration test equipment.* (A) *Iran.* Applications for export and reexport to Iran

of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexport of vibration test equipment that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other vibration test equipment: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications to Syria for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for export and reexport to military end-users or end-uses of vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other vibration test equipment: August 28, 1991.

(xxiv) *Digital computers with a CTP of 6 or above, assemblies, related equipment, equipment for development or production of magnetic and optical storage equipment, and materials for fabrication of head/disk assemblies.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity dates for exports and reexports of items that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity date for all other items for all end-users: August 28, 1991.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied, if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity dates for export and reexport to military end-users or end-uses of items that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for export and reexport to military end-users or end-uses of all other items: August 28, 1991.

(xxv) *Telecommunications equipment.* (A) A license is required for the following telecommunications equipment:

(*1*) Radio relay systems or equipment operating at a frequency equal to or greater than 19.7 GHz or ''spectral efficiency'' greater than 3 bit/s/Hz;

(*2*) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm;

(*3*) ''Telecommunications transmission systems'' or equipment with a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mb/s.

(B) *Iran.* Applications for export or reexport to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of telecommunications equipment that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other telecommunications equipment: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(C) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexport to military end-users or end-uses of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other telecommunications equipment: August 28, 1991.

(xxvi) *Microprocessors operating at a clock speed over 25 MHz.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of microprocessors that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other microprocessors: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of microprocessors that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other microprocessors: August 28, 1991.

(xxvii) *Semiconductor manufacturing equipment.* For Iran or Syria, a license is required for all such equipment described in ECCNs 3B01 and 3B91.

(A) *Iran.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991 for all users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other semiconductor manufacturing equipment: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for export and reexport to military end-users or end-uses of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for export and reexport to military end-users or end-uses of all other semiconductor manufacturing equipment: August 28, 1991.

(xxviii) *Software specially designed for the computer-aided design and manufacture of integrated circuits.* (A) *Iran.* Applications for export and reexport to Iran of such software will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of software that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other software: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such software will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such software: August 28, 1991.

(xxix) *Packet switches.* For Iran or Syria, a license is required for all equipment described in ECCNs 5A03 and 5A94.

(A) *Iran.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of packet switches that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other packet switches: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of packet switches that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses

for all other packet switches: August 28, 1991.

(xxx) *Specially designed software for air traffic control applications that uses any digital signal processing techniques for automatic target tracking or that has a facility for electronic tracking.*

(A) *Iran.* Applications for export and reexport to Iran of such software will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of such software that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other such software: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such software will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such software: August 28, 1991.

(xxxi) *Gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of gravity meters that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other such gravity meters: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for export and reexport to military end-users or end-uses of gravity meters that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such gravity meters: August 28, 1991.

(xxxii) *Magnetometers with a sensitivity lower (better) than 1.0 nt rms per square root Hertz.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of such magnetometers that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other such magnetometers: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such magnetometers: August 28, 1991.

(xxxiii) *Fluorocarbon compounds described in ECCN 1C94 for cooling fluids for radar and supercomputers.* (A) *Iran.* Applications for export and reexport to Iran of such compounds will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of such fluorocarbon compounds that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other such fluorocarbon compounds: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexports to Syria of such compounds will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such fluorocarbon compounds: August 28, 1991.

(xxxiv) *High strength organic and inorganic fibers (kevlar) described in ECCN 1C50.* (A) *Iran.* Applications for export and reexport to Iran of such fibers will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of high strength organic and inorganic fibers described in 1C50 that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other high strength organic and inorganic fibers described in 1C50: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such fibers will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of high strength organic and inorganic fibers described in 1C50 that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other high strength organic and inorganic fibers described in 1C50: August 28, 1991.

(xxxv) *Machines described in ECCNs 2B03 and 2B93 for cutting gears up to 1.25 meters in diameter.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of machines that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other machines: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of machines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other machines: August 28, 1991.

(xxxvi) *Aircraft skin and spar milling machines.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(*2*) Contract sanctity dates for all other aircraft skin and spar milling machines: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export or reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other aircraft skin and spar milling machines: August 28, 1991.

(xxxvii) *Manual dimensional inspection machines described in ECCN 2B92.* (A) *Iran.*

Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of manual dimensional inspection machines that were subject to national security controls on August 28, 1991 for all end-users: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other manual dimensional inspection machines: August 28, 1991.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such manual dimensional inspection machines: August 28, 1991.

(xxxviii) *Robots capable of employing feedback information in real time processing to generate or modify programs.*

(A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991 for all end-users: see paragraphs (a)(1)(i)(A)(*1*) and (a)(1)(i)(A)(*2*) of this Supplement.

(*2*) Contract sanctity date for all other such robots: August 28, 1991.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(*1*) Contract sanctity date for exports and reexports to military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(*2*) Contract sanctity date for all other such robots: August 28, 1991.

(2) Applications for Iran that are not subject to the policy of denial under the Iran-Iraq Arms Non-Proliferation Act (i.e., contract sanctity established prior to October 23, 1992) will be considered on a case-by-case basis for transaction involving the reexport to Iran of items where Iran was not the intended ultimate destination at the time of original export from the United States, provided that the export from the U.S. occurred prior to the applicable contract sanctity date indicated in paragraph (a)(1) of this Supplement (or, where the contract sanctity date is October 22, 1987, prior to November 27, 1987).

(3) Applicants who wish contract sanctity for any of the factors described in paragraph (a)(2) of this Supplement to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the existence of the pre-existing contract, the specifications and intended humanitarian or medical use of the equipment, or the date of export from the United States.

(b) Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable license policies that were in effect prior to the contact sanctity date. The contract sanctity dates set forth in paragraph (a) of this Supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, then you should include all relevant information with your license application.

Supplement No. 4 to Part 742—Supercomputers; Security Conditions and Safeguard Plans Definitions and Related Information

This Supplement sets forth the applicable security conditions and safeguard plans for the export, reexport, or in-country transfer of supercomputers to certain destinations. The licensing policies for the export, reexport, or in-country transfer of supercomputers are set forth in § 742.12 of this Part.

(a) Minimum Security Conditions

(1) *Applicable countries.* The countries subject to paragraph (a) of this Supplement include: Australia, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, and the United Kingdom.

(2) *Security conditions.* A license for any of the countries listed in paragraph (a)(1) of this Supplement will be subject to the following conditions unless otherwise specified on the license:

(i) The applicant will assume responsibility for providing adequate security against physical diversion of the supercomputer during shipment (e.g., delivery by either attended or monitored shipment, using the most secure route possible). This precludes using the services or facilities of any country listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter), and Iran, Syria, Cuba, Iraq, North Korea, and Libya.);

(ii) No reexport or intra-country transfer without prior written authorization from BXA; and

(iii) No physical or computational access to supercomputers may be granted to restricted nationals (see paragraph (e)(7) of this Supplement for definition) without prior written authorization from BXA, except that commercial consignees described in § 742.12(b)(6) of this Part are prohibited only from giving such nationals user-accessible programmability without prior written authorization.

(3) *Supporting documentation.* Applications must be accompanied by an International Import Certificate (IIC) or a Form BXA–6052P, Statement by Foreign Consignee, in accordance with the documentation requirements in Parts 748 and 752, respectively, of this subchapter.

(b) Level 1 Safeguards Plan

(1) *Applicable countries.* The countries subject to paragraph (b) of this Supplement include: Austria, Finland, Iceland, Mexico, Singapore, South Korea, Sweden, Switzerland, and Venezuela.

(2) *Supercomputer safeguards plan.* Following interagency review of the application, BXA will instruct the exporter to submit a supercomputer safeguards plan signed by the ultimate consignee. For supercomputers with a CTP equal to or exceeding 1,950 MTOPS, the safeguards plan must also be certified by the export control authorities of the importing country. The safeguards plan must indicate that the ultimate consignee agrees to implement the following safeguards:

(i) Measures to provide adequate security against physical diversion of the supercomputer during shipment (e.g., delivery by either attended or monitored shipment, using the most secure route possible. This precludes using the services or facilities of any country listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter), and Iran, Syria, Cuba, Iraq, North Korea, and Libya));

(ii) No reexport or intra-country transfer of the supercomputer without prior written authorization from BXA;

(iii) Security measures to protect the computer using facility against theft or unauthorized use of hardware or software at all times;

(iv) Appropriate checks to ensure that physical and computational access to the computer using facility will be limited to authorized persons;

(v) Password or ID protocols for access by all authorized users;

(vi) No access to supercomputers by restricted nationals:

(A) No physical or computational access to supercomputers may be granted to restricted nationals without prior written authorization from BXA, except that commercial consignees are prohibited only from giving such nationals user-accessible programmability without prior written authorization;

(B) No passwords or IDs may be issued to restricted nationals; and

(C) No work may be performed on the supercomputer on behalf of restricted nationals;

(vii) No conscious or direct ties may be established to networks (including their subscribers) operated by restricted nationals;

(viii) Appropriate monitoring of the use of the supercomputer (any indications of improper or unauthorized use or requests for runs will be promptly reported to the government of the importing country); and

(ix) No use of the supercomputer for any prohibited activities.

(3) *Certification by export control authorities of importing country.* The following importing government certification is required for supercomputers with a CTP equal to or exceeding 1,950 MTOPS:

This is to certify that (name of ultimate consignee) has declared to (name of appropriate foreign government agency) that the supercomputer (model name) will be used only for the purposes specified in the end-use statement and that the ultimate consignee will establish and adhere to all the safeguard conditions and perform all other undertakings described in the end-use statement.

The (name of appropriate foreign government agency) will advise the United States Government of any evidence that might reasonably indicate the existence of circumstances (e.g., transfer of ownership) that could affect the objectives of the security safeguard conditions.

(4) *Supporting documentation.* With the exception of applications for Mexico and Venezuela, applications must be accompanied by an International Import Certificate (IIC), or a Form BXA–629P (Statement by Ultimate Consignee and Purchaser), in accordance with the documentation requirements in Part 748 of this subchapter.

(c) Level 2 Safeguards Plan

(1) *Applicable countries.* The countries subject to paragraph (c) of this Supplement include: Bahrain, Czech Republic, Egypt, Jordan, Lebanon, Poland, Qatar, Slovakia, Taiwan, and Yemen and countries in Country Group D:2 (see Supplement No. 1 to Part 740 of this subchapter), excluding Iran.

(2) *Supercomputer safeguards plan.* Following interagency review of the application, BXA will instruct the exporter to submit a supercomputer safeguards plan signed by the ultimate consignee and certified by the export control authorities of the importing country. The safeguards plan must indicate that the ultimate consignee agrees to implement those safeguards required by BXA as a condition of issuing the license. BXA will inform exporters concerning which of the following safeguards will be required as license conditions:

(i) The applicant will assume responsibility for providing adequate security against physical diversion of the supercomputer during shipment (e.g., delivery by either attended or monitored shipment, using the most secure route possible—this precludes using the services or facilities of any country listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter), and Iran, Syria, Cuba, Iraq, North Korea, and Libya.

(ii) There will be no reexport or intra-country transfer of the supercomputer without prior written authorization from BXA.

(iii) The supercomputer systems will be used only for those activities approved on the license or reexport authorization.

(iv) There will be no changes either in the end-users or the end-uses indicated on the license without prior written authorization by BXA.

(v) Only software that supports the approved end-uses will be shipped with the computer system.

(vi) The end-user will station security personnel at the computer using facility to ensure that the applicable security measures are implemented.

(vii) The exporter will station representatives at the computer-using facility, or make such individuals readily available, to guide the security personnel in the implementation and operation of the security measures.

(viii) The security personnel will undertake the following measures under the guidance of the exporter's representatives:

(A) The physical security of the computer using facility;

(B) The establishment of a system to ensure the round-the-clock supervision of computer security;

(C) The inspection, if necessary, of any program or software to be run on the computer system in order to ensure that all usage conforms to the conditions of the license;

(D) The suspension, if necessary, of any run in progress and the inspection of any output generated by the supercomputer to determine whether the program runs or output conform with the conditions of the license;

(E) The inspection of usage logs daily to ensure conformity with the conditions of the license and the retention of records of these logs for at least a year;

(F) The determination of the acceptability of computer users to ensure conformity with the conditions of the license;

(G) The immediate reporting of any security breaches or suspected security breaches to the government of the importing country and to the exporter's representatives;

(H) The execution of the following key tasks:

(*1*) Establishment of new accounts;

(*2*) Assignment of passwords;

(*3*) Random sampling of data;

(*4*) Generation of daily logs;

(I) The maintenance of the integrity and security of tapes and data files containing archived user files, log data, or system backups.

(ix) The exporter's representatives will be present when certain key functions are being carried out (e.g., the establishment of new accounts, the assignment of passwords, the random sampling of data, the generating of daily logs, the setting of limits to computer resources available to users in the development mode, the certification of programs for conformity to the approved end-uses before they are allowed to run in the production mode, and the modification to previously certified production programs).

(x) The security personnel and the exporter's representatives will provide monthly reports on the usage of the supercomputer system and on the implementation of the safeguards.

(xi) The supercomputer system will be housed in one secure building and protected against theft and unauthorized entry at all times.

(xii) Restricted nationals will not be allowed access to supercomputers:

(A) No physical or computational access to supercomputers may be granted to restricted nationals without prior written authorization from BXA, except that commercial consignees are prohibited only from giving such nationals user-accessible programmability without prior written authorization;

(B) No passwords or IDs may be issued to restricted nationals;

(C) No work may be performed on the supercomputer on behalf of restricted nationals; and

(D) No conscious or direct ties may be established to networks (including their subscribers) operated by restricted nationals.

(xiii) Physical access to the supercomputer, the operator consoles, and sensitive storage areas of the computer using facility will be controlled by the security personnel, under the guidance and monitoring of the exporter's representatives, and will be limited to the fewest number of people needed to maintain and run the supercomputer system.

(xiv) The supercomputer will be equipped with the necessary software to: permit access to authorized persons only, detect attempts to gain unauthorized access, set and maintain limits on usage, establish accountability for usage, and generate logs and other records of usage. This software will also maintain the integrity of data and program files, the accounting and audit system, the password or computational access control system, and the operating system itself.

(A) The operating system will be configured so that all jobs can be designated and tracked as either program development jobs or as production jobs.

(B) In the program development mode, users will be free, following verification that their application conforms to the agreed end-use, to create, edit, or modify programs, to use utilities such as editors, debuggers, or compilers and to verify program operation. Programs in the development mode will be subject to inspection of any program or software to be run on the computer system in order to ensure that all usage conforms to the conditions of the license.

(C) In the production mode, users will have access to the full range of computer resources, but will be prohibited from modifying any program or using utilities that could modify any program. Before being allowed to run in the production mode, a program will have to be certified for conformity to approved end-uses by the security personnel and the exporter's representatives.

(D) Programs certified for execution in the production mode will be protected from unauthorized modification by appropriate software and physical security measures. Any modifications to previously certified production programs will be approved by the security personnel under the guidance and monitoring of the exporter's representatives.

(E) The supercomputer will be provided with accounting and audit software to ensure that detailed logs are maintained to record all computer usage. A separate log of security-related events will also be kept.

(F) For each job executed in the production mode, the operating system will record execution characteristics in order to permit generation of a statistical profile of the program executed.

(xv) The source code of the operating system will be accessible only to the exporter's representatives. Only those individuals will make changes in this source code.

(xvi) The security personnel, under the guidance of the exporter's representatives,

will change passwords for individuals frequently and at unpredictable intervals.

(xvii) The security personnel, under the guidance of the exporter's representatives, will have the right to deny passwords to anyone. Passwords will be denied to anyone whose activity does not conform to the conditions of the license.

(xviii) Misuse of passwords by users will result in denial of further access to the supercomputer.

(xix) The exporter's representatives will install a strict password system and provide guidance on its implementation.

(xx) Only the exporter's representatives will be trained in making changes in the password system and only they will make such changes.

(xxi) No supercomputer will be networked to other computers outside the supercomputer center without prior authorization from BXA.

(xxii) Generally, remote terminals will not be allowed outside the computer using facility without prior authorization by BXA. If remote terminals are specifically authorized by the license:

(A) The terminals will have physical security equivalent to the safeguards at the computer using facility;

(B) The terminals will be constrained to minimal amounts of computer resources (CPU time, memory access, number of input-output operations, and other resources);

(C) The terminals will not be allowed direct computational access to the supercomputer (i.e., the security personnel, under the guidance of the exporter's representatives, will validate the password and identity of the user of any remote terminals before any such user is permitted to access the supercomputer)—all terminals will be connected to the supercomputer system by a dedicated access line and a network access controller.

(xxiii) There will be no direct input to the supercomputer from remote terminals. Any data originating from outside the computer using facility, except for direct input from terminals within the same compound as the computer using facility, will first be processed by a separate processor or network access controller in order to permit examination of the data prior to its entry into the supercomputer.

(xxiv) The exporter will perform all maintenance of the supercomputer system.

(xxv) Spare parts kept on site will be limited to the minimum amount. Spares will be kept in an area accessible only to the exporter's representatives. These representatives will maintain a strict audit system to account for all spare parts.

(xxvi) No development or production technology on the supercomputer system will be sent with the supercomputer to the ultimate consignee.

(xxvii) The end-user must immediately report any suspicions or facts concerning possible violations of the safeguards to the exporter and to the export control authorities of the importing country.

(xxviii) The exporter must immediately report any information concerning possible violations of the safeguards to BXA. A violation of the safeguards might constitute grounds for suspension or termination of the license, preventing the shipment of unshipped spare parts, or the denial of additional licenses for spare parts, etc.

(xxix) The end-user will be audited quarterly by an independent consultant who has been approved by the export control authorities of the importing and exporting countries, but is employed at the expense of the end-user. The consultant will audit the supercomputer usage and the implementation of the safeguards.

(xxx) The installation and operation of the supercomputer will be coordinated and controlled by the following management structure:

(A) *Steering Committee.* The Steering Committee will be comprised of nationals of the importing country who will oversee the management and operation of the supercomputer.

(B) *Security Staff.* The Security Staff will be selected by the end-user or the government of the importing country to ensure that the required safeguards are implemented. This staff will be responsible for conducting an annual audit to evaluate physical security, administrative procedures, and technical controls.

(C) *Technical Consultative Committee.* This committee will comprise technical experts from the importing country and the exporting company who will provide guidance in operating and maintaining the supercomputer. At least one member of the committee will be an employee of the exporter. The committee will approve all accounts and maintain an accurate list of all users. In addition, the committee will advise the Steering Committee and the Security Staff concerning the security measures needed to ensure compliance with the safeguards required by the license.

(xxxi) An ultimate consignee who is a multiple-purpose end-user, such as a university, will establish a peer review group comprising experts who represent each department or application area authorized for use on the supercomputer under the conditions of the license. This group shall have the following responsibilities:

(A) Review all requests for supercomputer usage and make recommendations concerning the acceptability of all projects and users;

(B) Submit these recommendations to the Security Staff and Technical Consultative Committee for review and approval (see paragraph (c)(2)(xxviii) of this Supplement);

(C) Establish acceptable supercomputer resource parameters for each project and review the results to verify their conformity with the authorized end-uses, restrictions, and parameters; and

(D) Prepare monthly reports that would include a description of any runs exceeding the established parameters and submit them to the security staff.

(xxxii) The end-user will also cooperate with any post-shipment inquiries or inspections by the U.S. Government or exporting company officials to verify the disposition and/or use of the supercomputer, including access to the following:

(A) Usage logs, which should include, at a minimum, computer users, dates, times of use, and amount of system time used;

(B) Computer access authorization logs, which should include, at a minimum, computer users, project names, and purpose of projects.

(xxxiii) The end-user will also cooperate with the U.S. Government or exporting company officials concerning the physical inspection of the computer using facility, on short notice, at least once a year and will provide access to all data relevant to supercomputer usage. This inspection will include:

(A) Analyzing any programs or software run on the supercomputer to ensure that all usage complies with the authorized end-uses on the license. This will be done by examining user files (e.g., source codes, machine codes, input/output data) that are either on-line at the time of the inspection or that have been previously sampled and securely stored;

(B) Checking current and archived usage logs for conformity with the authorized end-uses and the restrictions imposed by the license; and

(C) Verifying the acceptability of all computer users in conformity with the authorized end-uses and the restrictions imposed by the license.

(xxxiv) Usage requests that exceed the quantity of monthly CPU time specified on the license shall not be approved without prior written authorization from BXA. Requests for computational access approval shall include a description of the intended purpose for which access is sought.

(3) *Certification by export control authorities of importing country.* (i) The following importing government certification is required:

This is to certify that (name of ultimate consignee) has declared to (name of appropriate foreign government agency) that the supercomputer (model name) will be used only for the purposes specified in the end-use statement and that the ultimate consignee will establish and adhere to all the safeguard conditions and perform all other undertakings described in the end-use statement.

The (name of appropriate foreign government agency) will advise the United States Government of any evidence that might reasonably indicate the existence of circumstances (e.g., transfer of ownership) that could affect the objectives of the security safeguard conditions.

(ii) Other importing government assurances may be required on a case-by-case basis regarding the prohibited activities set forth in the licensing policy for these countries.

(4) *Supporting documentation.* (i) *Exports.* Applications to export supercomputers to these countries must be accompanied by one of the following supporting documents, as required by Part 748 of this subchapter:

(A) Form BXA–629P (Statement by Ultimate Consignee and Purchaser);

(B) International Import Certificate (IIC);

(C) Indian Import Certificate;

(D) Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates.

(ii) *Reexports.* Applications to reexport supercomputers to the following countries must be accompanied by the necessary supporting documents, as required by Part 748 of this subchapter:

(A) Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia. Reproduced copies of the Bulgarian, Czech, Hungarian, Polish, Romanian, and Slovak Import Certificates;

(B) India. A reproduced copy of the Indian Import Certificate;

(C) South Africa. A Form BXA–629P (Statement by Ultimate Consignee and Purchaser).

(d) Prohibited Activities

An ultimate consignee who is authorized to use a supercomputer, except consignees authorized in accordance with licensing policy for supplier countries and countries subject to minimum security conditions, may not be involved in activities related to any of the following:

(1) The design, development, production or use of:

(i) Nuclear explosive devices, including any components or subsystems of such devices;

(ii) Complete rocket systems or unmanned air vehicle systems capable of delivering nuclear weapons, including any components or subsystems of such devices;

(2) The design, development, production, use, or maintenance of nuclear fuel cycle facilities (including facilities related to nuclear propulsion) or heavy water production plants in countries that are listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter);

(3) Any projects or facilities for the design, development, production, stockpiling, or use of chemical or biological weapons;

(4) A violation of the export laws and regulations of a supplier country or involvement in clandestine procurement activities or other activities where there is a significant risk of diversion from the authorized end-uses or a likelihood that supercomputer security safeguards would not be effectively implemented.

(e) Definitions

The following are definitions of terms as used in this Supplement:

(1) *Authorized person.* A person whose identity and legitimate bona fides have been established by the ultimate consignee. Restricted nationals (see paragraph (e)(7) of this Supplement) will not be considered to be authorized persons for the purposes of this Supplement.

(2) *Commercial end-user.* An end-user whose only authorized end-uses are those described in the list of approved commercial activities in § 742.12(b)(6) of this Part.

(3) *Computational access or usage.* Any data processing, or data, program, or file manipulation (retrieval), done on the supercomputer.

(4) *Independent consultant.* A nongovernment firm in the importing country that is experienced in informatics auditing procedures and not owned, affiliated, or controlled by the end-user or by the government of the importing country.

(5) *Multiple-purpose end-use.* Authorized end-uses in several areas of expertise with a variety of application packages (e.g., university).

(6) *National.* The term national as used in this section means:

(i) Any individual;

(ii) Any official, agent, or representative of a corporation, partnership, association, company, or any other kind of organization; or

(iii) Any official, agent, or representative of a government, government agency, or any other government organization.

(7) *Restricted nationals.* The term restricted nationals as used in this Supplement means:

(i) Nationals of countries subject to the licensing policy described in § 742.12(b)(4) of this Part (i.e., countries in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter) and Cuba, Iran, Iraq, Libya, North Korea, and Syria), except those individuals who have legally immigrated and have become permanent residents of the United States or Japan, or any of the countries listed in paragraph (a)(1) of this Supplement; and

(ii) Nationals of the countries listed in § 742.12(b)(3) of this Part (i.e., Bahrain, Czech Republic, Egypt, Jordan, Lebanon, Poland, Qatar, Slovakia, Taiwan, and Yemen and countries in Country Group D:2 (see Supplement No. 1 to Part 740 of this subchapter), excluding Iran) that are involved in prohibited activities as set forth in paragraph (d) of this Supplement.

(8) *Single-purpose end-use.* An authorized end-use in one area of expertise (e.g., oil exploration).

(9) The following are terms defined elsewhere in the EAR:

(i) Computer using facility;

(ii) Cryptography;

(iii) Network access controller;

(iv) Program;

(v) Software;

(vi) Source code;

(vii) Technology;

(viii) Use; and

(ix) User-accessible programmability.

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 744.1 General provisions.

(a) *Introduction.* This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Four and prohibitions against exports or reexports to certain end-uses as introduced, under General Prohibition Five. Sections 744.2, 744.3, 744.4, and 744.5 prohibit exports and reexports of items subject to the EAR to defined nuclear, missile, chemical and biological weapons, and nuclear maritime end uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain missile and chemical and biological weapons end uses regardless of whether that support involves the export or reexport of items subject to the EAR. Sections 744.7 and 744.8 prohibit exports and reexports of certain items for certain aircraft and vessels. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that Part 764 of this subchapter prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(b) *Steps.* The following are steps you should follow in using the provisions of this part:

(1) *Review end-use and end-user prohibitions.* First, review each end-use and end-user prohibition described to learn the scope of these prohibitions.

(2) *Determine applicability.* Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, or other activity. See Supplement No. 3 to part 744 for guidance.

§ 744.2 Restrictions on certain nuclear end-uses.

(a) *General prohibition.* In addition to the validated license requirements for items specified on the CCL, you may not export or reexport to any destination,

other than countries in the Nuclear Suppliers Group as indicated at Country Group A:4 in Supplement 1 to part 740 of this subchapter, any item subject to the EAR without a validated license if at the time of the export or reexport you know or have reason to know the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) *Nuclear explosive activities.* Nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device.[1, 2]

(2) *Unsafeguarded nuclear activities.* Activities including research on or development, design, manufacture, construction, operation, or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met.

(3) *Safeguarded and unsafeguarded nuclear activities.* Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities, or components for such facilities:[3]

(i) Facilities for the chemical processing of irradiated special nuclear or source material;

(ii) Facilities for the production of heavy water;

(iii) Facilities for the separation of isotopes of source and special nuclear material; or

(iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform an exporter or reexporter, either by specific notice or through amendment to the regulations in this subchapter, that a license is required for export or reexport of specified items to specified end-users, because BXA has determined that there is an unacceptable risk of use in or diversion to any of the activities described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of this section.

(c) *Exceptions.* Despite the prohibitions described in paragraph (a) and (b) of this section, you may export technology subject to the EAR under License Exception 13 for operation technology and License Exception 14 for sales technology but only to and for use in countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740 of this subchapter) and New Zealand. All the terms and conditions of License Exception 13 apply except that this exception may only be used for exports to the countries listed in Country Group A:1 and New Zealand notwithstanding the provisions of part 740 of this subchapter.

(d) *License review standards.* The following factors are among those used by the United States to determine whether to grant or deny license applications required under this section:

(1) Whether the commodities, software, or technology to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(2) The significance for nuclear purposes of the particular commodity, software, or technology;

(3) Whether the commodities, software, or technology to be exported are to be used in research on or for the development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;

(4) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(5) Whether the end-user has been engaged in clandestine or illegal procurement activities;

(6) Whether an application for a license to export to the end-user has previously been denied, or whether the end-use has previously diverted items received under a license or license exception to unauthorized activities;

(7) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.3 of this part; and

(8) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(i) Whether the importing country is a party of the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (see Supplement No. 2 to part 742 of this subchapter), or to a similar international legally-binding nuclear nonproliferation agreement;

(ii) Whether the importing country has all of its nuclear activities, facilities or installations that are operational, being designed, or under construction, under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(iii) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(iv) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear non-proliferation and whether that government is in compliance with its international obligations in the field of non-proliferation;

(v) The degree to which the government of the importing country cooperates in non-proliferation policy generally (e.g., willingness to consult on international non-proliferation issues);

(vi) Intelligence data on the importing country's nuclear intentions and activities.

§ 744.3 Restrictions on certain missile end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to any destination, including Canada, without a license if at the time of the export or reexport you know the item:

(1) Is destined to or for a project listed in the footnote to Country Group D:4

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[1] Nuclear explosive devices and items specifically designed or specially modified for use in designing or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1964, as amended. Similarly, items specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[2] Also see § 748.4 of this subchapter for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

[3] Such activities may also require a specific authorization from the Secretary of Energy pursuant to § 57.b.(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR 810.

(see Supplement No. 1 to part 740 of this subchapter); or

(2) Will be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4, whether or not that use involves a listed project.

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually or through amendment to the regulations in this subchapter, that a license is required for a specific export, or for exports of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to activities described in paragraph (a) of this section, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (a) of this section. An illustrative list of projects is included in a footnote to Country Group D:4. Exporters are deemed to have been informed that an individual validated license is required to export to these projects. Exporters should be aware that the list of projects in Country Group D:4 is not comprehensive; extra caution should be exercised when making any shipments to a country listed in Country Group D:4.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) *License review standards for certain missile end-uses.* (1) Applications to export the items subject to this section will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required by this section:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development production or use, of missiles delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

§ 744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to any destination, including Canada, without a license if at the time of the export or reexport you know the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:5 (see Supplement No. 1 to part 740 of this subchapter).

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually or through amendment to the regulations in this subchapter, that a license is required for a specific export, or for export of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (a) of this section.

(c) *Exceptions.* No license exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(d) *License review standards.* (1) Applications to export or reexport items subject to this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country;

(iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract.[4]

§ 744.5 Restrictions on certain naval nuclear propulsion end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport certain technology subject to the EAR to any destination, including Canada, without a license if at the time of the export or reexport you know the item is for use in connection with a foreign maritime nuclear propulsion project. This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities.

(b) *Exceptions.* The exceptions provided at part 740 of this subchapter do not apply to the prohibitions described in paragraph (a) of this section.

(c) *License review standards.* It is the policy of the United States Government not to participate in and not to authorize United States firms or individuals to participate in foreign naval nuclear propulsion plant projects, except under an Agreement for Cooperation on naval nuclear propulsion executed in accordance with § 123(d) of the Atomic Energy Act of 1954. However, it is the policy of the United States Government to encourage United States firms and individuals to participate in maritime (civil) nuclear propulsion plant projects in friendly foreign countries provided that United States naval nuclear propulsion information is not disclosed.

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) *General prohibitions*—(1) *Activities related to exports.* (i) No U.S. person may, without a license from BXA, export, reexport, or transfer, in the United States or in any other country,

[4] See Supplement No. 1 to part 742 for relevant contract sanctity dates.

any item where that person knows that such item:

(A) Will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter).

(B) Will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of this subchapter); or

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter).

(ii) No U.S. person shall, without a license from BXA, knowingly support an export, reexport, or transfer that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

(2) *Other activities unrelated to exports.* No U.S. person shall, without a license from BXA:

(i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of nuclear explosives devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter);

(ii) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of this subchapter); or

(iii) Perform any contract, service, or employment that the U.S. person knows directly will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter).

(3) *Whole plant requirement.* No U.S. person shall, without a license from BXA, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C60, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of this subchapter).

(b) *Additional prohibitions on U.S. persons informed by BXA.* BXA may inform U.S. persons, either individually or through amendment to the regulations in this subchapter, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (a) of this section.

(c) *Definition of U.S. person.* For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(d) *Exceptions.* No license exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(e) *License review standards.* Applications to engage in activities otherwise prohibited by this section will be denied if the activities would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons, or of missiles.

§ 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(a) *General end-use prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception permits the shipment to be made:

(1) To the country in which the vessel or aircraft is located, and

(2) To the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and

(3) To the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft.

(b) *Exception for U.S. and Canadian carriers.* (1) Notwithstanding the general end-use prohibition in paragraph (a) of this section, export may be made of the commodities set forth in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are [5] all of the following:

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that quantity necessary for a single onward voyage or flight; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports of the commodities set forth in paragraph (e) of this section, except fuel, may be made to a U. S. or Canadian airline's installation or agent in any foreign destination except North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, North Korea or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of these commodities is exported by U.S. airlines to their own installations and agents

[5] Where a license is required, see §§ 748.2 and 748.4(g).

abroad for use in their aircraft operations.

(3) *Applicable commodities.* This § 740.12(b) applies to the commodities listed subject to the provisions in paragraph (b) of this section:

(i) Fuel, except crude petroleum and blends of unrefined crude petroleum with petroleum products, which is of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of this subchapter);

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, except crude petroleum, provided that any commodities which are listed in Supplement No. 2 to part 754 of this subchapter are of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of this subchapter);

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles;

(vi) Saloon stores or supplies; and

(vii) Equipment and spare parts.

§ 744.8 Restrictions on certain exports to all countries for Libyan aircraft.

(a) *General end-use prohibition for Libyan aircraft.* In addition to the license requirements for items specified on the CCL for the items specified in paragraph (b) of this section, you may not export or reexport such parts and accessories if intended for use in the manufacture, overhaul, or rehabilitation in any country of aircraft that will be exported or reexported to Libya or Libyan nationals.

(b) *Scope of products subject to end-use prohibition for Libyan aircraft.* The general end-use prohibition in paragraph (a) of this section applies to items controlled by ECCNs 6A08, 6A28, 6A29, 6A30, 6A90, 7A01, 7A21, 7A02, 7A22, 7A03, 7A23, 7A04, 7A24, 7A05, 7A25, 7A06, 7A26, 7A27, 7A94, 9A01, 9A21, 9A23, 9A18.a, 9A82.d, 9A91, and 9A94.

Supplement No. 1—Missile Technology Locations and Projects

Location	Projects
Bahrain	
Brazil	Sonda III, Sonda IV, SS–300, SS–1000, MB/EE Series Missile, VLS Space Launch Vehicle.
China	M Series Missiles, CSS–2.
Egypt	
India	Agni, Prithvi, SLV–3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).
Iran	Surface-to-Surface Missile Project, Scud Development Project.
Iraq	
Israel	
Jordan	
North Korea	No Dong I, Scud Development Project.
Kuwait	
Lebanon	
Libya	
Oman	
Pakistan	Haft Series Missiles.
Qatar	
Saudi Arabia	
South Africa	Surface-to-Surface Missile Project, Space Launch Vehicle.
Syria	
United Arab Emirates	
Yemen	

Supplement No. 2—The Enhanced Proliferation Control Initiative (EPCI) [Catch-All Item List] [Positive List] [Product Scope for End-Use Limitation]—[Reserved]

Supplement No. 3—BXA's "Know Your Customer" Guidance

Certain provisions in part 744 require an exporter to obtain an individual validated license if the exporter "knows" that any export otherwise eligible for license exception is for end-uses involving nuclear, chemical, or biological weapons, or related missile delivery systems, in named destinations listed in the regulations.

(a) BXA has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise the EAR.

(1) *Decide whether there are "red flags".* Take into account any abnormal circumstances in a transaction that, indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "red flags". Included among examples of red flags are orders for items that are inconsistent with the needs of the purchaser, a customer declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations which are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts). Commerce has developed lists of such red flags that are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

(2) *If there are "red flags", inquire.* If there are no "red flags" in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. However, when "red flags" are raised in information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination. The duty to check out "red flags" is not confined to the use of License Exceptions affected by the "know" or "reason to know" language in the EAR. Applicants for licenses are required by part 748 of this subchapter to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.

(3) *Do not self-blind.* Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

(4) *Employees need to know how to handle "red flags".* Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

(5) *Reevaluate all the information after the inquiry.* The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR.

(6) *Refrain from the transaction or advise BXA and wait.* If you continue to have reasons for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BXA in the form of an application for a validated license or in such other form as BXA may specify.

(b) Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BXA will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a "red flag", you may contact the Office of Export Enforcement at 1–800–424–2980 or the Office of Exporter Services at (202)482–4532.

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

Sec.
746.1 Introduction.
746.2 Cuba.
746.3 Iraq.
746.4 Libya.
746.5 North Korea.
746.6 The Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia-Herzegovina, Croatia.
746.7 Rwanda.
746.8 through § 746.16 [Reserved]
746.17 Humanitarian License.

Supplement No. 1 to Part 746—Human-Needs Items

Supplement No. 2 to Part 746—United Nations Embargoes or Other Special Sanctions Administered by the Office of Foreign Assets Control: Angola

Supplement No. 3 to Part 746—United Nations Arms Embargoes Administered by the Department of State: Liberia, Somalia and Countries of the Former Yugoslavia (Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Slovenia)

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 746.1 Introduction.

(a) Sections 746.2 through 746.6 of this part give the license requirements and licensing policies for exports to Cuba, Iraq, Libya, North Korea, and the former Yugoslavia. All the items on the Commerce Control List (CCL) require a license for export or reexport to these destinations. In addition, most items subject to the EAR, but not included on the CCL, require a license to these destinations. Most items requiring a license to these destinations are subject to a general policy of denial. The Department of the Treasury's Office of Foreign Assets Control (OFAC) authorizes by general license (as defined in 31 CFR part 500) all transactions incident to the export of goods from the U.S. to Cuba and North Korea authorized by BXA. No license from OFAC is necessary. BXA is also responsible for licensing reexports of most items subject to the EAR, but additional authorization is required by OFAC if the reexport is being made by persons subject to U.S. jurisdiction (as defined in 31 CFR part 500), including foreign subsidiaries of U.S. firms. OFAC also controls other transactions by U.S. persons involving Cuba or North Korea or specially designated nationals of those countries, and exports of non U.S.-origin items by U.S. persons from third countries to Cuba or North Korea.

(b) Section 746.7 of this part explains the special controls on the sale or supply to Rwanda of arms and related material of all types. Such military-related items are subject to a general policy of denial, consistent with a United Nations Security Council Resolution. These special controls also complement controls on items included on the U.S. Munitions List administered by the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(c) Section 746.17 of this part gives the eligibility requirements for donations of human-needs items to certain embargoed destinations under the Humanitarian License.

(d) Supplement No. 1 to this part lists the human-needs items that may be approved under the Humanitarian License or that may be approved under regular license procedures when not qualifying for the Humanitarian License.

(e) Supplement No. 2 to this part provides you with general information on United Nations sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) (31 CFR part 590) on Angola.

(f) Supplement No. 3 to this part provides you with general information on United Nations arms embargoes administered by the Department of State (22 CFR parts 120 through 130) on all the countries of the former Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia, Montenegro, and Slovenia), Liberia and Somalia.

§ 746.2 Cuba.

(a) *License requirements.* You will need a license to export or reexport all items subject to the EAR (see part 732 of this subchapter for the scope of items subject to the EAR) to Cuba, except as follows:

(1) *License Exceptions.* You may export without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of this subchapter (License Exceptions).

(i) Temporary Exports (TMP) by the news media (see § 740.8(b)(8) of this subchapter).

(ii) Operating Technology and Software (OTS) for legally exported commodities (see § 740.17 of this subchapter).

(iii) Sales Technology (STS) (see § 740.18 of this subchapter).

(iv) Software Updates (SUD) for legally exported software (see § 740.19 of this subchapter).

(v) Parts (PTS) for one-for-one replacement in certain legally exported commodities (see § 740.10 of this subchapter).

(vi) Baggage (BAG) (see § 740.12 of this subchapter).

(vii) Governments (GOV) (see § 740.15 of this subchapter).

(viii) Gift parcels (GFT) (see § 740.16 of this subchapter).

(ix) Items in transit (TUS) from Canada through the U.S. (see § 740.9(b)(4) of this subchapter).

(x) Aircraft and Vessels (A&V) for certain aircraft on temporary sojourn (see § 740.13(a) of this subchapter).

(2) [*Reserved.*]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial. Exceptions to the policy of denial are as follows:

(1) *Humanitarian License.* BXA may issue licenses to organizations eligible for the Humanitarian License for exports of donated human-needs items. See § 746.17 of this part for this license and Supplement No. 1 to part 746 for a list of human-needs items that may be approved.

(2) *Licenses for donations of human-needs items.* BXA will review on a case-by-case basis applications for exports of donated human-needs items listed in Supplement 1 to part 746 that do not qualify for the Humanitarian License. Such applications include single transactions involving exports to meet emergency needs.

(3) *Medicines, medical supplies, instruments and equipment.* Applications to export medicines, medical supplies, instruments and equipment will generally be approved, except:

(i) To the extent restrictions would be permitted under section 5(m) of the Export Administration Act of 1979, as amended (EAA), or section 203(b)(2) of the International Emergency Economic Powers Act;

(ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) If there is a reasonable likelihood that the item to be exported will be reexported;

(iv) If the item to be exported could be used in the production of any biotechnological produce; and

(v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for

the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations of medicines for humanitarian purposes to a nongovernmental organization in Cuba.

(4) Telecommunications commodities may be authorized on a case by case basis, provided the commodities are part of an FCC-approved project and are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(5) Exports from third countries to Cuba of nonstrategic foreign-made products that contain an insubstantial proportion of U.S.-origin materials, parts, or components will generally be considered favorably on a case-by-case basis, provided all of the following conditions are satisfied:

(i) The local law requires, or policy in the third country favors, trade with Cuba;

(ii) The U.S.-origin content does not exceed 20 percent of the value of the product to be exported from the third country. Requests where the U.S.-origin parts, components, or materials represent more than 20 percent by value of the foreign-made product will generally be denied. See Supplement No. 3 to part 732 of this subchapter for instructions on how to calculate value.

(iii) You are not a U.S.-owned or -controlled entity in a third country as defined by the OFAC or you are a U.S.-owned or controlled entity in a third country and one or more of the following situations applies:

(A) You have a contract for the proposed export that was entered into prior to October 23, 1992.

(B) Your transaction involves the export of foreign-produced medicine, or medical supplies, instruments, or equipment incorporating U.S.-origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(3) of this section.

(C) Your transaction is for the export of foreign-produced telecommunications commodities incorporating U.S.-origin parts, components and materials, in which case the application will be reviewed under the licensing policy set forth in paragraph (b)(4) of this section.

(D) Your transaction is for the export of donated food to individuals or non-governmental organizations in Cuba.

(c) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national.

§ 746.3 Iraq.

(a) *License requirements.* For foreign policy reasons, you will need a license to export or reexport all items subject to the EAR (see Part 732 of this subchapter) to Iraq, except as noted in this section. OFAC administers an embargo against Iraq under the authority of the International Emergency Economic Powers Act of 1977 and in conformance with United Nations Security Council Resolutions. The applicable OFAC regulations, the Iraqi Sanctions Regulations, are found at 31 CFR part 575. You should consult with OFAC for authorization to export or reexport items subject to U.S. jurisdiction to Iraq, or to any entity owned or controlled by, or specially designated as acting for or on behalf of, the Government of Iraq. An authorization from OFAC constitutes authorization under the EAR, and no license from BXA is necessary. Except as noted in § 746.3(a)(1) of this part, you may not use any BXA License Exception or other BXA authorization to export or reexport to Iraq.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of one of the following License Exceptions.

(i) Baggage (BAG) (See § 740.12 of this subchapter).

(ii) Governments (GOV) (See § 740.15 of this subchapter).

(iii) Parts (PTS) for one-for-one replacement in certain legally exported goods (See § 740.10 of this subchapter).

(2) Exports for the official use of the United Nations, its personnel or agencies (excluding its relief or developmental agencies). You must consult with OFAC to determine what transactions are eligible.

(b) *Licensing policy.* Under Executive Orders 12722 of August 2, 1990 and 12724 of August 9, 1990, and consistent with United Nations resolutions, exports and reexports requiring a license are subject to a general policy of denial. You are advised to consult with OFAC concerning export and reexport authorization.

(c) *Related controls.* OFAC maintains controls on the activities of U.S. persons, wherever located, involving transactions with Iraq or any specially designated Iraqi national.

§ 746.4 Libya.

(a) *Introduction.* The Department of Commerce maintains comprehensive controls on exports and reexports to Libya. The Department of the Treasury, Office of Foreign Assets Control (OFAC) maintains comprehensive controls on exports and transshipments to Libya under the Libyan Sanctions Regulations (31 CFR part 550). To avoid duplicate licensing procedures, OFAC and BXA have allocated licensing responsibility as follows: OFAC licenses direct exports and transshipments to Libya; BXA licenses reexports, exports of foreign-manufactured items containing U.S.-origin parts, components or materials, and exports of foreign produced direct product of U.S. technology or software. Issuance of an OFAC license also constitutes authorization under the EAR, and no license from BXA is necessary. Exports and reexports subject to the EAR that are not subject to the Libyan Sanctions Regulations continue to require authorization from BXA.

(b) *Definitions.*—(1) *Transshipment.* For purposes of this section, transshipment means exports from the United States to third countries if the exporter knows, or has reason to know, the items are intended for reshipment to Libya (including passage through, or storage in, intermediate destinations) without coming to rest in a third country. The term ''transshipment'' covers goods intended specifically for substantial transformation or for incorporation in a third country into products for use in Libya in the petroleum or petrochemical industry. The term ''transshipment'' also covers technology intended specifically for use in a third country in the manufacture of, or incorporation into, products for use in Libya in the petroleum or petrochemical industry. See 31 CFR 550.409.

(2) *Reexport.* For purposes of this section, reexport means the export of an item from a third country to Libya when Libya is not the intended ultimate destination at the time of export from the United States. Exports of foreign-manufactured items incorporating U.S.-origin parts, component or materials, and exports of foreign-manufactured items based on U.S. technology which are not subject to OFAC license requirements as ''transshipments'' may be subject to BXA license requirements. See part 732 of this subchapter.

(c) *License requirements.* You will need a license to export and reexport all items subject to the EAR (see part 732 of this subchapter) to Libya, except donations of items intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes, or as follows.

(1) *Exports and transshipments.* You will need a license from OFAC for all direct exports and transshipments to Libya except the following:

(i) Exports eligible for the following BXA License Exceptions: (A) Baggage

(BAG) (see § 740.12 of this subchapter). (B) Governments (GOV) (see § 740.15 of this subchapter). (C) Gift parcels (GFT) (see § 740.16 of this subchapter).

(ii) As noted in paragraph (a) of this section, an authorization from OFAC constitutes authorization under the Export Administration Regulations. Except as noted in § 746.4(b)(1) of this section, you may not use any BXA License Exception or other BXA authorization to export or transship to Libya.

(2) *Reexports.* You will need a license from BXA to reexport any U.S.-origin item from a third country to Libya, any foreign-manufactured item containing U.S.-origin parts, components or materials, as defined in § 734.2(b)(2) of this subchapter, or any national security-controlled foreign-produced direct product of U.S. technology or software, as defined in § 734.2(b)(3) of this subchapter, exported from the U.S. after March 12, 1982. Exceptions to the controls maintained by BXA, insofar as reexports are concerned, include the following:

(i) Temporary Exports (TMP) reexports by the news media (see § 740.8(b)(8) of this subchapter).

(ii) Operating Technology and Software (OTS) for legally exported commodities (see § 740.17 of this subchapter).

(iii) Sales Technology (STS) (see § 740.18 of this subchapter).

(iv) Software Updates (SUD) for legally exported software (see § 740.19 of this subchapter).

(v) Parts (PTS) for one-for-one replacement in certain legally exported commodities (§ 740.10 of this subchapter).

(vi) Baggage (BAG) (§ 740.12 of this subchapter).

(vii) Aircraft and Vessels (A&V) for vessels only (see § 740.13(c)(1) of this subchapter).

(viii) Governments (GOV) (see § 740.15 of this subchapter).

(ix) Gift parcels (GFT) (see § 740.16 of this subchapter).

(3) Applications submitted to BXA for reexport authorization must provide specific answers to the following questions:

(i) How was the product received at its current location, and under what type of authorization;

(ii) On what date was it received; and

(iii) How are inventories maintained at the current site?

(d) *Licensing policy.* (1) You should consult with OFAC regarding licensing policy for direct exports and transshipments to Libya.

(2) The licensing policy for BXA controls is as follows. Licenses will generally be denied for:

(i) Items controlled for national security purposes and related technology and software, including controlled foreign produced products of U.S. technology and software exported from the United States after March 12, 1982; and

(ii) Oil and gas equipment and technology and software, if determined by BXA not to be readily available from sources outside the United States; and

(iii) Goods and technology and software destined for the petrochemical processing complex at Ras Lanuf, where such items would contribute directly to the development or construction of that complex. Items destined for the township at Ras Lanuf, or for the public utilities or harbor facilities associated with that township, generally will not be regarded as making such a contribution where their functions will be primarily related to the township, utilities or harbor.

(iv) The following items subject to international sanctions:

(A) Aircraft or aircraft components to Libya or the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components;

(B) Arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, spare parts for the aforementioned, and equipment or supplies for the manufacture or maintenance of the aforementioned.

(C) Materials destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment or any engineering or other services or components destined for the maintenance of any Libyan civil or military airfields or associated facilities and equipment, except emergency equipment and equipment and services directly related to civilian air traffic control;

(D) Items listed in paragraphs (d)(1) through (5) and equipment and supplies for the manufacture or maintenance of such items:

(*1*) Pumps of medium or large capacity (equal to or larger than 3500 cubic meters per hour) and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil and natural gas.

(*2*) Equipment designed for use in crude oil export terminals, as follows:

(*i*) Loading buoys or single point moorings;

(*ii*) Flexible hoses for connection between underwater manifolds (plem) and single point mooring and floating loading hoses of large sizes (from 12–16 inches); or

(*iii*) Anchor chains.

(*3*) Equipment not specially designed for use in crude oil export terminals, but which because of its large capacity can be used for this purpose, as follows:

(*i*) Loading pumps of large capacity (4000 m^3/h) and small head (10 bars);

(*ii*) Boosting pumps within the same range of flow rates;

(*iii*) Inline pipe line inspection tools and cleaning devices (i.e., pigging tools) (16 inches and above); or

(*iv*) Metering equipment of large capacity (1000 m^3/h and above).

(*4*) Refinery equipment, as follows:

(*i*) Boilers meeting American Society of Mechanical Engineers 1 standards;

(*ii*) Furnaces meeting American Society of Mechanical Engineers 8 standards;

(*iii*) Fractionation columns meeting American Society of Mechanical Engineers 8 standards;

(*iv*) Pumps meeting American Petroleum Institute 610 standards;

(*v*) Catalytic reactors meeting American Society of Mechanical Engineers 8 standards; or

(*vi*) Prepared catalysts, including catalysts containing platinum and catalysts containing molybdenum.

(*5*) Spare parts for any of the above.

(3) Notwithstanding the presumptions of denial in paragraphs (d)(2)(i) through (iii), licenses will generally be issued when the transaction involves items not included in paragraph (d)(2)(iv).

(i) The export or reexport of commodities or technology and software under a contract in effect prior to March 12, 1982, where failure to obtain a license would not excuse performance under the contract;

(ii) Reexport of items not controlled for national security purposes that had been exported from the United States prior to March 12, 1982 or exports of foreign products incorporating such items as components; or

(iii) Use of U.S.-origin parts, components, or materials in foreign-manufactured products destined for Libya, where the U.S. content is 20 percent or less by value,

(4) Notwithstanding the presumption of denial in paragraph (d)(2)(iv), applications for reexports under a contract pre-dating December 3, 1993, will be reviewed under the licensing policy in effect prior to that date.

(5) Licenses will generally be considered favorably on a case-by-case basis when the transaction involves the following items, provided such items are not included in paragraph (d)(2)(iv):

(i) Reexports of items subject to national security controls that were

exported prior to March 12, 1982 and exports of foreign products incorporating such U.S.-origin components, where the particular authorization would not be contrary to specific foreign policy objectives of the United States; or

(ii) Items destined for use in the development or construction of the petrochemical processing complex at Ras Lanuf, where the transaction could be approved but for the general policy of denial set out in paragraph (d)(4)(i)(C), and where either:

(A) The transaction involves a contract in effect before December 20, 1983 that requires export or reexport of the items in question; or

(B) The items had been exported from the U.S. before that date.

(iii) Other unusual situations such as transactions involving firms with contractual commitments in effect before March 12, 1982.

(6) Licenses will generally be considered favorably on a case-by-case basis for the export of reasonable quantities for civil use of off-highway wheel tractors of carriage capacity of 9t (10 tons) or more, as defined in ECCN 9A92, provided such tractors are not for uses covered by United Nations Security Council Resolution 883 of November 11, 1993.

(7) All other exports and reexports not covered by United Nations resolutions will generally be approved, subject to any other licensing policies applicable to a particular transaction.

(e) *Related controls.* OFAC administers broad economic sanctions on Libya, and restricts participation by U.S. persons in transactions with Libya or specially designated Libyan nationals. The applicable OFAC regulations, the Libyan Sanctions Regulations, are found at 31 CFR part 550.

§ 746.5 North Korea.

(a) *License requirements.* You will need a license to export or reexport items subject to the EAR (see part 732 of this subchapter) to North Korea, except as follows:

(1) *License Exceptions.* You may export without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of this subchapter (License Exceptions).

(i) Temporary Exports (TMP) by the news media (see § 740.8(b)(8) of this subchapter).

(ii) Operating Technology and Software (OTS) for legally exported commodities (see § 740.17 of this subchapter).

(iii) Sales Technology (STS) (see § 740.18 of this subchapter).

(iv) Software Updates (SUD) for legally exported software (see § 740.19 of this subchapter).

(v) Parts (PTS) for one-for-one replacement in certain legally exported commodities (§ 740.10 of this subchapter).

(vi) Baggage (BAG) (§ 740.12 of this subchapter).

(vii) Aircraft and Vessels (A&V) for fishing vessels under governing international fishery agreements and foreign-registered aircraft on temporary sojourn in the U.S.[1] (see § 740.13(a) and (c)(1) of this subchapter).

(viii) Governments (GOV) (see § 740.15 of this subchapter).

(ix) Gift parcels (GFT) (see § 740.16 of this subchapter).

(2) [*Reserved.*]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial. Exceptions to the policy of denial are as follows:

(1) *Humanitarian License.* BXA may issue licenses for exports of donated human-needs items to organizations eligible for the Humanitarian License. See § 746.17 of this part for this license and Supplement No. 1 to part 746 for a list of human-needs items that may be approved.

(2) BXA will review on a case-by-case basis applications for export of donated human-needs items listed in Supplement No. 1 to Part 746 that do not qualify for the Humanitarian License. Such applications include single transactions involving exports to meet emergency needs.

(3) BXA will review on a case-by-case basis applications for commercial sales of human-needs items. Such applications must be for items listed in Supplement No. 1 to part 746, but are not limited solely to small scale projects at the local level.

(c) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with North Korea or any specially designated North Korean national.

§ 746.6 The Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia-Herzegovina, Croatia.

(a) *Federal Republic of Yugoslavia (Serbia & Montenegro).* BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of this subchapter on the Federal Republic of Yugoslavia. In addition, OFAC administers an embargo on exports and reexports to the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY (S & M)). OFAC administers this embargo under Executive Orders 12808 of May 30, 1992, 12810 of June 5, 1992, 12831 of January 15, 1993, 12846 of April 25, 1993, and 12934 of October 25, 1994, and consistent with United Nations Security Council Resolutions 757 of May 30, 1992, 787 of November 16, 1992, 820 of April 17, 1993, and 942 of September 23, 1994. Under this embargo, no goods or technology subject to U.S. jurisdiction may be exported, directly or indirectly, to the FRY (S & M), or to any entity operated from the FRY (S & M), or owned or controlled by, or specially designated as acting for or on behalf of the Government of the FRY (S & M). The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found at 31 CFR part 585. Exporters should apply to OFAC for authorization to export or reexport items subject to the EAR to the FRY (S & M). An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary.

(b) *Bosnia-Herzegovina.* BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of this subchapter on Bosnia-Herzegovina. In addition, OFAC prohibits any dealing by a U.S. person relating to the export to, or transshipment through, those areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces, or activity of any kind that promotes or is intended to promote such dealing. OFAC maintains this embargo under Executive Orders 12846 of April 25, 1993 and 12934 of October 25, 1994, and consistent with United Nations Security Council Resolutions 820 of April 17, 1993 and 942 of September 23, 1994. The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found at 31 CFR part 585. U.S. persons should apply to OFAC for authorization to engage in trade-related transactions involving those areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces. An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary. You will need a license from BXA for items controlled on the CCL to Bosnia-Herzegovina when the export or

[1] Export of U.S. aircraft on temporary sojourn is prohibited by the Department of Transportation, 44 CFR Ch. IV, Part 403 ''Shipping restrictions: North Korea (T–2).''

reexport is destined to areas in the Republic of Bosnia-Herzegovina not controlled by the Bosnian Serb forces. You may also need a license from BXA to reexport U.S.-origin items from third countries to areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces.

(c) *Croatia.* BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of this subchapter on Croatia. In addition, OFAC prohibits any dealing by a U.S. person relating to the export to, or transshipment through, the United Nations Protected Areas in the Republic of Croatia. OFAC maintains this embargo under Executive Order 12846 of April 25, 1993, and consistent with United Nations Security Council Resolution 820 of April 17, 1993. The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found at 31 CFR part 585. U.S. persons should apply to OFAC for authorization to engage in trade-related transactions involving to the United Nations Protected Areas in the Republic of Croatia. An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary. You will need a license from BXA for items controlled on the CCL to Croatia when the export or reexport is destined to areas other than the United Nations Protected Areas in the Republic of Croatia. You may also need a license from BXA to reexport U.S.-origin items from third countries to the United Nations Protected Areas in the Republic of Croatia.

§ 746.7 Rwanda.

(a) *Introduction.* In addition to the controls on Rwanda reflected on the Country Chart in Supplement 1 to part 738 of this subchapter, there are special controls on items that fall within the scope of a United Nations Security Council arms embargo.

(b) *License requirements.* (1) Under Executive Order 12918 of May 26, 1994, and in conformity with United Nations Security Council (UNSC) Resolution 918 of May 17, 1994, an embargo applies to the sale or supply to Rwanda of arms and related matériel of all types and regardless of origin, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export of embargoed items as listed in paragraph (b)(1)(i) and (ii) of this section from the territory of the United States by any person. You will also need a license for the export, reexport, sale or supply to Rwanda of such items by any United States person in any foreign country or other location. (Reexport controls imposed by this embargo apply only to reexports by U.S. persons.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to Rwanda any such items. These requirements apply to embargoed items, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the ''License Requirements'' section of the applicable ECCN.

(ii) Items described by any ECCN ending in ''18,'' and items described by ECCNs 1A88F, 2B85F, 5A80D, 6A02A.a.1,a.2,a.3 and c, 6A03A.b.3 and b.4, 6D21B, 6E01A, 6E02A, 9A22B, 9A91F.a, 0A84C, 0A86F, and 0A88F.

(2) This embargo was effective 11:59 p.m. EDT on May 26, 1994.

(3) *Definitions.* For the purposes of this embargo, the term:

(i) ''Person'' means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(ii) ''United States person'' means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

(c) *Licensing policy.* Applications for export or reexport of all military-related equipment listed in paragraphs (b)(1)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 918 and the United Nations Participation Act, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to that date, except to the extent provided in regulations orders, directives or licenses that may be issued in the future under Executive Order 12918 or these regulations.

(d) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

§ 746.8–§ 746.16 [Reserved]

§ 746.17 Humanitarian License.

A Humanitarian License is established that authorizes exports to certain embargoed destinations of donated goods to meet basic human-needs by a group or organization that has experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(a) *Basic human needs.* Under this license, basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence. This license permits the export of goods that are suitable for small-scale local improvement projects; for example: seeds, tools, fertilizers, small-scale irrigation pumps, and agricultural materials and machinery suited to small-scale farming operations. It encompasses the export of goods of the kind normally donated by charitable organizations that address basic human needs directly and at the local level, where specific improvement projects can be closely monitored and adjusted as needed to ensure that the donated items are being delivered to the intended beneficiaries. The Humanitarian License does not, however, permit exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants.

(b) *Eligible donors.* Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities to the intended beneficiaries.

(c) *Donations.* To qualify for export under this license, the items must be provided free of charge to the beneficiary. This requirement reflects a distinction between freely-donated goods of a people-to-people nature of the type exported by U.S. private and voluntary charitable organizations and those goods of a commercial nature, which are excluded from this license. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this section.

(d) *Ineligible items.* Among those items not eligible under this license are those controlled for national security, chemical, biological and nuclear non-

proliferation, missile technology or crime control reasons in the ''Reason for Control'' paragraph on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of this subchapter) and communications intercepting devices (ECCN 5A80).

(e) *Eligible items*. Supplement No. 1 to this part 746 lists the kinds of items that have been determined to meet basic human needs. The exporter, however, is required to abide by the guidelines in paragraph (a) of this section to ensure that a given item to be exported is encompassed by this license. For example, even though ''generators'' are included in the Supplement, only small generators suitable and necessary to administer and operate a donative program are authorized for export by this license. In like manner, ''laboratory supplies and equipment'' covers items intended for use in local medical laboratories such as refrigerators, sterilization equipment and microscopes. If a license holder is in doubt whether an item is included within the scope of one of the entries listed in the Supplement, or seeks authorization for items not included in the Supplement, a letter of inquiry should be submitted to the Bureau of Export Administration, Office of Exporter Services, Rm. 2627, U.S. Department of Commerce, Washington, DC 20230. The request should describe the type of goods intended for export and how it is intended to meet basic human needs. The Office of Exporter Services will notify the exporter whether the item is authorized for export by this license and any special conditions that may apply to the export.

(f) *Distribution*. To qualify for a Humanitarian License, the donor must demonstrate a means of ensuring that the donations exported are in fact used to meet the basic human needs of the intended beneficiaries. This requires a monitoring system that would alert the donor if goods are being diverted. See paragraph (g)(5) of this section for ways by which this requirement may be satisfied.

(g) *Application procedure*. To apply for a Humanitarian License, the applicant shall prepare a Narrative Statement, in duplicate, explaining the nature and function of the donative program. This Narrative Statement should be submitted to the Bureau of Export Administration, Office of Exporter Services, Room 2627, Department of Commerce, Washington, DC 20230. The Narrative Statement must include, as a minimum, the following information:

(1) The applicant organization's identity and past experience as an exporter of goods to meet basic human needs;

(2) A specific list of past and current countries to which the donative programs have been and are being directed, as well as any countries to which such programs are now planned, with particular reference to donative programs in embargoed destinations;

(3) A description of the types of projects and commodities involved in the donative programs;

(4) A description of the specific class(es) of beneficiaries of particular donated goods intended to be exported under this license.

(5) A description of the arrangements to ensure proper distribution of the donated goods. These arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff;

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place; and

(6) Information concerning the source of funding for the donative programs and the projected annual value of exports under the license. When a narrative statement is approved, the Office of Exporter Services will issue a letter authorizing export of eligible donations during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and conditions contained in the letter. Attached to this letter will be a validated copy of the narrative statement with a license number and an expiration date. This letter together with the validated copy of the Narrative Statement constitutes the ''Humanitarian License.'' The license number must be displayed on the Shipper's Export Declaration (Commerce Form 7525–V.)

(h) *Duration of license*. (1) A Humanitarian License granted under this section will be valid for two years from the last day of the month in which it is issued. The license may be extended for two-year periods thereafter by submitting a certification to the Office of Exporter Services. This certification must state the following:

> For the purpose of requesting a two year extension of Humanitarian License No._____, I (we) certify that all material facts concerning the license outlined in the Narrative Statement submitted to the Office of Exporter Services remain the same and that I continue to comply with the terms and conditions of said license and with the Export Administration Regulations (EAR). I am authorized to make this statement on behalf of our organization.
>
> _____
> (Name and Title)
>
> _____
> (Signature and Date)

(2) If any material facts concerning the license have changed from those described in the Narrative Statement, the exporter must submit an explanation of those changes at the time that renewal of the license is sought. This request for an extension of the Humanitarian License should be submitted 90 days prior to the license's expiration date. When this extension request is approved, the Office of Exporter Services will issue a validated letter with a new license number and expiration date.

(i) *Revocation of license*. In addition to any enforcement action under part 764 of this subchapter, the license may be suspended or revoked if any of the following occurs:

(1) The exporter discontinues use of the license for a period of more than one year;

(2) The exporter has failed to comply with the guidelines of the license, including the export of items that do not qualify as donations intended to meet basic human needs or the acceptance of any form of payment for the items donated;

(3) The donations are diverted to an unauthorized party;

(4) Any provision of the Export Administration Act or any regulation, order, or license issued pursuant thereto has been violated.

(j) *Recordkeeping requirements*. In addition to the renewal request discussed in paragraph (h) of this section, any exporter granted a Humanitarian License must maintain records of all shipments made under that license, the values of said shipments, the countries and beneficiaries to which the donations are sent, the Department of Commerce letter and Narrative Statement, and any party charged with distributing the donations to the beneficiaries. These records must be available for review upon request by the Office of Export Enforcement.

Supplement 1 to Part 746—Kinds of Items That May Be Donated To Meet Basic Human Needs Under the Humanitarian License

The following is a list of the kinds of items that have been identified as meeting basic human needs. The list is not definitive but will be amended on an ongoing basis to reflect additional items, as they are identified, that meet

these needs. The list is divided into categories that parallel the five basic human needs: health, food, clothing, shelter, and education. A degree of overlap exists, however, since an item listed as meeting one need may serve as well to meet additional needs. A sixth category of items is added to cover the non-commercial export of basic support equipment and supplies necessary to operate and administer the donative programs. The list is limited by the guidelines outlined in § 746.17(a) of this part, which confine the scope of the list to those items appropriate in addressing basic human needs through small-scale projects at the local level. Each item itself must be able to be described as ''basic'' and ''small-scale'' if it is to be eligible for export under this license. If the exporter is unsure whether a prospective donation falls within these guidelines, the procedure outlined in § 746.17(e) of this part should be followed. Where applicable, replacement and spare parts for items that qualify for export under this Supplement may also be exported. Specific goods that may not be exported under a Humanitarian License are described in § 746.17(d) of this part.

Note: Motorized vehicles, watercraft and aircraft are not included in this Supplement. Requests to export such items to meet basic human needs may be made under the procedure described in § 746.17(e) of this part.

(a) *Health*

Equipment for the Handicapped
Hospital Supplies and Equipment
Laboratory Supplies and Equipment
Medical Supplies and Devices
Medicine-Processing Equipment
Medicines
Vitamins
Water Resources Equipment

Food

Agricultural Materials and Machinery Suited to Small-Scale Farming Operations
Agricultural Research and Testing Equipment
Fertilizers
Fishing Equipment and Supplies Suited to Small-Scale Fishing Operations

(b) *Food*

Insecticides
Pesticides
Seeds
Small-Scale Irrigation Equipment
Veterinary Medicines and Supplies

(c) *Clothes and Household Goods*

Bedding
Clothes
Cooking Utensils
Fabric
Personal Hygiene Items
Soap-Making Equipment
Weaving and Sewing Equipment

(d) *Shelter*

Building Materials
Hand Tools

(e) *Education*

Books
Individual School Supplies
School Furniture
Special Education Supplies and Equipment for the Handicapped

(f) *Basic Support Equipment and Supplies Necessary to Operate and Administer the Donative Program*

Audio-Visual Aids for Training
Generators
Office Supplies and Equipment

Supplement 2 to Part 746—United Nations Embargoes Administered by OFAC

(a) *Angola.* BXA maintains controls on Angola as reflected on the Country Chart in Supplement 1 to part 738 of this subchapter. (See also section 746.7 of this part.) In addition, OFAC administers sanctions against the National Union for the Total Independence of Angola (UNITA). Under Executive Order 12865 of September 26, 1993, and consistent with United Nations Security Council Resolution 864 of September 15, 1993, OFAC administers an embargo on the sale or supply of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products to:

(1) UNITA; or

(2) The territory of Angola, other than through points of entry designated by the Secretary of the Treasury, in the following schedule:

(i) Airports:
(A) Luanda; or
(B) Katumbela, Benguela Province.
(ii) Ports:
(A) Luanda;
(B) Lobito, Benguela Province; or
(C) Namibe, Namibe Province.
(iii) Entry Points:
(A) Malongo, Cabinda.
(B) Reserved.

(b) Exporters should apply to OFAC for authorization to export embargoed items to UNITA or to points of entry not designated by the Secretary of the Treasury. Exports of embargoed items that are also controlled on the CCL to end-users other than UNITA and to points of entry designated by the Secretary of the Treasury continue to require a license from BXA. In addition, all other items controlled on the CCL to Angola continue to require a license from BXA.

Supplement 3 to Part 746—United Nations Arms Embargoes Administered by the State Department

(a) *Former Socialist Federal Republic of Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Slovenia).* The Department of State administers an embargo on all weapons and military equipment, consistent with United Nations Security Council Resolution 713 of September 25, 1991, to the countries of the former Socialist Federal Republic of Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Slovenia). Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment to these destinations.

(b) *Liberia.* The Department of State administers an embargo on all weapons and military equipment to Liberia, consistent with United Nations Security Council Resolution 788 of November 19, 1992. Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment.

(c) *Somalia.* The Department of State administers an embargo on all weapons and military equipment to Somalia, consistent with United Nations Security Council Resolution 733 of February 23, 1992. Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

Sec.

Authority: 18 U.S.C. 2510 *et seq.;* 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.;* 46 U.S.C. 466(c); E.O. 12924.

§ 748.1 General provisions.

(a) *Scope.* (1) The provisions of this part apply to all applications whether submitted in writing or electronically for transactions subject to the Export Administration Regulations (EAR). All terms, conditions, provisions, and instructions including the applicant's certification, contained in such form(s) are incorporated as part of the EAR. For the purposes of this part, the term ''application'' refers to the Form BXA–748P.

(2) BXA will give a formal licensing decision only through the review of a license application or specific classification or advisory opinion request submitted in writing to BXA. Such decisions are based upon the application or request and information submitted concerning all facts relevant to the transaction supported by all required documentation.

(b) Reserved.

§ 748.2 Where to obtain the necessary forms.

(a) You may obtain the forms required by the EAR from any U.S. Department of Commerce District Office; or in person or by telephone or facsimile from the following BXA offices:

Export Counseling Division, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room H1099D, Washington, D.C. 20230. Telephone Number: (202) 482–4811; Facsimile Number: (202) 482–3617.

Western Regional Offices:

3300 Irvine Avenue, Ste. 345, Newport Beach, CA 92660. Telephone Number: (714) 660–0144; Facsimile Number: (714) 660–9347.

5201 Great America Pkwy., Ste. 226, Santa Clara, CA 95054. Telephone Number: (408) 748–7450; Facsimile Number: (408) 748–7470.

(b) For the convenience of foreign consignees and other foreign parties, certain BXA forms may be obtained at U.S. Embassies and Consulates throughout the world. A Forms Supplement containing samples of the most commonly used export control forms is included as a supplement to the EAR.

§ 748.3 Classification and Advisory Opinion requests.

(a) *Introduction.* You may ask BXA to classify your item and provide you with the correct Export Control Classification Number (ECCN) to the paragraph (or subparagraph if appropriate). BXA will advise you whether or not your item is subject to the EAR and, if applicable, the appropriate ECCN. This type of request is commonly referred to as a ''Classification Request''. If requested, for a given end-use, end-user, or destination, BXA will advise you whether a license is required to export a particular item(s), and whether or not a license is likely to be granted. This type of request is commonly referred to as an ''Advisory Opinion''.

(1) Classification and Advisory Opinion requests must be submitted using Form BXA–748P; Multipurpose Application. Please see the instructions contained in Supplement No. 1 to part 748 to complete the Blocks identified for each type of request. Both requests must be sent to BXA at one of the addresses listed in § 748.14 of this part. Be certain that your request does not omit any essential information or is otherwise incomplete.

(i) Each request involving particular items must be limited to 5 items. Exceptions may be made on a case-by-case basis for several related items if the relationship between the items is satisfactorily substantiated in the request. All Classification and Advisory Opinion requests (that necessitate BXA verifying a classification) must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification or verification by BXA.

(ii) Your specific request should be stated in Block 24 on the application, whether you are requesting a Classification or Advisory Opinion. If your request does not fit in this Block, you may enter the words ''See Attached Request'' in Block 24, and attach your written request to the application.

(b) *Classification requests.* If you are submitting a Classification request you must complete Blocks 1 through 5, 14, 22 and 25 on the application. If you are requesting BXA to classify an item for which precise specifications are identified in § 748.8 of this part, these specifications must be addressed in, or attached to, your request.

(c) *Advisory Opinion requests.* If you are submitting a written Advisory Opinion request, you must complete Blocks 1 through 5, 14 and 25 on the application. In addition you may need to complete the following Blocks based on the nature of your request:

(1) Blocks 16, 17, 18, or 19 when your request involves parties to a proposed transaction;

(2) Block 21 when your request involves a specific end-use; or

(3) Block 22 when your request involves a particular item.

§ 748.4 Parties to the transaction.

(a) *Definitions of parties in interest*— (1) *Applicant.* (i) The ''applicant'' is defined as the person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the exporting or reexporting of the items. BXA is primarily concerned with the identity of the applicant and the applicant's role in the transaction, and not the terms of sale.

(ii) Ordinarily, a seller who delivers items in the United States to a foreign buyer, or to the latter's forwarder or other agent, would not be in a position to assume responsibility for the export and would not be a proper applicant. This would normally be the situation where sale is made f.o.b. factory, although such terms of sale may relate only to price and are not necessarily inconsistent with the assumption by the seller of full responsibility for effecting the export or reexport.

(iii) If the seller intends to leave the responsibility for effecting an export or reexport in the hands of the foreign importer or the latter's forwarding or purchasing agent in the United States, the foreign importer should apply for the license in the foreign importer's own name if the foreign importer is subject to the jurisdiction of the United States at the time of export. Otherwise, the importer's forwarding or purchasing agent must appear as applicant and exporter. In this situation you, as the applicant, must disclose your role as agent and the name of your principal.

(2) *Order party.* The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

(3) *Purchaser.* The purchaser is that person abroad who has entered into the transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not the purchaser.

(4) *Intermediate consignee.* The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter or reexporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the export or reexport to the ultimate consignee.

(5) *Ultimate consignee.* The ultimate consignee is the person located abroad who is the true party in interest in actually receiving the export for the designated end-use. A bank, freight forwarder, forwarding agent, or other party, when acting as an intermediary,

is not acceptable as the ultimate consignee.

(b) *Reserved.*

§ 748.5 Provisions related to applying for a license.

(a) *Licensing action.* License applications may be approved in whole or in part, denied in whole or in part, or returned without action. However, if you specifically request, the license application will be considered as a whole and either approved or denied in its entirety. You will be notified of the action taken on your license application.

(b) *Prohibited from applying for a license.* No one convicted of a violation of one of the statutes specified in § 11(h) of the Export Administration Act, as amended, at the discretion of the Secretary of Commerce, is eligible to apply for any license for a period up to 10 years from the date of the conviction.

(c) *Disclosure of prior action on a shipment.* If you have obtained a license without disclosure of the facts described in § 748.6(a) of this part, where applicable, the license will be deemed to have been obtained without disclosure of all facts material to the granting of the license and the license so obtained will be deemed void.

(1) *Licenses for items subject to detention.* If you submit a license application for items that you know or have reason to know have been detained by the Office of Export Enforcement or by the U.S. Customs Service, you must disclose this fact to BXA when you submit your license application.

(2) *Licenses for items previously exported.* You may not submit a license application to BXA covering a shipment that is already laden aboard the exporting carrier, exported or reexported. If such export or reexport should not have been made without first securing a license authorizing the shipment, you must send a letter of explanation to the Office of Export Enforcement, U.S. Department of Commerce, 14th and Pennsylvania H4520, Washington, D.C., 20230. The letter must state why a license was not obtained and disclose all facts concerning the shipment that would normally have been disclosed on the license application. You will be informed of any action and furnished any instructions by the Office of Export Enforcement.

(d) *Combining items on license applications.* Any items may be combined on a single application, however, if the items differ dramatically (e.g., computers and shotguns) the number of BXA offices to which a license application may be referred for review may increase significantly. Accordingly, it is recommended that you limit items on each license application to those that are similar and/or related.

(e) *Second application.* You may not submit a second license application covering the same proposed transaction while the first is pending action by BXA.

(f) *Resubmission.* If a license application is returned without action to you by BXA, and you want to resubmit the license application, a new license application must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. You must attach the original license application returned without action to your new license application.

(g) *Emergency processing.* If you believe an emergency situation beyond your control necessitates expedited processing of your license application, you should contact BXA's Exporter Counseling Division of the Office of Exporter Services. This office may be reached by telephone on (202) 482–4811 or by facsimile on (202) 482–3617. These procedures do not apply to emergency handling of Special Comprehensive License applications.

(1) *How to request emergency handling.* If your license application is already pending with BXA, contact the Exporter Counseling Division directly on either number listed above. If you have not yet submitted your license application, include a written letter with the title ''Emergency Handling Request'' with your license application. The letter must include:

(i) A justification for the request, supported, where appropriate, with copies of orders, communications, or other documentation to show that a valid emergency exists. You may be specifically requested to supply these or other documents not included with your submission.

(ii) An acknowledgement by you that any license issued under these emergency procedures will be valid only until the end of the month following the month in which it is issued and that it may not be extended.

(2) *Prompt delivery of emergency handling requests.* You are responsible for prompt delivery of your request and license application to BXA. You may hand-carry your request and license application or use the services of an overnight courier to ensure prompt delivery. If you desire to hand-carry your request and license application, you may hand deliver it to the Exporter Counseling Division at the address stated in § 748.2 of this part. If you decide to use an overnight courier, use the address listed in § 748.14 of this part. The envelope containing your license application should be labeled ''Attn: Exporter Counseling Division, Emergency Handling Request Enclosed''.

(3) *Review of emergency handling requests.* BXA views an emergency as an unforeseeable situation over which you have no control. On the day of receipt, BXA will evaluate your license application and decide whether emergency handling is warranted. Frequent emergency request will be given particularly close scrutiny. This procedure is not designed to become a substitute for timely filing of license applications.

(4) *Action on license applications processed under emergency procedures.* If you have submitted an emergency request, you will be contacted by the Exporter Counseling Division informing you of whether or not your request for emergency processing has been granted. If your license is approved under emergency handling procedures, you will be notified by BXA of the approval by telephone or in person. You will be given the license number and verbal authorization to effect shipment immediately, without waiting for the actual license. Any license approved under these emergency handling procedures will have a limited validity period as described in § 750.7(f) of this subchapter.

§ 748.6 Disclosure and substantiation of facts on license applications.

(a) *Disclosure requirement*—(1) *Full disclosure.* You, as the applicant, are required to make the fullest disclosure of all parties in interest to the transaction so that BXA may decide on the license application with the fullest knowledge of all relevant facts and so that the identity and location of the persons who know the most about the transactions may be easily ascertained in the event they must be contacted for additional information. Where there is any doubt as to which of several persons should be named as a party to the license, you must disclose the names of all such persons and the functions to be performed by each in an attachment to your license application.

(i) *Parties.* The names of all the parties who are concerned with or interested in the proposed export or reexport. This includes all parties participating on their own account: the applicant as exporter or reexporter, the ultimate consignee, the intermediate consignee, and the purchaser, as defined in § 748.4(a) of this part. If the license application is filed for an account other than that of the applicant, the agent, as

applicant must disclose the name of the agent's principal.

(ii) *Identification of principal.* Where more than one person in a transaction can fairly be described as being a principal, the license application should be accompanied by a statement giving the names and addresses of all such persons and their roles in the transaction.

(2) Reserved.

(b) *Orders and other material facts*—(1) *Orders involving foreign agents.* If you are a foreign agent of a U.S. exporter, you are not required to have in your possession an order before submitting a license application if the order covers items intended for general resale by you to presently unknown end-users. In all other circumstances, the order must be transmitted to the U.S. exporter before the license application is submitted to BXA.

(2) *Requirements for other types of orders.* A license application must be based on an order. An ''order'' means a communication from a person in a foreign country or that person's representative expressing an intent to import items from you or order party, as defined in § 748.4(b) of this part. While an order must, in any case, be more than a mere business inquiry relating to a possible export or reexport, it need not be an agreement that can presently be executed or that would become a binding contract upon acceptance. Additionally, an order need not be an unconditional offer to buy. An order, for instance, may be contingent upon certain variable conditions such as market price, time of delivery, availability of the items in kinds and quantities desired, and other undetermined factors. Such a contingent offer still constitutes an order within the meaning of these provisions. Similarly, a continuing or ''open'' order that remains at all times flexible in some respects may be acceptable. If, however, all of the terms of the order are not finally determined before a license application is submitted, all negotiations toward the settlement of the terms must have been advanced sufficiently to establish the intent of the person placing the order to consummate the proposed transaction. BXA will consider granting a waiver of this order requirement in situations where you are able to show that an exception is warranted. Some examples of reasons that, if fully substantiated, might warrant an exception are:

(i) An unusual expenditure of time, money, or technical skill, in excess of ordinary sales expenses is necessary before negotiations for an order may be pursued and before a bid can be submitted or an order obtained.

(ii) The applicant is under an unusual obligation to export or reexport items covered because of a special trade or industry practice.

(iii) The export or reexport involves a sample, gift, relief, or charitable shipment, or other shipment where an order is not normally an element of the transaction.

(3) *Request for waiver of ''order'' requirement.* A statement explaining in full the reason(s) for the requested exception, and any documents that substantiate your request, must be submitted with your license application. If it is not possible to obtain the required documentation at the time the waiver request is submitted, you should submit the documents upon receipt. If the exception request is granted and the license is issued, certain conditions or limitations on the export or reexport may be imposed.

(c)(1) *Documentary Evidence you must have in your possession.* Before filing a license application for a license, you, as the applicant, should have in your possession documentary evidence of the order that is referenced on the license application. ''Documentary evidence'' means any document(s) from the foreign purchaser or the foreign purchaser's representative that contain the terms and conditions of an offer to buy the items for which the license is requested. Such evidence may take the form of a contract signed by both parties, or of letters, telegrams, facsimiles, confirmations or other documents that describe the offer of the foreign purchaser to buy or the acceptance by the foreign purchaser of the exporter's offer to sell. You, or the order party involved in the transaction, must have in your possession documentary evidence of the facts related to the transaction that appear on the license application including:

(i) Country of ultimate destination;

(ii) Names and addresses of the ultimate consignee, intermediate consignee (if any), purchaser (if other than ultimate consignee), and any other party to the transaction, whether principal or agent, including but not limited to brokers, representatives, or other agents through whom the order was received;

(iii) Quantity, value and description of the items to be exported or reexported; and

(iv) End-use of the export or reexport.

(2) The printed name, address, or nature of business of the ultimate consignee or purchaser appearing on a letterhead or order form will not constitute evidence of either the ultimate consignee or purchaser's identity, country of ultimate destination, or end-use of the items described in the license application. This type of information does not meet the requirement for documentary evidence as described in § 748.6(c) of this section.

§ 748.7 General instructions for license applications.

(a) *Application Control Number.* Each application form includes a preprinted Application Control Number. This Application Control Number, consisting of a letter followed by six digits, is for use by BXA when processing applications, and by applicants communicating with BXA concerning pending applications. The Application Control Number is not a license number. This control number is for use by BXA and by applicants when communicating with BXA concerning their pending applications. This number is used for tracking purposes within the U.S. Government.

(b) *Form and instructions.* An application for license, whether to export or reexport, must be submitted on Form BXA–748P, Multipurpose Application (revised [EFFECTIVE DATE] or later), and Forms BXA–748P–A, Item Appendix, and Form BXA–748P–B, End-User Appendix. Facsimiles or copies of these forms are not acceptable. Instructions for preparing Form BXA–748P are contained in Supplement No. 1 to part 748. Remember, your license application is not limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license.

(c) *Assembly and additional information.* All documents or correspondence accompanying your license application should bear the Application Control Number, and be stapled together. Where necessary, BXA may require you to submit additional information beyond that stated in the EAR or Form BXA–748P confirming or amplifying information contained in your license application.

(d) *Changes in facts.* Answers to all items on the license application will be deemed to be continuing representations of the existing facts or circumstances. Any material or substantive change in the terms of the order, or in the facts relating to the purchase transaction or other transaction, must be promptly reported to BXA, whether a license has been granted or the license application is still under consideration. If a license has been granted, such changes must be reported immediately to BXA, even

though shipments against the license may be partially or wholly completed.

(e) *Applying electronically for a license, Classification or Advisory Opinion requests.* You may apply electronically once you have been authorized to do so by BXA. An authorization to submit applications electronically may be limited or withdrawn by BXA at any time. There are no prerequisites for obtaining permission to submit electronically or limitations in terms of country eligibility. However, BXA may direct that any electronic application be resubmitted in writing, in whole or in part for any reason, including the desire of BXA in a particular case to receive documentation in support of the application that does not lend itself to electronic submission.

(1) *Requesting approval to submit applications electronically.* Your company must submit a written request to submit applications electronically to BXA at one of the addresses identified in § 748.14 of this part. Both the envelope and letter must be marked ''Attn: Electronic Submission Request''. Your letter must contain your company's name, and the address, telephone number, and name of the principal contact person in your company. BXA will provide you with language for a number of required certifications. Once you have completed the necessary certifications, you may be approved by BXA to submit applications electronically.

(2) *Assignment and use of company and personal identification numbers.* (i) Each company granted permission to submit applications electronically will be assigned a company identification number. Each person approved by BXA to submit applications electronically for the company will be assigned a personal identification number (''PIN'') telephonically by BXA. A PIN will be assigned to you only if your company has certified to BXA that you are to be authorized to act for it in making to electronic submissions under these regulations.

(ii) Your company may reveal the assigned company identification number only to the PIN holders, their supervisors, employees, or agents of the company with a commercial justification for knowing the company identification number.

(iii) An individual PIN holder may not:

(A) Disclose the PIN to anyone;

(B) Record the PIN either in writing or electronically;

(C) Authorize another person to use the PIN; or

(D) Use the PIN following termination by BXA or your company of your authorization or approval for PIN use.

(iv) To prevent misuse of the PIN:

(A) If a PIN is lost, stolen or otherwise compromised, the company and the PIN holder must report the loss, theft or compromise of the PIN immediately by telephoning BXA at (202) 482–0436. You must confirm this notification in writing within two business days to BXA at the address provided in § 748.14 of this part.

(B) Your company is responsible for immediately notifying BXA whenever a PIN holder leaves the employ of the company or otherwise ceases to be authorized by the company to submit applications electronically on its behalf.

(v) No person may use, copy, steal or otherwise compromise a PIN assigned to another person; and no person may use, copy, steal or otherwise compromise the company identification number where the company has not authorized such person to have access to the number.

(3) *Electronic submission of applications.* (i) All applications. Upon submission of the required certifications and approval of the company's request to use electronic submission, BXA will provide instructions both on the method to transmit applications electronically and the process for submitting required supporting documents and technical specifications. These instructions may be modified by BXA from time to time.

(ii) License Applications. The electronic submission of a application for license will constitute an export control document. Such submissions must provide the same information as written applications and are subject to the recordkeeping provisions of part 762 of this subchapter. The applicant company and PIN holder submitting the application will be deemed to make all representations and certifications as if the submission were made in writing by the company and signed by the submitting PIN holder. Electronic submission of a license application will be considered complete upon the transmittal of the application to BXA or to an entity under contract to receive such applications for BXA.

(4) *Maintenance of a log.* Your company must maintain a log, either manually or electronically, specifying the date and time of each electronic submission, the ECCNs of items on each electronic submission, and the name of the employee or agent submitting the license application. This log may not be altered. Written corrections must be made in a manner that does not erase or cover original entries. If the log is maintained electronically, corrections may only be made as notations.

(5) *Updating.* An applicant company must promptly notify BXA of any change in its name or address. If your company wishes to have an individual added as a PIN holder, your company must advise BXA and follow the instructions provided by BXA. Your company should conduct periodic reviews to ensure that PINs are held only by individuals whose current responsibilities make it necessary and appropriate that they act for the company in this capacity.

(f) *Request for extended validity period.* An extended validity period will generally be granted if your transaction is related to a multi-year project, when production lead time will not permit export or reexport during the original validity period of the license, when an unforeseen emergency prevents shipment within the 24-month validity of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. To request an extended validity period, include justification for your request in Block 24 on the application.

(g) *Applications for the export of items from the United States.* A license application to export items from the United States may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by the applicant's duly authorized agent. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

§ 748.8 Additional license application requirements.

In addition to the instructions contained in Supplement No. 1 to part 748, you must also ensure that the additional requirements for certain items or types of transactions described below are addressed in your license application. Any block not identified below must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. All ''blocks'' discussed in this section relate to those appearing on the Form BXA–748P, unless otherwise noted.

(a) *Chemicals, medicinals, and pharmaceuticals.* If you are submitting a license application for the export or reexport of chemicals, medicinals, and/or pharmaceuticals, the following information must be provided in the Block 22 on the license application.

(1) Facts relating to the grade, form, concentration, mixture(s), or ingredients as may be necessary to identify the item accurately, and;

(2) In instances where Chemical Abstract Service Registry (C.A.S.) numbers exist, they must be identified.

(b) *Communications intercepting devices.* If you are required to submit a license application under § 742.13 of this part, you must enter the words ''Communications Intercepting Device(s)'' in Block 9.

(c) *Digital computers and related equipment.* If your license application involves items controlled by both Category 4 and Category 5, your license application must be submitted according to the principal function of the equipment. If the principal function is telecommunications, a Composite Theoretical Performance (CTP) is not required. Computers, related equipment, or software performing telecommunication or local area network functions will be evaluated against the telecommunications performance characteristics of Category 5, while cryptographic, cryptoanalytic, certifiable multi-level security or certifiable user isolation functions, or systems that limit electromagnetic compatibility (EMC) will be evaluated against the information security performance characteristics of Category 5. (If your license application involves a supercomputer, See § 742.12 of this part for application requirements.)

(1) *Requirements for license applications involving digital computers.* If you are submitting a license application to export or reexport ''digital computers'' or equipment containing digital computers to destinations in Country Group D:1 (See Supplement No. 1 to part 740 of this subchapter), or to upgrade existing ''digital computer'' installations in those countries, you must include in addition to the CTP in Block 22(b) the following information:

(i) A configuration diagram of the entire system must be submitted if the equipment exceeds the limits of the Advisory Notes that indicate a likelihood of approval for Country Group D:1 in the appropriate ECCN in the Commerce Control List (CCL); and

(ii) Technical specifications and product brochures to corroborate the data supplied in your license application.

(2) *Additional requirements.* License applications to export or reexport computers or related equipment that are described in Advisory Note 6 to Category 4, or that exceed any of the limits specified in Advisory Notes 3 or 6 to Category 4, must include:

(i) A signed statement by a responsible representative of the end-user or the importing agency describing the end-use and certifying that the ''digital'' computers or related equipment:

(A) Will be used only for civil applications; and

(B) Will not be reexported or otherwise disposed of without prior written authorization from the BXA;

(ii) A full description of the equipment and its intended application and workload; and

(iii) A complete identification of all end-users and their activities.

(d) *Gift parcels; consolidated in a single shipment.* If you are submitting a license application to export multiple gift parcels for delivery to individuals residing in a foreign country, you must include the following information in your license application. NOTE: Each gift parcel must meet the terms and conditions described in License Exception GFT (See § 740.16 of this subchapter).

(1) In Block 16, enter the word ''None'';

(2) In Block 18, enter the word ''Various'' instead of the name and address of a single ultimate consignee;

(3) In Block 22(e), indicate the specific number of gift parcels you believe may represent a reasonable estimate of the number of parcels to be shipped during the validity of the license;

(4) In Block 22(j), enter the phrase ''Gift Parcels'';

(5) In Block 23, indicate a reasonable value approximation proportionate to the quantity of gift parcels identified in Block 22(e); and

(6) In Block 21, enter the phrase ''For personal use by recipients''.

(e) *Intransit through the United States.* If you are submitting a license application for items moving intransit through the United States that do not qualify for License Exception TUS (See § 740.9 of this subchapter), you must provide the following information with your license application:

(1) In Block 9, enter the phrase ''Intransit Shipment'';

(2) In Block 24, enter the name and address of the foreign consignor who shipped the items to the United States and a statement that the shipment is wholly of foreign origin;

(3) Any available evidence showing the approval or acquiescence of the exporting country (or the country of which the exporter is a resident) for shipments to the proposed ultimate destination. Such evidence may be in the form of a Transit Authorization Certificate; and

(4) Any support documentation required by § 748.9 of this part for the country of ultimate destination.

(f) *Intransit outside of the United States.* If you are submitting a license application based on General Prohibition No. 10 stated in § 734.2(b)(10) of this subchapter and identification of the intermediate consignee in the country of unlading or transit is unknown at the time the license application is submitted, the country of unlading or transit must be shown in Block 17.

(g) *Nuclear Non-proliferation items and end-uses.* (1) *Statement requirement.* If a license is required to export or reexport items under § 742.3 of this subchapter, prior to submitting a license application you must obtain a signed written statement from the foreign importer certifying the following:

(i) The items to be exported or replicas thereof (''replicas'' refers to items produced abroad based on physical examination of the item originally exported, matching it in all critical design and performance parameters), will not be used in any of the activities described in § 742.3 of this subchapter; and

(ii) Written authorization will be obtained from the BXA prior to reexporting the items, unless they are destined to Canada or would be eligible for export from the United States to the new country of destination under License Exception NSG (See § 740.6 of this subchapter).

(2) *License application requirements.* Along with the required certification, you must include the following information in your license application:

(i) In Block 6, place an (X) in the box titled ''Nuclear Certification'';

(ii) In Block 9, enter the phrase ''NUCLEAR CONTROLS'';

(iii) In Block 21, provide, if known, the specific geographic locations of any installations, establishments, or sites at which the items will be used;

(iv) In Block 22(j), if applicable, include a description of any specific features of design or specific modifications that make the item capable of nuclear explosive activities, or of safeguarded or unsafeguarded nuclear activities; and

(v) In Block 24, if your license application is being submitted because you know or have reason to know that your transaction involves a nuclear end-use described in § 744.2 of this subchapter, you must fully explain the basis for your knowledge that the items are intended for the purpose(s) described in § 744.2 of this subchapter. Indicate, if possible, the specific end-use(s) the items will have in designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices or in designing, constructing,

fabricating, or operating the facilities described in § 742.3 of this subchapter.

(h) *Numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies and specially designed software.* (1) If you are submitting a license application to export, reexport, or request BXA to classify numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, and specially designed software you must include the following information in your license application:

(i) For numerical control devices and motion control boards:

(A) Make and model number of the control unit;

(B) Description and internal configuration of numerical control device. If the device is a computer with motion control board(s), then include the make and model number of the computer;

(C) Description of the manner in which a computer may be connected to the CNC unit for on-line processing of CAD data. Specify the make and model of the computer;

(D) Number of axes the control unit is capable of simultaneously controlling in a coordinated contouring mode, and type of interpolation (linear, circular, and other);

(E) Minimum programmable increment;

(F) Number and type of data communication interfaces;

(G) A description and an itemized list of all software/firmware to be supplied with the control device or motion control board, including software/firmware for axis interpolation function and for any programmable control unit or device to be supplied with the control unit;

(H) Description of capabilities related to ''real time processing'' and receiving computer aided-design as described in ECCN 2B01.a.2.a and a.2.b and ECCN 2B01.b.2 and b.3;

(I) A description of capability to accept additional boards or software that would permit an upgrade of the electronic device or motion control board above the control levels specified in ECCN 2B01; and

(J) Specify if the electronic device has been downgraded, and if so can it be upgraded in future.

(ii) For numerically controlled machine tools and dimensional inspection machines:

(A) Name and model number of machine tool or dimensional inspection machine;

(B) Type of equipment, e.g., horizontal boring machine, machining center, dimensional inspection machine, turning center, water jet, etc.;

(C) Description of the linear and rotary axes capable of being simultaneously controlled in a coordinated contouring mode, regardless of the fact that the coordinated movement of the machine axis may be limited by the numerical control unit supplied by the machine tool;

(D) Maximum workpiece diameter for cylindrical grinding machines;

(E) Motion of the spindle axis measured in the axial direction in one revolution of the spindle, and a description of the method of measurement for turning machine tools only;

(F) Motion of the spindle axis measured in the radial direction in one revolution of the spindle, and a description of the method of measurement;

(G) Overall positioning accuracy, and a description of the method for measurement; and

(H) Slide motion test results if required as described in ECCN 2B01.c.1.b.6.

(i) *Parts, components, and materials incorporated abroad into foreign-made products.* BXA will consider license applications to export or reexport to multiple consignees or multiple countries. Such requests will not be approved for countries listed in Country Group E:1 (See Supplement No. 1 to part 740 of this subchapter), but may be approved only in limited circumstances for countries listed in Country Group D:1. If you are requesting approval of multiple countries or consignees, enter the word ''Various'' in Block 18, and list the countries or consignees in Block 24.

(1) *License applications for the export of parts and components.* If you are submitting a license application for the export of parts, components, or materials to be incorporated abroad into products that will then be sent to designated third countries, you must enter in Block 21, a description of end-use including a general description of the commodities to be manufactured, their typical end-use, and the countries where those commodities will be marketed. The countries may be listed specifically or may be identified by Country Groups, geographic areas, etc.

(2) *License applications for the reexport of incorporated parts and components.* If you are submitting a license application for the reexport of parts, components, or materials incorporated abroad into products that will be sent to designated third countries you must include the following information in your license application:

(i) In Block 9, enter the phrase ''Parts and Components'';

(ii) In Block 18, enter the name, street address, city and country of the foreign party who will be receiving the foreign-made product (if various, enter ''Various'' in Block 18, and list the specific countries, Country Groups, or geographic areas in Block 24);

(iii) In Block 20, enter the name, street address, city, and country of the foreign party who will be reexporting the foreign-made product incorporating U.S. origin parts, components or materials;

(iv) In Block 22(e), specify the quantity for each foreign-made product. If this information is unknown, enter ''Unknown'' in Block 22(e);

(v) In Block 22(j), describe the foreign-made product that will be reexported, specifying type and model or part number. Attach brochures or specifications, if available. Show as part of the description the unit value, in U.S. dollars, of the foreign-made product (if more than one foreign-made product is listed on the license application, specify the unit value for each type/model/part number). Also include a description of the U.S. content (including the applicable Export Control Classification Number(s)) and its value in U.S. dollars. If more than one foreign-made product is identified on the license application, describe the U.S. content and specify the U.S. content value for each foreign-made product. Also, provide sufficient supporting information to explain the basis for the stated values. To the extent possible, explain how much of the value of the foreign-made product represents foreign origin parts, components, or materials, as opposed to labor, overhead, etc. When the U.S. content varies and cannot be specified in advance, provide a range of percentage and value that would indicate the minimum and maximum U.S. content;

(vi) Include separately in Block 22(j) a description of any U.S. origin spare parts to be reexported with the foreign-made product, if they exceed the amount allowed by § 740.10 of this subchapter. Enter the quantity, if appropriate, in Block 22(e). Enter the ECCN for the spare parts in Block 22(a) and enter the value of the spare parts in Block 22(h);

(vii) In Block 22(h), enter the digit ''0'' for each foreign-made product;

(viii) In Block 23, enter the digit ''0'';

(ix) In Block 21, describe the activity of the ultimate consignee identified in Block 18 and the end-use of the foreign-made product. Indicate the final configuration if the product is intended

to be incorporated in a larger system. If the end-use is unknown, state ''unknown'' and describe the general activities of the end-user;

(x) If the foreign-made product is the direct product of U.S. origin technology that was exported or reexported subject to written assurance, a request for waiver of that assurance, if necessary, may be made in Block 24. If U.S. origin technology will accompany a shipment to a country listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of this subchapter) describe in Block 24 the type of technology and how it will be used.

(j) *Ship stores, plane stores, supplies, and equipment.* (1) *Vessels under construction.* If you are submitting a license application for the export or reexport of items, including ship stores, supplies, and equipment, to a vessel under construction must include the following information in your license application:

(i) In Block 18, enter the name, street address, city, and country of the shipyard where vessel is being constructed;

(ii) In Block 22(j), enter the following information, state the length of the vessel for a vessel under 12 m (40 ft) in length. For a vessel 12 m (40 ft) in length or over, provide the following information (if this information is unknown, enter ''Unknown'' in this Block):

(A) Hull number and name of vessel;

(B) Type of vessel;

(C) Name and business address of prospective owner, and the prospective owner's nationality; and

(D) Country of registry or intended country of registry.

(2) *Aircraft under construction.* If you are submitting a license application for the export or reexport of items, including plane stores, supplies, and equipment, to an aircraft under construction must include the following information in your license application:

(i) In Block 18, enter the name and address of the plant where the aircraft is being constructed;

(ii) In Block 22(j), enter the following information (if this information is unknown, enter ''Unknown'' in this Block):

(A) Type of aircraft and model number;

(B) Name and business address of prospective owner and his nationality; and

(C) Country of registry or intended country of registry.

(3) *Operating vessels and aircraft.* If you are submitting a license application for the export or reexport of items, including ship or plane stores, supplies, and equipment to an operating vessel or aircraft, whether in operation or being repaired, must include the following information in your license application:

(i) In Block 18, enter the name of the owner, the name of the vessel, if applicable, and port or point where the items will be taken aboard;

(ii) In Block 18, enter the following statement if, at the time of filing the license application, it is uncertain where the vessel or aircraft will take on the items, but it is known that the items will not be shipped to country listed in Country Group D:1 and E:2 (see Supplement No. 1 to part 740 of this subchapter):

Uncertain; however, shipment(s) will not be made to Country Groups D:1 or E:2.

(iii) Provide information as described in § 748.8(l)(1)(ii) of this section for vessels or information contained in § 748.8(l)(2)(ii) of this section for aircraft.

(k) *Regional stability controlled items.* If you are submitting a license application for the export or reexport of items controlled for regional stability reasons and subject to licensing under RS Column 1 on the Country Chart, your license application must be accompanied by full technical specifications. License applications received without full technical specifications will be promptly returned without action, without prior notice from BXA.

(l) *Reexports.* If you know that an item that requires a license to be exported from the United States to a certain foreign destination will be reexported to a third destination also requiring approval, such a request must be included on the license application. The license application must specify the country to which the reexport will be made in Block 24.

(m) *Robots.* If you are submitting a license application for the export or reexport of items controlled by ECCNs 2B07 or 2D01 (including robots, robot controllers, end-effectors, or related software) the following information must be provided in Block 24:

(1) Specify if the robot is equipped with a vision system and its make, type, and model number;

(2) Specify if the robot is specially designed to comply with national safety standards for explosive munitions environments;

(3) Specify if the robot is specially designed for outdoor applications and if it meets military specifications for those applications;

(4) Specify if the robot is specially designed for operating in an electro-magnetic pulse (EMP) environment;

(5) Specify if the robot is specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (i.e., non-nuclear industry) ionizing radiation;

(6) Describe the robot's capability of using sensors, image processing or scene analysis to generate or to modify robot program instructions or data;

(7) Describe the manner in which the robot may be used in nuclear industry/manufacturing; and

(8) Specify if the robot controllers, end-effectors, or software are specially designed for robots controlled by ECCN 2B07, and why.

(n) *Short Supply controlled items.* If you are submitting a license application for the export of items controlled for short supply reasons, you must consult part 754 of this subchapter for instructions on preparing your license application.

(o) *Technology*—(1) *License application instructions.* If you are submitting a license application for the export or reexport of technology you must check the box labeled ''Letter of Explanation'' in Block 6, enter the word ''Technology'' in Block 9, leave Blocks 22(e) and (i) blank, and include a general statement that specifies the technology (e.g., blueprints, manuals, etc.) in Block 22(j).

(2) *Letter of explanation.* Each license application to export or reexport technology must be supported by a comprehensive letter of explanation. This letter must describe all the facts for a complete disclosure of the transaction including, if applicable, the following information:

(i) The identities of all parties to the transaction;

(ii) The exact project location where the technology will be used;

(iii) The type of technology to be exported or reexported;

(iv) The form in which the export or reexport will be made;

(v) The uses for which the data will be employed;

(vi) An explanation of the process, product, size, and output capacity of all items to be produced with the technology, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the ''technical scope''); and

(vii) The availability abroad of comparable foreign technology.

(3) *Special provisions.* (i) *Technology controlled for national security reasons.* If you are submitting a license application to export technology controlled for national security reasons to a country not listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of this subchapter), you must obtain

a written letter from the ultimate consignee assuring that, unless prior authorization is obtained from BXA, the consignee will not knowingly reexport the technology to any destination, or export the direct product of the technology directly to a country listed in Country Group D:1 or E:2 (See Supplement No. 1 to part 740 of this subchapter). If you are unable to obtain this letter of assurance from your consignee, you must state in your license application why the assurances could not be obtained.

(ii) *Maritime nuclear propulsion plants and related items.* Maritime nuclear propulsion plants and related items including maritime (civil) nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities. If you are submitting a license application to export or reexport technology relating to any of these items you must include the following information in your license application:

(A) A description of the foreign project for which the technology will be furnished;

(B) A description of the scope of the proposed services to be offered by the applicant, his consultant(s), and his subcontractor(s), including all the design data that will be disclosed;

(C) The names, addresses and titles of all personnel of the applicant, the applicant's consultant(s) and subcontractor(s) who will discuss or disclose the technology or be involved in the design or development of the technology;

(D) The beginning and termination dates of the period of time during which the technology will be discussed or disclosed and a proposed time schedule of the reports the applicant will submit to BXA, detailing the technology discussed or disclosed during the period of the license;

(E) The following certification:

I (We) certify that if this license application is approved, I (we) and any consultants, subcontractors, or other persons employed or retained by us in connection with the project licensed will not discuss with or disclose to others, directly or indirectly, any technology relating to U.S. naval nuclear propulsion plants. I (We) further certify that I (we) will furnish to the Bureau of Export Administration all reports and information it may require concerning specific transmittals or disclosures of technology under any license granted as a result of this license application.

(F) A statement of the steps that you will take to assure that personnel of the applicant, the applicant's consultant(s) and subcontractor(s) will not discuss or disclose to others technology relating to U.S. naval nuclear propulsion plants; and

(G) A written statement of assurance from the foreign importer as described in § 748.8(q)(2) of this section.

(p) *Temporary exports or reexports.* If you are submitting a license application for the temporary export or reexport of an item (not eligible for License Exception TMP (See § 740.8 of this subchapter)) you must include the following certification in Block 24:

The items described on this license application are to be temporarily exported (or reexported) for (state the purpose e.g., demonstration, testing, exhibition, etc.), used solely for the purpose authorized, and returned to the United States (or originating country) as soon as the temporary purpose has ended, but in no case later than two years of the date of export (or reexport), unless other disposition has been authorized in writing by the Bureau of Export Administration.

§ 748.9 Support documentation for license applications.

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations, no support documentation is required. Simply submit the license application.

(1) All exports and reexports involving ultimate consignees located in any of the following countries:

Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, French West Indies, French Guiana, Greenland, Guatemala.

Guyana, Haiti, Honduras, Jamaica, Leeward and Windward Islands, Mexico, Miquelon and St. Pierre Islands, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Surinam, Trinidad and Tobago, Uruguay, and Venezuela.

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies). To determine whether the parties to your transaction meet the definition of ''government agency'' refer to the definition contained in § 730.3 of this subchapter. Remember, if both the ultimate consignee and purchaser are not a foreign government or foreign government agency, a statement is required from the nongovernmental party. However, support documents *are* required from governments of the People's Republic of China, India, Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia.

(3) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, to a member agency in the foreign country.

(4) The license application is submitted to export or reexport items for temporary exhibition, demonstration, or testing purposes.

(5) The license application is submitted for items controlled for short supply reasons (See part 754 of this subchapter).

(6) The license application is submitted under the Special Comprehensive License described in part 752 of this subchapter.

(b) *Support documentation requirements.* Certain license applications must be supported by documents designed to elicit information concerning the disposition of the items intended for export or reexport. These support documents must be either submitted at the time the license application is filed or retained in the applicant's files in accordance with the recordkeeping provisions of part 762 of this subchapter. The type of support documentation required is dependent on the item involved and the country of ultimate destination. To determine which type of support documentation is required, answer the following questions:

(1) Does your transaction involve items controlled for national security reasons?

(i) If yes, continue with question number 2.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Proceed directly to § 748.11 of this part.

(2) Does your transaction involve items controlled for national security reasons destined for Bulgaria, the Czech Republic, Hungary, India, the People's Republic of China, Poland, Romania, or Slovakia?

(i) If yes, your transaction may require an Import or End-User Certificate. Proceed to § 748.10 of this part.

Note: If the destination is the People's Republic of China, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate under the following conditions: (1) The item to be exported is described in an Advisory Note for Country Group D:1 (See Supplement No. 1 to part 740 of this subchapter) on the CCL, or; (2) The item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at $75,000 or less; or (3) The End-User is not a Chinese entity.

(ii) If no, continue with question number 3.

(3) Does your transaction involve items controlled for national security

reasons destined for one of the following countries (this applies only to those overseas territories specifically listed):

Argentina, Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Republic of, Italy, Japan, Korea, Republic of.

Liechtenstein Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, and United Kingdom.

(i) If yes, your transaction may require an Import Certificate. Proceed to § 748.10 of this part.,

(ii) If no, your transaction may require a Statement by Ultimate Consignee or Purchaser. Proceed to § 748.11 of this part.

(c) *License applications requiring support documentation.* License applications requiring support by either a Statement by the Ultimate Consignee and Purchaser or an Import or End-User Certificate must indicate the type of support document obtained in Block 6. If the support document is an Import or End User Certificate, you must also identify the originating country and number of the Certificate in Block 13. If a license application is submitted without either the required support document, the license application will be immediately returned without action unless the reasons for failing to obtain the document are supplied in Block 24 or in an attachment to the license application.

(1) *License applications supported by an Import or End User Certificate.* If submission of the original certificate is not required in § 748.10(g) of this part, you may submit your license application upon receipt of a facsimile or other legible copy of the Import or End User Certificate provided that no shipment will be made against any license issued based upon the Import or End User Certificate prior to receipt and retention of the original statement by the applicant. If § 748.10(g) requires submission of the original certificate with your license application, you must submit the original. Copies will not be accepted.

(2) *License applications supported by Ultimate Consignee and Purchaser statements.* These types of license applications may be submitted upon receipt of a facsimile or other legible copy of the original statement provided that the original manually-signed statement is retained by the ultimate consignee, and you retain a copy of the statement.

(d) *Exceptions to obtaining the required support document.* BXA will consider the granting of an exception to the requirement for supporting document where the requirements cannot be met due to circumstances beyond your control. An exception will not be granted contrary to the objectives of the U.S. export control program. Refer to § 748.12(d) of this part for specific instructions on procedures for requesting an exception.

(e) *Validity period.* (1) When an Import or End-User Certificate or a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, you must submit the first license application within the validity period shown on the Certificate, or 6 months from the date the Certificate was issued (or Statement signed), whichever is shorter.

(2) All subsequent license applications supported by the same Certificate or Statement must be submitted to BXA within one year from the date that the first license application, supported by the same Certificate or Statement, was submitted to BXA.

(f) *English translation requirements.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by you to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(g) *Responsibility for full disclosure.* (1) Information contained in a support document cannot be construed as extending or expanding the specific information supplied in a license application or license issued by BXA. In terms of the disclosure of facts pertaining to a transaction(s), the license application covering the transaction must be self-contained. The authorizations contained in the resulting license are not extended by the general information contained in Import Certificate, End-User Certificate or Statement by Ultimate Consignee and Purchaser with regard to the reexport from the country of destination or with regard to any other facts relative to the transaction as reported on the license application.

(2) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject all parties to administrative action by BXA. Administrative action may include suspension, revocation, or denial of licensing privileges and denial of other participation in exports from the United States.

(3) In obtaining the required support document, you as the applicant are not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end-use of which you has knowledge or belief, even if inconsistent with the representations made in the Import Certificate, End-User Certificate, or Statement by Ultimate Consignee and Purchaser. You are responsible for promptly notifying BXA of any change in the facts contained in the support document that comes to the your attention subsequent to the issuance of the support document.

(h) *Effect on license application review.* BXA reserves the right in all respects to determine to what extent any license will be issued covering items for which an Import or End-User Certificate has been issued by a foreign government. BXA will not seek or undertake to give consideration to recommendations from the foreign government as to the action to be taken on a license application. A supporting document issued by a foreign government will be only one of the considerations upon which BXA will base its licensing action, since end-uses and other considerations are important factors in the decision making process.

(i) *Request for return of support documents submitted to BXA.* If an applicant is requested by a foreign importer to return an unused or partially used Import or End-User Certificate submitted to BXA in support of a license application, the procedure provided below should be followed:

(1) Applicants must send their letter request for return of an Import or End-User Certificate to the address stated in § 748.14 of this part, ''Attn: Import/End-User Certificate Request''.

(2) The letter request must include the name and address of the importer, the Application Control Number under which the original Import or End-User Certificate was submitted, the Application Control Numbers for any subsequent license applications supported by the same certificate, and one of the following statements, if applicable:

(i) If the certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the certificate will not be used in connection with another license application.

(ii) If you do not intend to make any additional shipments under a license covered by the certificate, or is in the

possession of an expired license covered by the certificate, a statement to this effect, indicating the unshipped items.

(j) *Recordkeeping requirements for returning certificates retained by the applicant.* (1) Though the recordkeeping provisions of these regulations require that all original support documents are retained for a period of five years, you may return an unused or partially used certificate at the request of a foreign importer provided that you submit the original certificate, accompanied by a letter of explanation, and a copy of each license covered by the certificate, and list of all shipments made against each license to BXA at the address listed in § 748.14. BXA will notify you in writing whether your request has been granted. The following information must be contained in your letter of explanation:

(i) A statement citing the foreign importer's request for return of the certificate;

(ii) The license number(s) that have been issued against the certificate (including both outstanding and expired licenses); and

(iii) If the certificate covers a quantity greater than the total quantity stated on the license(s), you must include a statement that the certificate will not be used in connection with another license application.

(2) If your request is granted, BXA will return the certificate to you. You must make a copy of the certificate before you return the original to the importer. This copy must show all the information contained on the original certificate including any notation made on the certificate by BXA. The copies must be retained on file along with your correspondence in accordance with the recordkeeping provisions in part 762 of this subchapter.

§ 748.10 Import and End-User Certificates.

(a) *Scope.* There are a variety of Import and End-User Certificates currently in use by various governments. The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the transaction by BXA. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an Import or End-User Certificate. This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) and (b)(3) of this part.

(b) *An Import or End-User Certificate must be obtained if:*

(1) Any items on your license application are controlled for national security reasons (NS); and

(2) Your license application involves the export of items classified in a single entry on the CCL, the total value of which exceeds $5,000.

(i) Your license application may list several separate CCL entries. If *any* entry controlled for national security reasons exceeds $5,000, then an Import or End-User Certificate must be obtained covering all items controlled for national security reasons on your license application;

(ii) If your license application involves a lesser transaction that is part of a larger order exceeding $5,000, an Import or End-User Certificate must be obtained.

(iii) If you are specifically requested by BXA to obtain an Import Certificate for a transaction valued under $5,000.

(c) *Where to obtain Import and End-User Certificates.* See Supplement No. 3 to part 748 for a list of the authorities administering the Import Certificate/ Delivery Verification and End-User Certificate Systems in other countries.

(d) *How to obtain an Import or End-User Certificate.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import or End-User Certificate, and that it be issued covering only those items that are controlled for national security reasons. Importers should not be requested to obtain an Import or End-User Certificate for items that are controlled for reasons other than national security. Upon receipt, the importer must transmit the original document to the applicant.

(2) The applicant's name must appear on the Import or End-User Certificate submitted to BXA as either the applicant, supplier, or order party. The Import Certificate may be made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country.

Note: You should furnish the consignee the item description contained in the CCL to be used in applying for the Import or End-User Certificate. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the item is new.

(i) If your transaction requires support of a PRC End-User Certificate, you must ensure the following information is included on the PRC End-User Certificate signed by an official of the Department of Science and Technology of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) with MOFTEC's seal affixed to it:

(A) Title of contract and contract number (optional);

(B) Names of importer and exporter;

(C) End-User and end-use;

(D) Description of the item, quantity and dollar value; and

(E) Signature of the importer and date.

(ii) Reserved.

(e) *Triangular symbol on International Import Certificates.* (1) In accordance with international practice, the issuing government may stamp a triangular symbol on the International Import Certificate (IIC). This symbol is notification that the importer does not intend to import or retain the items in the country issuing the certificate, but that, in any case, the items will not be delivered to any destination except in accordance with the export regulations of the issuing country.

(2) If you receive an IIC bearing a triangular symbol, you must identify all parties to the transaction on the license application, including those located outside the country issuing the IIC. If the importer declines to provide you with this information, you may advise the importer to provide the information directly to BXA through a U.S. Foreign Commercial Service office, or in a sealed envelope to you marked ''To be opened by BXA only''.

(f) *Multiple license applications supported by one certificate.* An Import or End-User Certificate may cover more than one purchase order and more than one item. Where the certificate includes items for which more than one license application will be submitted, you must include in Block 24, or in an attachment to each license application submitted against the certificate, the following certification:

> I (We) certify that the quantities of items shown on this license application, based on the Certificate identified in Block 13 of this license application, when added to the quantities shown on all other license applications submitted to BXA based on the same Certificate, do not total more than the total quantities shown on the above cited Certificate.

(g) *Submission of Import and End-User Certificates.* (1) In order to determine whether submission to BXA of the requisite certificate is required, you must ask the following two questions.

(i) Does the license application involve the export or reexport of a supercomputer as defined in part 742 of this subchapter?

(ii) Is a PRC End-User Certificate required for the proposed transaction?

(2) If the answer is yes to either question, the original certificate must be submitted with the license application to BXA. Copies will not be accepted.

(3) If the answer is no to both of these questions, the original certificate must

be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of this subchapter, and not submitted with the license application.

(h) *Alterations.* After an Import or End-User Certificate is issued by a foreign government, no corrections, additions, or alterations may be made on the Certificate by any person. If you desire to explain any information contained on the Certificate, you may attach a signed statement to the Certificate.

(i) *Request for Delivery Verification.* BXA will on a selective basis require Delivery Verification documents for shipments supported by Import Certificates. You will be notified if Delivery Verification is required at the time of issuance of the license. Please refer to § 748.13 of this part for detailed information on these procedures.

(j) *Retention procedures.* You must retain on file the original copy of any certificate issued in support of a license application submitted to BXA, unless the original is submitted with the license application. All recordkeeping provisions contained in part 762 of this subchapter apply to this requirement, except that reproductions may not be substituted for the officially authenticated original in this instance.

§ 748.11 Statement by Ultimate Consignee and Purchaser.

(a) *Exceptions to completing a Statement by Ultimate Consignee and Purchaser.* A Statement by the Ultimate Consignee and/or Purchaser involved in a transaction must be completed unless:

(1) An International Import Certificate, a People's Republic of China End-User Certificate, an Indian Import Certificate, or a Bulgarian, Czech, Hungarian, Polish, Romanian or Slovak Import Certificate is required in support of the license application.

(2) The applicant is the same person as the ultimate consignee, provided the required statements are contained in Block 24 on the license application. This exemption does not apply where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms.

(b) *Submission of the Statement by Ultimate Consignee and Purchaser.* A copy of the signed Statement by Ultimate Consignee and Purchaser must be maintained by the applicant with the ultimate consignee retaining the manually-signed original in accordance with the recordkeeping provisions of part 762. The copy retained by the applicant must be of sufficient quality to ensure all assertions made on the statement are legible and that the signatures are sufficiently legible to permit identification of the signature as that of the signer. A copy of the statement must be submitted with your license application if the country of ultimate destination is listed in either Country Group D:2, D:3, or D:4 (See Supplement No. 1 to part 740 of this subchapter) or the item involved is a supercomputer.

(c) *Form or letter.* The ultimate consignee and purchaser must complete either a statement on company letterhead in accordance with § 748.11(e) of this part or Form BXA–711, Statement by Ultimate Consignee and Purchaser. If you elect to complete the statement on letterhead and both the ultimate consignee and purchaser are the same entity, only one statement is necessary. If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed. If you elect to complete Form BXA–711, only one Form BXA–711 (containing the signatures of the ultimate consignee and purchaser) need be completed. Whether your ultimate consignee and purchaser sign a written statement or Form BXA–711, the following constraints apply:

(1) Responsible officials representing the ultimate consignee must sign the statement. ''Responsible official'' is defined as someone with personal knowledge of the information included in the statement, and authority to bind the ultimate consignee or purchaser for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

(2) The authority to sign the statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his or her official position with the ultimate consignee or purchaser for whom he or she signs. The signing official may be located in the U.S. or in a foreign country. The official title of the person signing the statement must also be included.

(3) The consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and must promptly send a new statement to the applicant if changes in the facts or intentions contained in their statement(s) occur after the statement(s) have been forwarded to the applicant. Once a statement has been signed, no corrections, additions, or alterations may be made. If a signed statement is incomplete or incorrect in any respect, a new statement must be prepared, signed and forwarded to the applicant.

(d) *Instructions on completing Form BXA–711.* Instructions on completing Form BXA–711 are contained in Supplement No. 2 to part 748. The ultimate consignee and purchaser may sign a legible copy of Form BXA–711. It is not necessary to require your ultimate consignee and purchaser sign an original Form BXA–711, provided all information contained on the copy is legible.

(e) *Instructions on completing the statement on letterhead.* Information in response to each of the following criteria must be included in the statement. If any information is unknown, that fact should be disclosed in the statement. Preprinted information supplied on the statement, including the name, address, or nature of business of the ultimate consignee or purchaser appearing on the letterhead or order form, will not constitute evidence of either the signer's identity, the country of ultimate destination, or end-use of the items described in the license application.

(1) *Paragraph 1.* One of the following certifications must be included depending on whether the statement is proffered in support of a single license application or multiple license applications:

(i) *Single.* This statement is to be considered part of a license application submitted by [name and address of applicant].

(ii) *Multiple.* This statement is to be considered a part of every license application submitted by [name and address of applicant] until one year from the date this statement is signed.

(2) *Paragraph 2.* One or more of the following certifications must be included:

Note: If any of the facts related to the following statements are unknown, this must be clearly stated.

(i) The items for which a license application will be filed by [name of applicant] will be used by us as capital equipment in the form in which received in a manufacturing process in [name of country] and will not be reexported or incorporated into an end product.

(ii) The items for which a license application will be filed by [name of applicant] will be processed or incorporated by us into the following product(s) [list products] to be manufactured in [name of country] for distribution in [list name of country or countries].

(iii) The items for which a license application will be filed by [name of applicant] will be resold by us in the form in which received for use or consumption in [name of country].

(iv) The items for which a license application will be filed by [name of

applicant] will be reexported by us in the form in which received to [name of country or countries].

(v) The items received from [name of applicant] will be [describe use of the items fully].

(3) *Paragraph 3.* The following two certifications must be included:

(i). The nature of our business is [possible choices include; broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.].

(ii) Our business relationship with [name of applicant] is [possible choices include; contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.] and we have had this business relationship for [number of years].

(4) *Paragraph 4.* The final paragraph must include each of the following certifications:

(i) We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and belief and we do not know of any additional facts that are inconsistent with the above statements. We shall promptly send a replacement statement to [name of the applicant] disclosing any change of facts or intentions set forth in this statement that occur after this statement has been prepared and forwarded to [name of applicant]. We acknowledge that the making of any false statement or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both, and denial, in whole or in part, of participation in U.S. exports or reexports.

(ii) Except as specifically authorized by the U.S. Export Administration Regulations, or by written approval from the Bureau of Export Administration, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement issued to [name of applicant] (1) to any country not approved for export as brought to our attention by the U.S. exporter; or (2) to any person if there is reason to believe that it will result directly or indirectly, in disposition of the items contrary to the representations made in this statement or contrary to the U.S. Export Administration Regulations.

(iii) We understand that acceptance of this statement as a support document cannot be construed as an authorization by BXA to reexport the items in the form in which received even though the ultimate consignee and/or purchaser has indicated the intention to reexport, and that authorization to reexport is not granted on the basis of information provided in the statement, but as a result of a specific request in a license application.

§ 748.12 Special provisions.

(a) *Grace periods.* Whenever the requirement for an Import or End-User Certificate or Statement by Ultimate Consignee or Purchaser is imposed or extended by a change in the regulations, the license application need not conform to the new support documentation requirements for a period of 45 days after the effective date of the notice published in the **Federal Register**.

(1) Requirements are usually imposed or extended by virtue of one of the following:

(i) Addition or removal of national security controls over a particular item; or

(ii) Development of an Import Certificate/Delivery Verification or End-User Certificate program by a foreign country; or

(iii) Removal of an item from eligibility under the Special Comprehensive License described in part 752 of this subchapter, when you hold such a special license and have been exporting the item under that license.

(2) License applications filed during the 45 day grace period must be accompanied by any evidence available to you that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between you and ultimate consignee, or other documents received from the ultimate consignee. You must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period.

Note: An Import or End-User Certificate will not be accepted, after the stated grace period, for license applications involving items that are no longer controlled for national security reasons. If an item is removed from national security controls, you must obtain a Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part. Likewise, any item newly controlled for national security purposes requires support of an Import or End-User Certificate as described in § 748.10 of this part after expiration of the stated grace period.

(b) *Reexports.* If a support document would be required for an export, the same document would be required for reexport to Country Group D:1 and E:2 (See Supplement No. 1 to part 740 of this subchapter).

(c) *Granting of exceptions to the support documentation requirement.* An exception to obtaining the required support documentation will be considered by BXA, however, an exception will not be granted contrary to the objectives of the U.S. export control program. A request for exception may involve either a single transaction, or where the reason necessitating the request is continuing in nature, multiple transactions. If satisfied by the evidence presented, BXA may waive the support document requirement and accept the license application for processing. Favorable consideration of a request for exception generally will be given in instances where the support document requirement:

(1) Imposes an undue hardship on you and/or ultimate consignee (e.g., refusal by the foreign government to issue an Import or End-User Certificate and such refusal constitutes discrimination against you); or

(2) Cannot be complied with (e.g., the items will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(3) Is not applicable to the transaction (e.g., the items will not be imported for consumption into the named country of destination).

(d) *Procedures for requesting an exception.* (1) Requests for exception must be submitted with the license application to which the request relates. Where the request relates to more than one license application it should be submitted with the first license application and referred to in Block 24 on any subsequent license application. The request for exception must be submitted in writing on the applicant's letterhead.

(2) In instances where you are requesting exception from obtaining an Import or End-User Certificate, the request must be accompanied by a manually-signed original Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part.

(3) At a minimum, the letter request must include:

(i) Name and address of ultimate consignee;

(ii) Name and address of purchaser, if different from ultimate consignee;

(iii) Location of foreign trade zone or bonded warehouse if the items will be exported to a foreign trade zone or bonded warehouse;

(iv) Type of request, i.e., whether for a single transaction or multiple transactions;

(v) Full explanation of the reason(s) for requesting the exception;

(vi) Nature and duration of the business relationship between you and ultimate consignee and purchaser shown on the license application;

(vii) Whether you have previously obtained and/or submitted to BXA an Import or End-User Certificate issued in the name of the ultimate consignee and/or purchaser, and a list of the Application Control Number(s) to which the certificate(s) applied; and

(viii) Any other facts to justify granting an exception.

(4) *Action by BXA.* (i) *Single transaction request.* Where a single transaction is involved, BXA will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related license application is approved, the issuance of the license will serve as an automatic notice to the applicant that the exception was approved. If any restrictions are placed on granting of the exception, these will appear on the approval. If the request for exception is not approved, BXA will advise you by letter.

(ii) *Multiple transactions request.* Where multiple transactions are involved, BXA will advise you by letter of the action taken on the exception request. The letter will contain any conditions or restrictions that BXA finds necessary to impose (including an exception termination date if appropriate). In addition, a written acceptance of these conditions or restrictions may be required from the parties to the transaction.

(e) *Availability of original.* The original certificate or statement must be kept on file, and made available for inspection in accordance with the provisions of part 762 of this subchapter. To ensure compliance with this recordkeeping requirement, BXA will require applicants, on a random basis, to submit specific original certificates and statements that have been retained on file. Applicants will be notified in writing of any such request.

§ 748.13 Delivery Verification (DV).

(a) *Scope.* (1) BXA may request applicants to obtain verifications of delivery on a selective basis. A Delivery Verification Certificate (DV) is a document issued by the government of the country of ultimate destination after the export has taken place and the items have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. Governments that issue DVs are listed in Supplement No. 3 to part 748.

(2) If BXA decides to request verification of delivery, the request will appear as a condition on the face of the license. If the license is sent directly to a party other than the applicant authorized to receive the license (e.g., agent, forwarder, broker, etc.), such party is responsible for notifying the licensee immediately in writing that a DV is required.

(b) *Exception to obtaining Delivery Verification.* The DV requirement for a particular transaction is automatically canceled if, subsequent to the issuance of a license, the item is no longer controlled for national security reasons. In this instance, the licensee must send a letter to BXA at the address listed in § 748.14 of this part, stating that the items on the license are no longer controlled for national security reasons, and accordingly, the request for DV will not be fulfilled by the licensee.

(c) *Procedure for obtaining Delivery Verification.* When notified that DV is required by BXA, the licensee must transmit to the importer a written request for a DV at the time of making each shipment under the license (whenever possible, this request should be submitted together with the related bill of lading or air waybill). The request must include the number of the Import or End-User Certificate for the transaction referred to on the license, and notify the importer that this same Import or End-User Certificate number should be shown on the DV.

(1) The importer must obtain the DV from the appropriate government ministry identified in Supplement No. 3 to part 748, and forward the completed DV to the licensee. The DV must cover the items described on the license that have been shipped.

Note: BXA must be able to relate the description provided in the DV to the approved license. In order to ensure the same terminology is used, the licensee should provide the importer with the description as it appears on the license.

(2) The original copy of the DV must be sent to BXA within 90 days after the last shipment has been made against the license. If verification of delivery is required for items covered by a license against which partial shipments have been made, the licensee shall obtain the required DV for each partial shipment, and retain these on file until all shipments have been made against the license. Once all shipments against the license have been made (or the licensee has determined that none will be), the licensee must forward, in one package, all applicable DVs to BXA at the address listed in § 748.14 of this part.

(3) The documents must be forwarded with a dated letter evidencing the license number, the name, title and signature of the authorized representative, and one of the following statements:

(i) The total quantity authorized by license number _____ have been exported, and all delivery verification documents are attached.

(ii) A part of the quantity authorized by license number _____ will not be exported. Delivery verification documents covering all items exported are attached.

(iii) No shipment has been made against this license, and none is contemplated.

(d) *Inability to obtain Delivery Verification certificates.* If a licensee is unable to obtain the required DV (within the time frame stated above, or at all) from the importer, the licensee must promptly notify BXA and, upon request, make available all information and records, including correspondence, regarding the attempt to obtain the DV.

§ 748.14 Mailing address for applications and documentation.

All applications should be mailed to the following address, unless otherwise specified: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044. If you wish to submit your application using an overnight courier, use the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, Room 2705, Washington, D.C. 20044, Attn: ''Application Enclosed''. BXA will not accept applications sent C.O.D.

Supplement No. 1 to Part 748—BXA–748P, BXA–748P–A; Item Appendix, and BXA–748P–B; End-User Appendix Multipurpose Application Instructions

All information must be legibly typed within the lines for each Block or Box.

Block 1: Contact Person. Enter the name of the person who can answer questions concerning the application.

Block 2: Telephone. Enter the telephone number of the person who can answer questions concerning the application.

Block 3: Facsimile. Enter the facsimile number, if available, of the person who can answer questions concerning the application.

Block 4: Date of Application. Enter the current date.

Block 5: Type of Application. Mark the appropriate Box with an (X). *Export.* If the items are located within the United States, and you wish to export those items, mark the Box labeled ''Export'' with an (X). *Reexport.* If the items have been previously exported (e.g., they are no longer located in the United States), mark the Box labeled ''Reexport'' with an (X). *Classification Request.* If you are requesting BXA to classify your item against the CCL, check the Box labeled ''Classification Request''. *Advisory Opinion Request.* If you are requesting an Advisory Opinion from BXA, check the Box labeled ''Advisory Opinion Request''. *Special Comprehensive License.* If you are submitting

a Special Comprehensive License in accordance with procedures described in part 752 of this subchapter, mark the Box labeled ''Special Comprehensive License'' with an (X).

Block 6: Attachments submitted with Application. Review the documentation you are required to submit with your application in accordance with the provisions of part 748 and § 742.12 of this subchapter, and mark all applicable Boxes with an (X).

Mark the Box ''Foreign Availability'' with an (X) if you are submitting an assertion of foreign availability with your license application. See part 768 of this subchapter for instructions on the submission of a foreign availability submission.

If you are asking BXA to classify your product, you must mark the Box labeled ''Tech. Specs.'', and include with your application descriptive literature, brochures, technical specifications or papers that provide sufficient technical detail to enable BXA to determine the correct classification. Also mark this box if you are required to submit technical specifications for a application.

Block 7: Documents on File with Applicant. Certify that you have retained on file all applicable documents as required by the provisions of part 748 by placing an (X) in the appropriate Box(es).

Block 8: Special Comprehensive License. Complete this Block only if you are submitting an application for a Special Comprehensive License in accordance with part 752 of this subchapter.

Block 9: Special Purpose. Complete this box for certain items or types of transactions only if specifically required in § 748.8 of this part.

Block 10: Resubmission Application Control Number. If your original application was returned without action, provide the Application Control Number for the previous application.

Block 11: Replacement License Number. If you have received a license for identical items to the same ultimate consignee, but would like to make a change to the license as originally approved, enter the license number here, and a statement in Block 24 regarding what changes you wish to make to the original license.

Block 12: Items Previously Exported. This Block should be completed only if you have checked the ''Reexport'' box in Block 4. Enter the license number or License Exception symbol (for exports under General Licenses, enter the appropriate General License symbol) under which the items were originally exported.

Block 13: Import/End-User Certificate. Enter the name of the country and number of the Import or End User Certificate obtained in accordance with provisions of § 748.11 of this subchapter.

Block 14: Applicant. Enter the applicant's name, street address, city, state/country, and postal code. Refer to § 748.4(a) of this part for a definition of ''applicant''. If you have checked ''Export'' in Block 4, you must include your company's Employer Identification Number unless you are filing as an individual or as an agent on behalf of the exporter. The Employer Identification Number is assigned by the Internal Revenue Service for tax identification purposes. Accordingly, you should consult your company's financial officer or accounting division to obtain this number.

Block 15: Other Party Authorized to Receive License. If you would like BXA to transmit the approved license to another party designated by you, complete all information in this Block, including name, street address, city, country, postal code and telephone number. Leave this space blank if the license is to be sent to the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant.

Block 16: Purchaser. Enter the purchaser's complete name, street address, city, country, postal code and telephone or facsimile number. If you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 011–358–0–123456F). Refer to § 748.4(b)(3) of this part for a definition of ''purchaser''. If the purchaser is also the ultimate consignee, enter the words ''same as Block 18''.

Block 17: Intermediate Consignee. Enter the intermediate consignee's complete name, street address, city, country, postal code and telephone or facsimile number. If you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 011–358–0–123456F). Provide a complete street address, P.O. Boxes are not acceptable. Refer to § 748.4(b)(4) of this part for a definition of ''intermediate consignee''. If this party is identical to that listed in Block 16, you may simply type the words ''Same as Block 16''. If your proposed transaction does not involve use of an intermediate consignee, enter ''None''. If your proposed transaction involves use of more than one intermediate consignee, provide the information in Block 24 for each additional Intermediate Consignee.

Block 18: Ultimate Consignee. Enter the ultimate consignee's complete name, street address, city, country, postal code and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. The ultimate consignee is the party who will actually receive the material for the end-use designated in Block 21. A bank, freight forwarder, forwarding agent, or other intermediary may not be identified as the ultimate consignee. Refer to § 748.4(b)(1) of this part for the definition of ''ultimate consignee''. Government purchasing organizations are the sole exception to this requirement. This type of entity may be identified as the government entity that is the actual ultimate consignee in those instances when the items are to be transferred to the government entity that is the actual end-user, provided actual end-use is clearly identified in Block 21 or additional documentation attached to the application.

If your application is for the reexport of items previously exported, enter the new ultimate consignee's complete name, street address, city, country, postal code and telephone or facsimile number. If you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 011–358–0–123456F).

If your application involves a temporary export or reexport, the applicant should be shown as the ultimate consignee in care of a person or entity who will have control over the items abroad.

Block 19: End-User. Complete this Block only if the ultimate consignee identified in Block 18 is not the actual end-user. If there is more than one end-user, enter the word ''Various'' in this Block, and use Form BXA–748P–B to identify each of the end-users. Enter each end user's complete name, street address, city, country, postal code and telephone or facsimile number. If you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 011–358–0–123456F). Provide a complete street address, P.O. Boxes are not acceptable.

Block 20: Original Ultimate Consignee. If your application involves the reexport of items previously exported, enter the original ultimate consignee's complete name, street address, city, country, postal code and telephone or facsimile number. The original ultimate consignee is the entity identified in the original application for export as the ultimate consignee or the consignee currently in possession of the items. If you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 011–358–0–123456F). Provide a complete street address, P.O. Boxes are not acceptable.

Block 21: Specific End-Use. Provide a complete and detailed description of the end-use intended by the ultimate consignee and/or end-user(s). If you are requesting approval of a reexport, provide a complete and detailed description of the end-use intended by the new ultimate consignee or end-user(s) and indicate any other countries for which resale or reexport is requested. If additional space is necessary, use Block 21 on Form BXA–748P–A or B.

Block 22: You must complete each of the sub-blocks contained in this Block, If you are submitting a classification request, you do not need to complete blocks (d), (e), (f), (g), and (h). Enter ''N/A'' in these blocks. If you wish to export, reexport or have BXA classify more than one item, use Form BXA–748P–A for additional items.

(a) ECCN. Enter the Export Control Classification Number that corresponds to the item you wish to export or reexport. If you are requesting BXA classify your item, provide a recommended classification for the item in this Block.

(b) CTP. You must complete this Block if you intend to export, reexport, or request BXA to classify a digital computer. Instructions on calculating the CTP is contained in a Technical Note at the end of Category 4 in the CCL. If you are not exporting or reexporting a digital computer, insert ''N/A'' in this Block.

(c) Model Number. Enter the correct model number for each item.

(d) CCATS Number. If you have received a classification from BXA, provide the CCATS number shown on the classification issued by BXA. If not, enter ''N/A''.

(e) Quantity. Give the quantity to be exported or reexported, as in terms of the ''Units'' identified in the Export Control Classification Number entered in Block 21(a) of the item. If the ''Unit'' for an item is ''$value,'' enter the quantity in units commonly used in the trade.

(f) Units. The ''Unit'' paragraph within each Export Control Classification Number will list a specific ''Unit'' for those items controlled by the entry. The ''Unit'' must be entered on all license applications submitted to BXA. If an item is licensed in terms of ''§ value'', the unit of quantity commonly used in trade must also be shown on the license application. If the unit for your particular item is shown as ''N/A'' in the appropriate entry on the CCL, enter ''N/A'' in this Block.

(g) Unit Price. Provide the fair market value of the items you wish to export or reexport. Round all prices to the nearest whole dollar amount. Give the exact unit price only if the value is less than $0.50. If normal trade practices make it impractical to establish a firm contract price, state in Box 24 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

(h) Total Price. Provide the total price of the item(s) described in Block 22(j).

(i) Manufacturer. Provide the name only of the manufacturer, if known, for each of the items you wish to export, reexport, or have BXA classify, if different from the applicant.

(j) Manufacturer's Description. Provide a description of the item(s) you wish to export, reexport, or have BXA classify. Provide details when necessary to identify the specific item(s), include all characteristics or parameters shown in the applicable ECCN using measurements identified in the ECCN (e.g., basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc.) These characteristics must be identified for the items in the proposed transaction that may be different than the characteristics described in promotional brochure(s).

Block 23: Total Application Dollar Value. Enter the total value of all items contained on the application in U.S. Dollars. The use of other currencies is not acceptable.

Block 24: Additional Information. Enter additional data pertinent to the transaction as required in the EAR. Include special certifications, names of parties in interest not disclosed elsewhere, explanation of documents attached, etc. Do not include information concerning Block 22 in this space.

If your application represents a transaction previously denied, you must provide the Application Control Number for the original application.

If you are asking BXA to classify your product, provide an explanation why you believe the Export Control Classification Number entered in block 22(a) is appropriate. This explanation must contain an analysis of the item in terms of the technical control parameters specified in the appropriate ECCN. If you do not identify a recommended classification in block 22(a), you must state the reason you cannot determine the appropriate classification, identifying any ambiguities or deficiencies in the regulations that precluded you from determining the correct classification.

If additional space is necessary, use Block 24 on Form BXA–748P–A or B.

Block 25: You, as the applicant or duly authorized agent of the applicant, must manually sign the application. If you are an agent of the applicant, in addition to providing your name and title in this Block you must enter your company's name in Block 24. Note: rubber-stamped or electronic signatures are not acceptable. Type both your name and title in the spaces provided.

Supplement No. 2 to Part 748 BXA–711, Statement by Ultimate Consignee and Purchaser Instructions

All information must be typed or legibly printed in each appropriate Block or Box.

Block 1: Ultimate Consignee. The Ultimate Consignee must be the person abroad who is actually to receive the material for the disposition stated in Block 2. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as the Ultimate Consignee.

Block 2: Disposition or Use of Items by Ultimate Consignee named in Block 1. Place an (X) in ''A.,'' ''B.,'' ''C.,'' ''D.,'' and ''E.,'' as appropriate, and fill in the required information.

Block 3: Nature of Business of Ultimate Consignee named in Block 1. Complete both ''A'' and ''B''.

Possible choices for ''A'' include: broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.

Possible choices for ''B'' include: contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.

Block 4: Additional Information. Provide any other information not appearing elsewhere on the form such as other parties to the transaction, and any other material facts which may be of value in considering license applications supported by this statement.

Block 5: Assistance in Preparing Statement. Name all persons, other than employees of the ultimate consignee or purchaser, who assisted in the preparation of this form.

Block 6: Ultimate Consignee. Enter the requested information and sign the statement in ink. (For a definition of ultimate consignee, see § 748.4(a)(5) of this subchapter.)

Block 7: Purchaser. This form must be signed in ink by the Purchaser, if the Purchaser is not the same as the Ultimate Consignee identified in Block 1. (For a definition of purchaser, see § 748.4(a)(3) of this subchapter.)

Block 8: Certification for U.S. Exporter. This Block must be completed to certify that any correction, addition, or alteration on this form was made prior to the signing by the Ultimate Consignee in Block 6 and Purchaser in Block 7.

Supplement No. 3 to Part 748—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and end use Certificate Systems in Foreign Countries [1]

Country	IC/DV authorities	System administered
Argentina	Secretaria Ejecutiva de la Comision Nacional de Control de Exportaciones Sensitivas y Material Belico Balcarce 362—ler. piso—Capital Federal—CP 1064 Buenos Aires. Tel. 334–0738, Fax 331–1618.	IC/DV.
Australia	Director, Technology Transfer and Analysis, Industry Policy and Operations Division, Department of Defense, Russell Office, Canberra, A.C.T. 2600.	IC/DV.
Austria	Bundesministerium fur Handel Gewerbe und Industrie Landstr. Haupstr. 55–57, Vienna 1031.	IC/DV.
Belgium	Ministere Des Affaires Economiques Office Central des Contingents et Licences 24–26 Rue De Mot, Bruxelles-1040.	IC/DV.
Bulgaria	Ministry of Trade 12 Al. Batenberg 1000 Sofia	IC/DV.
China, People's Republic of	Technology Import and Export, Department MOFERT, No. 2 Dong Chang An Street, Beijing, Telephone: 553031, Telex: 22478 MFERTCN.	PRC End-User Certificate.
Czech Republic	Federal Ministry of Foreign Trade, Head of Licensing Politickych, Veznu 20 112 49 Praha 1.	IC/DV.
Denmark	Handelsministeriets, Licenskontor, Kampmannsgade 1, DK 1604, Copenhagen V.	IC/DV.
	IC's also issued by Danmarks Nationalbank, Holmens Kanal 17, Copenhagen K Custom-houses.	DV.

Country	IC/DV authorities	System administered
Finland	Hensingin Piiritullikamari, Kanavakatu 6 (or P.O. Box 168), 00161 Helsinki.	IC/DV.
France	Ministere de l'Economie et des, Finances Direction Generale des, Douanes et Droita Indirects, Division des Affaires Juridiques et Contentieuses 8, Rue de la Tour des Dames, Bureau D/3, 75436, Paris Codex 09.	IC/DV.
Germany	Bundesamt fur gewerbliche, Wirtschaft Frankfurter Strasse, 29–31 65760 Eschborn.	IC/DV.
Greece	Banque de Greece, Direction des Transactions Commerciales avec l'Etranger, Athens.	IC/DV.
Hong Kong	Trade Department, Ocean Centre, Canton Road, Tsimshatsui, Kowloon,.	IC/DV.
Hungary	Ministry of International Economic Relations Export Control Office, 1054 Budapest P.O. Box 728, H–1365, Hold Str. 17.	IC/DV.
India	Deputy Director General of Foreign Trade Udyog Bhawan, Maulana Azad Road, New Delhi 11011: For small scale industries and entities, and those not elsewhere specified.	Indian IC.
	Directorate General of Technical Development, Udyog Bhawan, Maulana Azad Road, New Delhi 11011: For the ''organized'' sector, except for computers and related equipment.	Indian IC.
	Defense Research and Development Organization, Room No. 224, ''B'' Wing Sena Bhawan, New Delhi 110011: For Defense organizations.	Indian IC.
	Department of Electronics, Lok Nayak Bhawan, New Delhi 110003: For computers and related electronic items.	Indian IC.
	Assistant Director, Embassy of India, Commerce Wing, 2536 Massachusetts Ave. NW, Washington D.C. 20008—: For any of the above.	Indian IC.
Ireland, Republic of	Department of Industry, Trade, Commerce and Tourism, Frederick House, South Frederick Street, Dublin 2.	IC/DV.
Italy	Ministero del Commercio con l'Estero Direzione Generale delle Importazioni e delle Esportazioni, Div. III, Rome, Dogana Italiana (of the town import where takes place).	IC/DV.
Japan	Ministered of International Trade and Industry in: Fukuoka, Hiroshima, Kanmon (Kitakyushu-shi), Kobe, Nagoya, Osaka, Sapporo, Sendai, Shikoku (Takamatsu-shi), Shimizu, Tokyo, and Yokohama.	IC.
	Japanese Customs Offices	DV.
Korea, Republic of	Trade Administration Division, Trade Bureau Ministry of Trade and Industry Jungang-Dong, Kyonggi-Do, Building 3, Kwachon.	IC.
	Republic of Korea Customs House	DV.
Liechtenstein	Swiss Federal Office for Foreign Economic Affairs, Import and Export Division Zieglerstrasse 30, CH–3003 Bern.	IC/DV.
Luxembourg	Office des Licences, Avenue de la Liberte, 10	IC/DV.
Netherlands	Centrale Dienst voor In-en Uitvoer, Engelse Kamp 2, Groningen	IC/DV.
New Zealand	Comptroller for Customs, P.O. Box 2218, Wellington	IC/DV.
Norway	Handelsdepartmentet, Direktoratet for Eksport-og-Importregulering, Fr. Nansens plass 5, Oslo.	IC/DV.
Pakistan	Chief Controller of Imports and Exports, 5, Civic Center, Islamabad.	IC.
	Joint Science Advisor, Ministry of Science and Technology, Secretariat, Block 'S', Islamabad.	DV.
Poland	Ministry of Foreign Economic Relations Department of Commodities and Services, Plac Trzech Krzyzy 5, Room 358, 00–507 Warsaw.	IC/DV.
Portugal	Reparticao do Comercio Externo, Direccao-Geral do Comercio, Secretaria de Estado do Comercio, Ministerio da Economia, Lisbon.	IC/DV.
Romania	National Agency for Control of Strategic Exports and Prohibition of Chemical Weapons, 13, Calea 13 Septembrie Casa (or P.O. Box 5–10) Republicii, Gate A 1, Bucharest, Sector 5, Phone: 401–311–2083, Fax: 401–311–1265.	IC/DV.
Singapore	Controller of Imports and Exports, Trade Development Board, World Trade Centre, 1 Maritime Square, Telok Blangah Road,.	IC/DV.
Slovakia	Ministry of Foreign Affairs, Licensing-Registration Department, Spitalska 8, 813 15 Bratislava.	IC
Spain	Secretary of State for Commerce, Paseo la Cistellana 162, Madrid 28046.	IC/DV.
Sweden	The Association of Swedish Chambers of Commerce & Industry P.O. Box 16050, S–103 22 Stockholm Office: Vastra Tradgardsgatan 9.	IC/DV.
Switzerland	Swiss Federal Office for Foreign Economic Affairs, Import and Export Division, Zieglerstrasse, 30 CH–3003 Bern.	IC/DV.

Country	IC/DV authorities	System administered
Taiwan	Board of Foreign Trade Ministry of Economic Affairs, 1 Hu-Kou Street, Taipei.	IC/DV.
	Science-based Industrial Park Administration No. 2 Hsin Ann Road, Hsinchu.	
	Export Processing Zone Administration, 600 Chiachang Road Nantz, Kaohsiung.	
Turkey	Ministry of Commerce, Department of Foreign Commerce, Ankara.	IC.
	Head Customs Office at the point of entry	DV.
United Kingdom	Department of Trade and Industry, Export Licensing Branch, Millbank Tower Millbank, London, SW1P 4QU.	IC.
	H.M. Customs and Excise, King's Beam House, Mark Lane, London, E.C. 3.	DV.

[1] Samples of Import Certificates and Delivery Verifications issued by each of these countries may be viewed at any of the offices identified in § 748.2(a) of this part. Copies are not available.

Supplement No. 4—U.S. Import Certificate and Delivery Verification Procedure—[Reserved]

PART 750—APPLICATION PROCESSING, ISSUANCE AND DENIAL

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 750.1 Scope.

This part 750 describes the licensing process used by the Bureau of Export Administration (BXA) to review your application for a license, including processing times, denials, revocations, issuance, duplicates, transfers, and shipping tolerances on approved licenses. The processing times for Classification and Advisory Opinion requests are also provided along with directions on obtaining status on your pending application.

§ 750.2 Processing of classification and advisory opinion requests.

(a) *Classification requests.* All written inquiries submitted to BXA requesting the classification of a particular item on the Commerce Control List (CCL) will be answered within 14 days after receipt. All responses will inform the person of the proper classification (e.g., whether or not the item is subject to the Export Administration Regulations (EAR) and, if applicable, the appropriate Export Control Classification Number [ECCN]).

(b) *Advisory opinion requests.* All written inquiries submitted to BXA requesting the applicability of license requirements to a proposed transaction or series of transactions (e.g., a particular item to a specific destination), will be answered within 30 days after receipt.

§ 750.3 Review of license applications by BXA and other government agencies and departments.

(a) *Review by BXA.* In reviewing specific license applications, BXA will conduct a complete analysis of all documentation and other forms of information submitted along with the license application. In addition to reviewing the item and end-use, BXA will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BXA will make licensing decisions without referral of license applications to other agencies, however, BXA may consult with other U.S. departments and agencies regarding any license application.

(b) *Review by advisory agencies.* (1) The Departments of State, Defense, Energy, and the Arms Control and Disarmament Agency have the authority to review all categories of license application each agency or department specifies to BXA. These agencies and departments will be referred to as ''advisory agencies'' for the purposes of this section. Though advisory agencies have the authority to review any license application, they may determine that certain types of license applications need not be referred. In these instances, the advisory agency will provide BXA with a Delegation of Authority to process those license applications without review by that particular advisory agency.

(2) Advisory agencies are concerned with license applications involving items controlled for missile technology, nuclear non-proliferation, and chemical and biological weapons proliferation reasons or destined for countries and/or end uses of concern. In addition the following advisory agencies are generally concerned with reviewing license applications, as follows:

(i) The Department of State is concerned primarily with license applications involving items controlled for regional stability, anti-terrorism, crime control reasons, and sanctions;

(ii) The Department of Defense is concerned primarily with license applications involving items controlled for national security and regional stability reasons; and

(iii) The Department of Energy is concerned primarily with license applications involving items controlled for nuclear non-proliferation reasons.

§ 750.4 Procedures for processing license applications.

(a) *Overview.*

(1) All license applications will be resolved or referred to the President no later than 90 calendar days from the date of BXA's registration of the license application. Processing times for the purposes of this section are defined in calendar days. The procedures and time limits described in this chapter apply to all license applications received on or after [EFFECTIVE DATE OF THE FINAL RULE]. The procedures and time limits in effect prior to [EFFECTIVE DATE OF THE FINAL RULE] will apply to license applications received prior to [EFFECTIVE DATE OF THE FINAL RULE].

(2) Incomplete license applications will not be registered. BXA will attempt to contact the applicant to correct the deficiencies, however, if BXA is unable to contact the applicant, the license

application will be returned without being registered. The specific deficiencies requiring return will be enumerated in a notice accompanying the returned license application. If a license application is registered, but BXA is unable to correct deficiencies crucial to processing the license application, it will be returned without action. The notice will identify the deficiencies and the necessary action to correct the deficiencies. If you decide to resubmit the license application, it will be treated as a new license application when calculating license processing time frames.

(b) *Exceptions to the 90 day license processing.* The only license applications not subject to this 90 day license processing time limit are those involving:

(1) The Special Comprehensive License;

(2) Items controlled for short supply reasons; or

(3) Items and destinations where the existence of a pre-existing contract is a prerequisite to approval.

(c) *Actions not included in processing time calculations.* The following actions will not be counted in the time period calculations described in paragraphs (a) and (b) of this section for the processing of license applications:

(1) *Agreement of the applicant.* (i) *When the applicant agrees to the delay.* Applicants may be requested by BXA to provide additional information in support of their license application or respond to questions arising during the processing of their license application.

(ii) *In situations where BXA has provided the applicant with an intent to deny letter described in § 750.6 of this part.* Processing times may be suspended in order to negotiate modifications to a license application and obtain agreement to such modifications from the foreign parties to the license application.

(2) *Pre-license checks.* If a pre-license check, to establish the identity and reliability of the recipient of the controlled items, is conducted through government channels, provided that:

(i) The need for such pre-license check is established by the Secretary, or by another advisory agency, if the request for a pre-license check is made by such advisory agency;

(ii) The pre-license check is requested within five days of the determination that it is necessary; and

(iii) The analysis resulting from the pre-license check is completed within five days.

(3) *Government-to-Government assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export or reexport when failure to obtain such assurances would result in rejection of the license application, provided that:

(i) The request for such assurances is sent to the Secretary of State within five days of the determination that the assurances are required;

(ii) The Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(iii) The license is issued within five days of the Secretary's receipt of the requested assurances.

(4) *Multilateral reviews.* Multilateral review of a license application if such review is required by the relevant multilateral regime.

(5) *Congressional notification.* License applications requiring congressional notification in accordance with section 6(j) of the Export Administration Act, as amended (EAA). Under Section 6(j) of the EAA, the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days prior to issuing a license to any country designated by the Secretary of State as being terrorist supporting for any items that could make a significant contribution to the military potential of such countries, or could enhance the ability of such countries to support acts of international terrorism. Accordingly, the issuance of any license subject to this requirement will be delayed for 30 days.

(i) *Designated countries.* The following countries have been designated by the Secretary of State as terrorist-supporting countries: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(ii) *Items subject to notification requirement.* License applications involving the export or reexport of the following items to the military, police, intelligence or other sensitive end-users are subject to this notification requirement:

(A) All items controlled for national security reasons, except digital computers with a Composite Theoretical Performance (CTP) less than 500 Mtops.

(B) All items controlled for chemical and biological weapons proliferation reasons.

(C) All items controlled for missile technology reasons.

(D) All items controlled for nuclear non-proliferation reasons.

(E) All items controlled by the CCL entries ending with number 18.

(iii) *Additional notifications.* The Secretaries of Commerce and State must also notify the appropriate Congressional committees 30 days before a license is issued for the export or reexport of any item controlled on the CCL to a designated country if the Secretary of State determines that the export or reexport ''could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.''

(d) *Initial processing.* Within nine days of license application registration, BXA will, as appropriate:

(1) Contact the applicant if additional information is required, or if the license application is improperly completed or required support documents are missing, to request corrected information;

(2) Assure the stated classification on the license application is correct;

(3) Return the license application if a license is not required; or

(4) Refer the license application electronically along with all necessary recommendations and analysis concurrently to other agencies or departments. Any relevant information not contained in the electronic file will be simultaneously forwarded in paper copy. If referral to another advisory agency is not required, BXA will either approve the license application or notify the applicant of the intent to deny the license application.

(e) *Review by advisory agencies and/or interagency groups.* (1) Within thirty days of receipt of a referral, an advisory agency will provide BXA with a recommendation either to approve or deny the license application. As appropriate, such a recommendation may be with the benefit of consultation and discussions in interagency groups established to provide expertise and coordinate interagency consultation. These interagency groups consist of:

(i) *The Missile Technology Export Control Group (MTEC).* The MTEC, chaired by the Department of State, reviews license applications involving items controlled for missile technology reasons. The MTEC also reviews license applications involving items not controlled for missile technology (MT) reasons, but destined for a country and/or end-use/end-user of concern.

(ii) *The SubGroup on Nuclear Export Coordination (SNEC).* The SNEC, chaired by the Department of State, reviews license applications involving items controlled for nuclear non-proliferation reasons. The SNEC also reviews license applications involving items not controlled for nuclear non-proliferation (NP) reasons, but destined for a country and/or end use/end-user of concern.

(iii) *The Shield.* The Shield, chaired by the Department of State, reviews license applications involving items

controlled for chemical and biological weapons reasons. The Shield also reviews license applications involving items not controlled for chemical and biological weapons (CBW) reasons, but destined for a country and/or end-use/end-user of concern.

(2) If an advisory agency requires additional information that is not contained in the electronic referral file or paper copies, the request will be forwarded promptly to BXA. BXA will in turn contact you.

(f) *Recommendations by advisory agencies.* Advisory agencies recommending denial of a license application must provide a statement of reasons, consistent with the provisions of the Act, and cite both the statutory and the regulatory basis for the recommendation to deny. An advisory agency that fails to provide a recommendation within thirty days with a statement of reasons supported by the statutory and regulatory basis shall be deemed to have no objection to the final decision of BXA.

(g) *Interagency dispute resolution and escalation procedures*—(1) *Escalation to the Operating Committee (OC).* (i) In any instance where the reviewing agencies are not in agreement on final disposition of a license application, it will be escalated to the OC for resolution. The Chair of the OC will consider the recommendations of the reviewing agencies and inform each agency of the Chair's decision on the license application within 14 days after the deadline for receiving agency recommendations.

(ii) If any advisory agency disagrees with the OC Chair's decision, the advisory agency may escalate the decision to the Chair of the Advisory Committee on Export Policy for resolution. If such a request for escalation is not made within five days of the decision of the OC Chair, his or her decision is then final.

(2) *Escalation to the Advisory Committee on Export Policy (ACEP).* Requests for escalation to the ACEP must be in writing from an official appointed by the President, with the advice and consent of the Senate, and cite both the statutory and the regulatory basis for the request. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority decision of the ACEP within 11 days from the date of receipt of the escalation request. Within five days of the decision, any dissenting advisory agency may appeal in writing the ACEP's decision to the Secretary of Commerce in the Secretary's capacity as the Chair of the Export Administration Review Board. The appeal must be made by the head of the advisory agency and cite both the statutory and the regulatory basis for the appeal. Within the same period of time, the Secretary may initiate a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the decision of the ACEP is then final.

(3) *Escalation to the Export Administration Review Board (EARB).* The EARB will review all relevant information and recommendations, and such other export control matters as may be appropriate. The Secretary will inform the reviewing departments and agencies of the majority decision of the EARB decision within 11 days from the date of receipt of the appeal. Within five days of the decision, any advisory agency dissenting from the decision of the EARB may appeal the decision to the President. The appeal must be in writing from the head of the dissenting advisory agency. In the absence of a timely appeal, the decision of the EARB is then final.

§ 750.5 Status of pending applications.

(a) *Information available on pending application.* Depending on the type of application you have submitted you may contact BXA for status of your application. For Classification and Advisory Opinion requests, telephone (202) 482–4905 or send a fax to (202) 219–9179. For license applications, telephone BXA's System for Tracking Export License Applications (''STELA'') at (202) 482–2752. STELA is an automated voice response system, that upon request via any standard touch-tone telephone will provide you with up to the minute status on any license application pending with BXA. Requests for status may be made only by the applicant or the applicant's agent.

(b) *STELA's hours.* STELA is operational Monday through Friday from 7:15am to 11:15pm and on Saturday from 8:00am to 4:00pm, Eastern Standard Time. If you have any difficulty accessing STELA, contact during normal business hours, one of BXA's offices listed in § 748.2 of this subchapter.

(c) *Procedures to access information on STELA.* Once you dial STELA you will be instructed to enter your Application Control Number using your push button telephone keys. Enter the number ''5'' on your telephone for Application Control Numbers beginning with the letter ''Z''. Following this number, enter in the remaining six digits. After you enter the Application Control Number, STELA will provide you with the current status of your license application.

§ 750.6 Denial of license applications.

(a) *Intent to deny notification.* If BXA intends to deny your license application, BXA will notify you in writing within 5 days of the decision. The notification will include:

(1) The intent to deny decision;

(2) The statutory and regulatory basis for the denial;

(3) To the extent consistent with the national security and foreign policy of the United States, the specific considerations that led to the determination to deny the license application;

(4) What, if any, modifications or restrictions to the license application would allow BXA to reconsider the license application;

(5) The name of the BXA representative in a position to discuss the issues with the applicant; and

(6) The availability of appeal procedures.

(b) *Response to intent to deny notification.* You will be allowed 20 days from the date of the notification to respond to the determination before the license application is denied. If you respond to the notification, BXA will advise you if, as a result of your response, the determination to deny has been changed. Unless you are so advised by the 45th day after the date of the notification, the denial will become final, without further notice. You will then have 45 days from the date of final denial to exercise the right to appeal under part 756 of this subchapter.

§ 750.7 Issuance of licenses.

(a) *Scope.* A license authorizes only a specific transaction, or series of transactions, as described in the license application and any supporting documents. A license application may be approved in whole or in part, or further limited by conditions or other restrictions appearing on the license itself or in the EAR. When a license application is approved by the BXA, a license is issued as described in paragraph (b) of this section.

(b) *Issuance of a license.* After a license application is approved, a computer generated license is issued by the Department of Commerce bearing the license number and a validation date. Where appropriate, the license will also show an expiration date. Where necessary, attachments to a license will also be validated with the Department of Commerce seal and the date of validation. Exporters must use the complete license number when

preparing a Shipper's Export Declaration (SED) and other export control documents, and in communicating with the Department of Commerce concerning the license. The following changes do not require submission of a ''Replacement'' license or any other notification to BXA (If you wish to make any change not identified below, you will need to submit a ''Replacement'' license in accordance with the instructions contained in Supplement No. 1 to part 748):

(1) Decrease in unit price or total value;

(2) Increase in price or quantity if permitted under the shipping tolerances in § 750.11 of this subchapter;

(3) Increase in price that can be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, etc.;

(4) Establishment of unit or total price in conformance with a ''price statement'' on a license that permits price to be based on the market price at a specified date plus an exporter's mark-up, or like basis;

(5) Change in intermediate consignee if the new intermediate consignee is located in the country of ultimate destination as shown on the license, except a change in, or addition of, an intermediate consignee involving a consolidated shipment;

(6) Change in continuity of shipment by unloading from carrier at a country listed in Country Group B (see Supplement No. 1 to part 740 of this subchapter) port not in the country of ultimate destination, without the designation of an intermediate consignee on the shipping documents and license, provided:

(i) The purpose is to transfer the shipment to another vessel, barge, or vehicle, solely for onforwarding to the country of destination shown on the shipping documents and the license;

(ii) The shipment is moving on a through bill of lading;

(iii) The carrier is not registered in, owned or controlled by, or under charter or lease to a country in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of this subchapter), or a national of any of these countries;

(iv) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and

(v) The original ocean bill of lading first issued at the port of export is delivered with the shipment to the ultimate consignee;

(7) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license;

(8) Change in ECCN, unit of quantity, unit price, or wording of the item description (where necessary only for the purpose of conforming to an official revision in the CCL). This does not cover an actual change in the item to be shipped, or an increase in the price or quantity.

(c) *Responsibility of the licensee.* If a license is issued to you, you become the licensee. The licensee will be held accountable for use of the license, whether as a principal (exporting for your own account) or as an agent (including an agent acting for the account of a foreign principal who is not subject to the jurisdiction of the United States). You, as the licensee, assume responsibility for effecting the export or reexport, for proper use of the license, and for due performance of all of the license's terms and conditions. The obligations arising under the provisions of the EAA and the EAR are the same whether the license application is submitted and issued in writing or electronically.

(d) *Prohibited use of a license.* No one convicted of a violation of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, is eligible to use any license for a period up to 10 years from the date of the conviction. (See § 766.25 of this subchapter)

(e) *Quantity of commodities authorized.* Unlike software and technology, commodities will be approved with a quantity or dollar value limit. The ''Unit'' paragraph within each CCL commodity entry will list a specific ''Unit'' for those commodities controlled by that entry. Any license resulting from a license application to export or reexport commodities will be licensed in terms of the specified ''Unit''. If a commodity is licensed in terms of ''§ value'', the unit of quantity commonly used in trade may also be shown on the license. Though this unit may be shown on the approved license, the quantity of commodities authorized is limited entirely by the total dollar value shown on the approved license.

(f) *License validity period.* Licenses involving the export or reexport of items generally have a 24 month validity period, unless a different validity period has been requested and specifically approved by BXA. Exceptions from the 24 month validity period include, license applications reviewed and approved as an ''emergency'' (See § 748.5(f) of this subchapter), or license applications for items controlled for short supply reasons. Emergency licenses are limited to a one month validity period and licenses for items controlled for short supply reasons are limited to a 12 month validity period. Where appropriate, the expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first day of business following the expiration date. (See part 752 of this subchapter for validity periods for Special Comprehensive Licenses.)

(1) *Extended validity period.* Validity periods in excess of 24 months generally will *not* be granted. BXA will consider granting a validity period exceeding 24 months when extenuating circumstances warrant, however, no changes will be approved related to any other particular (e.g., parties to the transaction, countries of ultimate destination, etc.). For example, an extended validity period will generally be granted where the transaction is related to a multi-year project, when production lead time will not permit export or reexport during the original validity period of the license, when an unforeseen emergency prevents shipment within the 24-month validity of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Licenses issued in accordance with emergency clearance provisions contained in § 748.5(f) of this subchapter will not be extended.

(2) *Request for extension.* (i) The applicant must submit a written request for the extension of the validity period of a previously approved license. The subject of the letter must be titled: ''Request for Validity Period Extension'' and contain the following information:

(A) The name, address, and telephone number of the requestor;

(B) A copy of the original license, with the license number, validation date, and current expiration date legible; and

(C) Justification for the extension;

(ii) It is the responsibility of the applicant to ensure all applicable support documents remain valid and in the possession of the applicant. If the request for extension is approved, BXA will provide the applicant with a written response.

(g) *Specific types of licenses*—(1) *Licenses for temporary exports or Reexports.* If you have been granted a license for the temporary export or reexport of items and it is decided not to return the items to the United States, you must submit a license application requesting authorization to dispose of the items. Except where the items will be used on a temporary basis at the new

destination (and returned to the United States after such use), you must ensure your license application is accompanied by any documents that would be required if you had requested a license to export or reexport the same item directly to the new destination.

(2) *Intransit within the United States.* If you have been issued a license authorizing an intransit shipment through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

(3) *Intransit outside the United States.* If you have been issued a license authorizing unlading or transit through a country listed in the Intransit Prohibition contained in part 734 of this subchapter, and you did not know the identity of the intermediate consignee at the time of the original license application, you must notify BXA in writing once you have ascertained the identity of the intermediate consignee. Your notification must contain, the original license number, and the complete name, address, and telephone number of the intermediate consignee. The letter must be submitted to BXA at the address listed in § 748.15 of this subchapter.

(4) *Replacement license.* If you have been issued a ''replacement'' license (for changes to your original license that were not covered in § 750.7(b) of this part), you must attach the ''replacement'' license to the original, and retain both.

(h) *Records.* If you have been issued a license you must retain the license, and maintain complete records in accordance with part 762 of this subchapter including any licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

§ 750.8 Revocation or suspension of licenses.

(a) *Revocation.* All licenses to export or reexport are subject to revision, suspension, or revocation, in whole or in part, without notice whenever there is reason to know that the EAR have been violated or that a violation is about to occur. BXA may revoke any license in which a person who has been convicted of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, has an interest in the license at the time of the conviction. It may be necessary for the BXA to stop a shipment or an export or reexport transaction at any stage in the process (e.g., in order to prevent an unauthorized export or reexport). If a shipment is already en route, BXA may be further necessary to order the return or unloading of such shipment at any port of call in accordance with the provisions of the EAA.

(b) *Return of revoked or suspended licenses.* If BXA revokes or suspends a license, the licensee shall return the license immediately upon notification that the license has been suspended or revoked. The license must be returned to BXA at the address listed in § 748.15 of this subchapter, Attn:'' Return of Revoked/Suspended License''. All applicable supporting documents and records of shipments must be retained by the licensee in accordance with the recordkeeping provisions of part 762 of this subchapter. If the licensee fails to return a license immediately upon notification that it has been suspended or revoked, the Office of Export Enforcement may impose sanctions provided for in § 764.3 of this subchapter.

§ 750.9 Duplicate License.

(a)(1) *Lost, stolen or destroyed.* If a license is lost or destroyed you may obtain a duplicate of the license by submitting a letter to the BXA at the address listed in § 748.15 of this subchapter, Attention: Duplicate License Request''. You must certify in your letter:

(i) That the original license ([number] issued to [name and address of licensee]) has been lost or destroyed;

(ii) The circumstances under which it was lost or destroyed;

(iii) If the original license is found, the licensee will return either the original or duplicate license to the BXA.

(2) If shipment was made against the original license, those shipments must be counted against the duplicate license. If you are issued a duplicate license you must retain the duplicate license in accordance with the recordkeeping provisions of part 762 of this subchapter.

(b) *Hong Kong Trade Department.* BXA will automatically issue a duplicate license whenever the license lists a party in Hong Kong as the intermediate consignee, or when Hong Kong is identified as the country from which the reexport will take place. The duplicate license will be labeled ''Duplicate for Hong Kong Trade Department''. This duplicate must be forwarded to the reexporter or intermediate consignee for submission to the Hong Kong Trade Department. The original license must be retained on file by the licensee in accordance with the recordkeeping provisions contained in part 762 of this subchapter.

§ 750.10 Transfers of licenses for export.

(a) *Authorization.* As the licensee, you may not transfer a license issued for the export of items from the United States to any other party, except with the prior written approval of BXA. BXA may authorize a transfer of a license for export to a transferee who is subject to the jurisdiction of the United States, is a principal party in interest, and will assume all powers and responsibilities under the license for the control of the shipment of the commodities or technology out of the United States. BXA will approve only one transfer of the same license and only transfers of licenses to export items.

(b) *How to request the transfer of licenses*—(1) *Letter from licensee.* You, as the licensee, must submit a letter in writing to request transfer of a license or licenses containing the following:

(i) The reasons for the requested transfer;

(ii) Either a list of the outstanding license numbers or a statement that all outstanding licenses in the name of the licensee are to be transferred, and the total number of such outstanding licenses;

(iii) A list of all license applications for export to be transferred that are pending with BXA, identifying the Application Control Number for each, or other information that will assist in identifying the pending license applications;

(iv) Name and address of the person you intend to transfer the licenses and license applications to;

(v) The facts necessitating transfer;

(vi) A statement as to whether any consideration has been, or will be, paid for the transfer; and

(vii) Identification by name of the legal document (certificate, agreement, etc.) or other authority by which the new firm name is legally established, the new corporation or firm created, or the assets transferred,showing the effective date of such document and the state where filed or recorded.

(2) *Information from transferee.* The person to whom you wish to transfer your license(s) must provide you a signed letter, that must be submitted with your request, containing the following:

(i) That the transferee is a principal party in interest in the transaction covered by the license, or is acting as agent for a principal party in interest;

(ii) That the transferee is subject to the jurisdiction of the United States;

(iii) That the transferee assumes all powers and responsibilities under the

license for the control of the shipment of the items out of the United States;

(iv) Whether any consideration has been, has not been, or will be paid for the transfer;

(v) The name and address of the foreign principal in instances where the transferee will make the export as an agent on behalf of a foreign principal; and

(vi) If the license is to be transferred to subsidiary or firm, or if you transfer to the transferee all, or a substantial portion, of your assets or business, the transferee must certify that the legal authority changing the exporter imposes on the transferee the responsibility to accept and fulfill the obligations of the transferor under the transactions covered by the license; and

(vii) The following certification:

The undersigned hereby certifies that, if license number(s) _____ is (are) transferred in accordance with my (our) request, any and all documents evidencing the order covered by this(these)license(s) will be made available upon demand and will be retained by me (us) for a period of two years from the time of the export from the United States, or any known reexport, transshipment, or diversion, or any other termination of the transaction whether formally in writing or by any other means, whichever is later. The undersigned will promptly report to the Bureau of Export Administration any material or substantive changes in the terms of the order and any other facts of the export transaction known or reported to the undersigned at any future time by any party to the export transaction.

(c) *Notification of transfer and recordkeeping.* Unless instructed otherwise by BXA, you must retain the license(s) pending notification by the BXA of the action taken. If the request is approved, you must forward the license(s) to the transferee and the validated letter received from BXA authorizing the transfer. If the transfer request is not approved, the license(s) must either be returned to BXA or used by you if you so choose and have retained the legal and operational capacity fully to meet the responsibilities imposed by the license(s). If your initial request is returned by BXA for additional information, after obtaining the necessary information you may resubmit your request.

§ 750.11 Shipping tolerance.

(a) *Applicability and use of shipping tolerances.* Under some circumstances, you may use a license issued for the export of items from the United States to export more than the quantity or value shown on that license. This additional amount is called a shipping tolerance. This section tells you, as the licensee, when you may take advantage of a shipping tolerance and the amount of shipping tolerance you are permitted to use.

(1) If you have already shipped the full amount approved on your license, you may not use this shipping tolerance provision. No further shipment may be made under the license.

(2) The amount of shipping tolerance you are permitted is based on the ''Unit'' specified for the item you want to ship in the applicable ECCN on the CCL (see Supplement No. 1 to part 774 of this subchapter). You must calculate shipping tolerance based on the applicable ''Unit'' whether that be ''Number'', ''Dollar value'', or ''Area, Weight, or other Measure''. You may not use any other unit that may appear on your license.

(b) *Calculating shipping tolerances.* There are three basic rules, one for items licensed by ''Dollar Value'', one for items licensed by ''Number'', and another for items licensed by ''Area, Weight or other Measure''.

(1) *Items licensed by ''Dollar Value''.* If the ''Unit'' paragraph in ECCN applicable to your item reads ''§ value'' or ''in § value'', there is no shipping tolerance. You may not ship more than the dollar value stated on your license.

(2) *Items licensed by ''Number''.* If the ''Unit'' paragraph in ECCN applicable to your item reads ''Number'' or ''in Number'', there is no shipping tolerance with respect to the number of units. However, the value of all of your shipments under one license may exceed the dollar value stated on that license by up to 25%.

(3) *Items licensed by ''Area, Weight or Measure''.* If the ''Unit'' paragraph in ECCN applicable to your item reads ''kilograms'' or ''square meters'' or some other unit of area, weight or measure, your shipment may exceed the unshipped balance of the area, weight or other measure listed on your license by up to 10% and the total dollar value shown on your license by up to 25%, unless:

(i) Your license stipulates a specific shipping tolerance; or

(ii) Your item is controlled for short supply reasons and a smaller tolerance has been established. (see part 754 of this subchapter).

(c) *Examples of shipping tolerances.* (1) A license authorizes the export of 100,000 kilograms of an item controlled by an ECCN where the ''Unit'' is stated as ''kilograms'', the total cost of which is $1,000,000:

(i) *One shipment.* If one shipment is made, the quantity that may be exported may not exceed 110,000 kg (10% tolerance on the unshipped ''Area, Weight, or Measure'' balance), and the total cost of that one shipment may not exceed $1,250,000:

$1,000,000	(the total value shown on the license)
+250,000	(25% of the total value shown on the license)
$1,250,000	

(ii) *Two shipments.* If the first shipment is for 40,000 pounds, the second shipment may not exceed 66,000 kg (10% of the unshipped balance of 60,000 kg (6,000 kg) plus the unshipped balance), and the total cost of the second shipment shall not exceed $850,000:

$600,000	(the value of the unshipped balance of 60,000 kg)
+250,000	(25% of the original total value shown on the license)
$850,000	

(iii) *Three shipments.* If the first shipment is for 40,000 kg and the second shipment is for 20,000 kg, the third shipment may not exceed 44,000 kg (10% of the unshipped balance of 40,000 kg (4,000 kg) plus the unshipped balance), and the total cost of the third shipment can not exceed $650,000:

$400,000	(the value of the unshipped balance of 40,000 kg)
+250,000	(25% of the original total value on the license)
$650,000	

(2) A license authorizes the export of an item controlled by an ECCN where the ''Unit'' is stated as ''$value'', the total cost of which is $5,000,000. There is no shipping tolerance on this license because the items are controlled by an ECCN where ''$value'' is the stated ''Unit''.

(3) A license authorizes the export of 10 pieces of equipment controlled by an ECCN where the ''Unit'' is stated as ''Number'', with a total value of $10,000,000 and the export of parts and accessories covered by that same entry valued at $1,000,000:

(i) If one shipment is made, the quantity of equipment that may be exported may not exceed 10 pieces of equipment because there is no shipping tolerance on the ''number'' of units. That one shipment of equipment may not exceed $12,500,000:

$10,000,000	(the total value shown on the license)
+2,500,000	(25% of the total value shown on the license)
$12,500,000	

If the one shipment includes parts and accessories, those parts and accessories may not exceed $1,000,000 because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(ii) If the first shipment is for 4 pieces of equipment valued at $4,000,000, the second shipment may not exceed 6 pieces of equipment (no tolerance on ''number'') valued at no more than -$8,500,000:

$6,000,000	(the value of the unshipped 6 pieces)
+2,500,000	(25% of the original total value shown on the license)
$8,500,000	

If the first shipment includes $300,000 of parts and accessories, the second shipment may not exceed $700,000 of parts and accessories because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(iii) If the first shipment is for 4 pieces of equipment valued at $4,000,000 and the second shipment is for 3 pieces of equipment valued at $3,000,000, the third shipment may not exceed 3 pieces of equipment (no tolerance on ''number'') valued at no more than $5,500,000:

$3,000,000	(the value of the unshipped 3 pieces)
+2,500,000	(25% of the original value shown on the license)
$5,500,000	

If the first shipment includes $300,000 of parts and accessories and the second shipment incudes another $300,000, the third shipment may not exceed $400,000 because there is no shipping tolerance on commodities licensed in terms of dollar value.

PART 752—SPECIAL COMPREHENSIVE LICENSE

Sec.

Supplement No. 1: Instructions for Completing Forms BXA–748P and BXA–752 for Requests for Special Comprehensive Licenses

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 752.1 Introduction.

(a) *Scope*—(1) *Introduction.* This part describes the provisions of the Special Comprehensive License (SCL). You may use SCLs, when appropriate, in lieu of other licenses described in part 748 of this subchapter, for multiple exports and reexports of items subject to the EAR. The SCL provides authorization to make specified exports and reexports otherwise prohibited by General Prohibitions One, Two, and Three described in part 734 of this subchapter. However, the existence of an SCL does not supersede an exporter's obligation to request a separate license as may be required by part 744 of this subchapter. Because the Bureau of Export Administration (BXA) does not review each individual transaction covered by a SCL, parties to the SCL must have the mechanisms in place to ensure that each export and reexport made under a SCL meets all the terms and conditions of the license and are in accordance with all applicable provisions in the Export Administration Regulations (EAR). It is through the design and effective implementation of an Internal Control Program (ICP) that the SCL holder and the SCL consignee (referred to as ''consignee'' for purposes of this part) assure that exports and reexports are not made contrary to the EAR.

(2) *ICP Levels.* To qualify for a SCL, you will be required to develop an ICP. ICPs can be generally categorized into three levels that are dependent upon the activities involved. Section 752.12 of this part includes a general description of the elements of each of the three ICP levels, and guidance on which ICP your company must establish before making shipments under the SCL. The elements of each ICP reflect the complexity of the activities authorized under the SCL, the countries involved, and the relationship between the SCL holder and the approved consignees. BXA may require you to include in your ICP any combination of elements from one or more levels, depending upon the nature of your SCL application.

(b) [Reserved].

§ 752.2 Activities that may be authorized under the Special Comprehensive License.

(a) *General authorizations.* Under the SCL, BXA may authorize you to perform any number of activities, which can be grouped under the general categories of ''service'', ''end-user'', ''distribution'' and ''other'' activities. Examples of the types of activities that BXA may authorize under the SCL include:

(1) *Service activities.* Exporting and reexporting items subject to the EAR for use in servicing other items subject to the EAR. Related activities include:

(i) *Exports of replacement parts for the repair of items subject to the EAR that have been legally exported from the U.S.* This includes replacement of defective parts. Items that upgrade the original item are permitted as long as the upgrade does not exceed the performance parameter of the particular ECCN under which the item was originally classified (see Supplement No. 1 to part 774 of this subchapter).

(ii) *Exports to support services performed related to previously exported U.S.-origin items.* Examples include computer help lines, training, advisory services, transfer of information or data, and testing.

(iii) *Exports to support maintenance.* Servicing that involves normal and usual activities to maintain items in proper and safe operating condition, or to restore items to the original condition. Servicing may result in upgrades, provided that the upgrade does not exceed the performance parameters of the ECCN under which the item was originally classified (see Supplement No. 1 to part 774 of this subchapter).

(iv) *Exports to a designated service facility.*

(v) *Exports of items for stocking.* Stocking of ''spare parts'' where items are kept on hand to assure prompt repair of items abroad.

(A) *Definition of spare parts.* As used in this part 752, ''spare parts'' includes ''sub-assemblies'', but does not include test instruments.

(B) *Definition of sub-assemblies.* As used in this part 752, ''sub-assemblies'' means a number of components assembled to perform a specific function or functions, replaceable as a unit, and

not capable of operating as a standalone. One example is printed circuit boards that include mounted components. The term ''sub-assemblies'' does not include major subsystems such as those composed of a number of sub-assemblies, for example, the entire memory bank or the complete central processing unit of a computer.

(2) *End-user activities.* Exporting and reexporting items subject to the EAR for use as capital equipment or for incorporating items into manufactured items, where the U.S. content is above the de minimis levels identified in § 732.4(b) of this subchapter. Related activities include:

(i) Exporting items for capital expansion projects for constructing a new facility or expanding an existing facility;

(ii) Providing maintenance, repair, and operating supplies for an existing facility;

(iii) Supplying parts, components, and materials for use in the production of foreign-made items;

(iv) Exporting items to support scientific data acquisition when the items remain under the control of either the SCL holder or the consignee (examples include charting shorelines, recording tidal activity, drawing core samples, and oil and gas exploration);

(v) Exporting items for installation and expansion of services, such as providing wiring and cable for establishing a cable network; or

(vi) Supplying chemicals or chemical and biological equipment to subsidiaries under the ''effective control'' of the United States exporter or to other end-users specifically authorized by the BXA. As used in this part 752, ''effective control'' means the exercise of a right, under a contractual agreement between the U.S. exporter and the consignee, to determine and control the export of items authorized under a SCL and

(3) *Distribution activities.* Exporting and reexporting items subject to the EAR for the purpose of resale and reexport by consignees, such as:

(i) Reselling and/or reexporting in the form received under the SCL;

(ii) Assembling a finished product from kit form;

(iii) Adding software to a U.S. computer or other device;

(iv) Using an item for systems integration (i.e., assembling hardware and various components/software for a specific application by an end-user customer);

(v) Adding support equipment (e.g., test equipment being shipped with a foreign-produced system);

(vi) Installing communication/navigation equipment in a customer's aircraft, or direction finding equipment on a vessel;

(vii) Adding discrete U.S. components to foreign-produced systems; or

(viii) Reselling foreign manufactured products that exceed the de minimis levels described in § 734.2(b)(2) of this subchapter.

(4) *Other activities.* Other activities may be authorized by BXA under the SCL on a case-by-case basis.

(b) *Prohibited activities.* The general prohibitions described in § 734.2(b) (4) through (10) of this subchapter apply to all exports and reexports by, and conduct of, all parties named on the SCL, unless you are specifically authorized under the SCL to perform such activities or the particular activity otherwise qualifies for a License Exception described in part 740 of this subchapter.

§ 752.3 Eligible items.

(a) All items subject to the EAR are eligible for export and reexport under the SCL, *except:*

(1) Items identified by the letters MT in the ''Reason for Control'' paragraph on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of this subchapter);

(2) Biologicals, or equipment and materials that can be used in the production of biologicals (items controlled by ECCNs 1C61, 1B71, 1E61, and 1E70);

(3) Chemicals and chemical equipment and materials that can be used in the production of chemical weapons to destinations listed in Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter) (items controlled by ECCNs 1B70, 1C60, 1E60, and 1D60);

(4) Maritime (civil) nuclear propulsion systems or associated design or production software and technology identified in § 744.5 of this subchapter;

(5) Communication intercepting devices controlled by ECCN 5A80 on the CCL (see Supplement No. 1 to part 774 of this subchapter);

(6) Items identified by the letters ''SS'' in the ''Reason for Control'' paragraph on the CCL;

(7) Items specifically identified as ineligible by BXA on your approved SCL; and

(8) Additional items excluded consistent with multilateral obligations.

(b) Exports of items identified as NP in the ''Reason for Control'' paragraph on the CCL will not generally be authorized under an approved SCL for export or reexport to countries listed in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter).

§ 752.4 Eligible countries.

(a) *General provisions.* You or your approved consignees may export or reexport items covered by a SCL to all countries *except:*

(1) Countries designated by the Secretary of State that have repeatedly provided support for acts of international terrorism (Cuba, Libya, Iran, Iraq, North Korea, Sudan, Syria).

(2) Countries listed in Country Group E (see Supplement No. 1 to part 740 of this subchapter); and

(3) Other countries that BXA may declare on a case-by-case basis as ineligible to receive items under the SCL.

(b) *Servicing prohibitions.* Under the SCL, you may not service any item owned or controlled by, or under the lease or charter of, entities in countries identified in paragraphs (a)(1) through (a)(3) of this section or any national of such countries.

§ 752.5 Steps you must follow to apply for a Special Comprehensive License.

(a) *Step One: Establish exporter reliability.* (1) *Pre-application consultation.* To apply for a SCL, BXA must determine your reliability as a potential SCL holder. BXA usually does this through consultation with company officials, and a review of the elements identified in paragraph (a)(2) of this section. To determine whether your company requires such a consultation before you apply for a SCL, contact BXA at the address listed in § 752.19 of this part.

(2) *Criteria to determine eligibility.* BXA will review the following to determine SCL holder eligibility:

(i) Evidence of past licensing history and projected, continuous large volume exports;

(ii) Reliability of all parties relative to their compliance with U.S. export controls;

(iii) Company commitment, as well as the commitment of appropriate consignees, of the necessary resources to implement an adequate ICP; and

(iv) Evidence of your knowledge of all provisions of the EAR.

(b) *Step Two: Establish consignee reliability.* (1) *Definition of consignee.* Consignee, as used in this part 752, means a legal entity authorized as a consignee on the SCL. The consignees may be:

(i) A party that is ''controlled-in-fact'' by the SCL holder;

(ii) An unrelated party that has entered into a written agreement with the SCL applicant to adhere to all provisions of the EAR, and related documentation applicable to an approved consignee; or

(iii) Any other party receiving items under the SCL.

(2) *Requirements.* You must make an initial determination of the reliability of all consignees that are listed on your application for a SCL.

(3) *Criteria for determining reliability.* For purposes of this initial determination, a consignee is considered ''reliable'' if any one of the following apply:

(i) Your proposed consignee has a satisfactory record established through BXA pre-license checks, extensive experience as a consignee under a license issued by BXA, or has been previously approved by BXA as a consignee on a special license;

(ii) The proposed consignee is a wholly-owned subsidiary or a ''controlled-in-fact'' affiliate of the applicant or of a consignee that is already approved on a SCL; or

(iii) You have evidence of an established, on-going business relationship with the proposed consignee.

(4) *Determination by BXA.* The provisions of paragraph (b)(3) of this section do not preclude the authority of BXA to determine the reliability and eligibility of a party as a consignee. BXA may, based upon any negative information on the proposed consignees, refuse to authorize a proposed consignee and remove certain consignees from your SCL application.

(c) *Step Three: Prepare your documentation.* Prepare Form BXA–748P, an ICP, a comprehensive narrative statement, Form BXA–752, and all applicable certifications. Submit this documentation to BXA at the addresses listed in § 752.19 of this part.

(1) *Form BXA–748P, Multipurpose Application.* Complete Form BXA–748P, Multipurpose Application, according to the instructions found in Supplement No.1 to part 748 of this subchapter. Certify submission of all applicable SCL documentation by placing an ''X'' in the appropriate boxes in Block 8 on the Form BXA–748P.

(2) *ICP.* You must provide a copy of your proposed ICP as required by § 752.12 of this part.

(3) *Comprehensive narrative statement.* Prepare a comprehensive narrative statement on your company letterhead that includes the following information:

(i) An overview of the total business activity you and other parties will perform under the SCL.

(ii) An explanation of the relationship between the parties to the application, such as affiliate, subsidiary, or parent.

(iii) A description of the role of other participants under the SCL and whether they are under the effective control of the SCL holder or the consignee. For example, describe whether vessels receiving exports for scientific data gathering or exploration activities are ''controlled-in-fact'' by the SCL holder or consignee. You must attach a list of subcontractors or vessels to the Form BXA–6052 that exercises control over those entities.

(iv) A detailed list of all items you would like to export or reexport under the SCL, including Export Control Classification Numbers (ECCN), and the descriptive item category (i.e, ''semiconductors,''). Refer to the Commerce Control List (Supplement No. 1 to part 774 of this subchapter for the appropriate ECCNs).

(v) A detailed list of all items eligible for export under a License Exception described in part 740 of this subchapter, which will be included in shipments of controlled items authorized under the SCL. Indicate the applicable ECCN for each item.

(vi) The total dollar value of sales or other transactions during the last 12 month period preceding submission of your application relevant to the types of activities you are requesting on the application. Also include the projected total dollar value of all transactions you anticipate to make throughout the validity period of the license, and the basis upon which you made that estimate. Include a ratio of controlled items to those not subject to the EAR, that have been, and will be, exported under the SCL.

(vii) The final disposition of the items. If the activity you are requesting is to manufacture commodities for resale, describe the finished product and how it will be sold and/or distributed.

(viii) A certification that you have in place, or will establish, upon approval of the application by BXA, an ICP that incorporates the elements set forth in § 752.12 of this part and as required by BXA upon approval of the SCL. You must indicate whether any of the elements of the ICP have not been implemented and explain why these elements were deemed inapplicable. Existence of a properly constructed ICP will not relieve you of your responsibility to comply with requirements of all applicable regulations pertaining to your SCL.

(ix) A detailed description of the primary activities of the various classes of proposed consignees (e.g., sales, manufacturing, assembly, warehousing/redistribution, servicing, etc.). Indicate the dollar volume of sales or other transactions with each proposed consignee in the items involved during the 12 month period preceding submission of your application. Also describe the anticipated nature and volume of regular and repetitive transactions proposed between consignees under the license.

(x) Information on whether the consignees will use directly or reexport the items received under a SCL. You must include enough detail of the proposed consignee's activity for BXA to determine the appropriate level of ICP required.

(4) *Form BXA–752, ''Statement of Consignee in Support of Special Comprehensive License Application.''* Each consignee named on the SCL application must provide to you a completed Form BXA 752. This requirement also applies to subsidiaries, affiliates and branches of the applicant company, or other independent firms. Each completed Form BXA–752 must be submitted by you with your application for a SCL.

(i) *Exceptions.* Form BXA–752 is not required if the proposed consignee is the same legal entity as the applicant or if the SCL consignee is a foreign government agency.

(ii) *Number of copies.* Each named consignee must provide three copies of Form BXA–752.

(iii) *Authorized signatures.* Each of the three copies required by paragraph (a)(3)(ii) of this section must include the original signature of a responsible official of the named consignee who has:

(A) Personal knowledge of the information included on the form BXA–752;

(B) Authority to bind the company to the terms and conditions of the SCL; and

(C) The power and authority to control the use and disposition of the licensed items in the country of destination.

(iv) The authority to sign form BXA–752P may not be delegated to any person whose authority to sign is not inherent in his/her official position with the company. The signing official must include their official title with the signature. All copies must be co-signed by the applicant and submitted with the application to BXA.

(5) *Consignee certifications.* Each consignee must provide certain certifications on either Form BXA–752 or by letter. Letters of certification must be prepared on company letterhead, signed by the consignee, and attached to Form BXA–752. Facsimile copies of certification letters are acceptable. Each consignee must certify that:

(i) They have an ICP in place, if required by § 752.12 of this part. If

certain elements of an ICP are not required, include the reasons for that determination;

(ii) No items received under the SCL will be reexported unless authorized by § 752.6 of this part, and that the consignee agrees to the notice requirements described in § 752.6(d) of this part;

(iii) They will comply with all provisions of the EAR, including the recordkeeping provisions of part 762 of this subchapter and all applicable audit requirements of § 752.15 of this part; and

(iv) They will make available for review by BXA all records required under part 762 of this subchapter.

(6) *Additional certifications.* (i) *Temporary Exports.* Consignees who plan to exhibit or demonstrate items in countries other than those in which they are located or are authorized under a SCL, an approved Form BXA–752, or a License Exception described in part 740 of this subchapter may obtain permission to do so by providing the following additional certification on the Form BXA–752. If the consignee has already been previously approved by BXA to receive items under a SCL, the same certification may be provided on company letterhead, in triplicate, which upon approval will be validated by BXA.

''I(We) request authorization to reexport temporarily, for exhibit or demonstration in countries eligible to receive items under the SCL. The items exported will be retained under my (our) ownership and control, and will be returned by me (us) to (name destination) promptly after their exhibit or demonstration abroad, and in no case later than one year after the date of reexport, unless other disposition is authorized in writing by the Bureau of Export Administration.''

(ii) *Exports of technology and software.* If you are requesting authorization from BXA to export technology or software eligible for export or reexport under License Exception 17 (TSR), described in § 750.19 of this subchapter, or that requires a license, both the SCL holder and consignee must certify that they have received from the foreign importer the written assurances described in § 740.18 of this subchapter.

(iii) *Chemicals and chemical and biological equipment certification.* Section 752.6(b) of this part prohibits retransfers, resales, and reexports of chemicals and chemical and biological equipment without specific authorization by BXA. If you are requesting authority to export chemicals or chemical and biological equipment (ECCNs identified with the letters CB in the ''Reason for Control'' paragraph on the CCL (see Supplement No. 1 to part 774 of this subchapter), the consignee must include the following certification on the Form BXA–752, or on company letterhead, in triplicate.

''No items received under this Special Comprehensive License will be transferred resold, or reexported to a destination that requires a license, unless the new end-user has been approved by the Bureau of Export Administration, and in no case will the items be transferred, resold, or reexported to a party who is not the end-user.''

§ 752.6 Reexports.

(a) *Authorized reexports.* Consignees may reexport items under License Exception 18 (APR) (see § 740.20 of this subchapter). In addition, all consignees may reexport items without approval from BXA under any one of the following circumstances, unless otherwise specifically exempt by the regulations in this subchapter or by a condition placed on your SCL.

(1) Reexports to destinations approved by BXA through validation of a Form BXA–752, according to the terms stated on the Form BXA–752 and the comprehensive narrative statement required by § 752.5(c)(3) of this part; or

(2) Reexports of items approved under a SCL to and among other consignees approved on the same SCL.

(b) *Prohibitions*—(1) *Reexports to destinations described in § 752.4.* Notwithstanding the authority of paragraph (a) of this section, consignees may not use the authority of the SCL to reexport to destinations not eligible to receive items under the SCL, as described in § 752.4 of this part.

(2) *Retransfer, resell and reexport of chemicals and chemical and biological equipment.* You may not retransfer, resell, or reexport chemicals or chemical and biological equipment (ECCNs identified with the letters CB in the ''Reason for Control'' paragraph on the CCL (see Supplement No. 1 to part 774 of this subchapter) under the SCL without specific authorization by BXA.

(c) *Sourcing.* Consignees who obtain SCL-eligible items abroad, which are subject to General Prohibitions One, Two, or Three (see part 734 of this subchapter), may reexport them under the authority of the SCL, provided that they are reexported in accordance with the firm's comprehensive narrative statement required by § 752.5(c)(3) of this part and ICP required by § 752.12 of this part. Either the SCL holder or the consignee must submit the request for reexport of items (in triplicate), on their letterhead, BXA–6052 or within the comprehensive narrative statement.

(d) *Destination control statements*—(1) *General provisions.* Unless specifically exempted by the SCL or subsequently in writing by BXA, all approved consignees reexporting items received under a SCL must notify their customers on the commercial invoice (or by such other means specifically approved by BXA) of reexport restrictions. See § 758.6(b)(6) of this subchapter for information on notification procedures.

(2) *Requirements for retransfers, resales, and reexports of chemicals and chemical and biological equipment.* (i) *General requirements.* Unless specifically exempt on the SCL, or subsequently in writing by BXA, all approved consignees not located in Country Group A:3 (see Supplement No. 1 to part 740 of this subchapter) must notify each end-user approved by BXA of the restrictions on unauthorized reexports the items described in paragraph (b)(2) of this section. This notification must appear on the commercial invoice or other document specifically approved by BXA.

(ii) *Notification.* The notice required by paragraph (d)(2)(ii) of this section must read as follows:

''These items were authorized for export from the United States under a Special Comprehensive License on the condition that they may not be reexported without prior approval from the United States Government to countries not listed in Country Group A:3 in the Export Administration Regulations.''

(3) *Exceptions.* The notice required by paragraph (d)(1) of this section is not required if the shipment is destined to a country in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter).

§ 752.7 Direct shipment to customers.

(a) (1) *General authorization.* Upon request by a consignee, a SCL holder or another consignee approved under the same SCL is authorized to deliver products directly to the consignee's customer in either:

(i) The requesting consignee's country; or

(ii) Another country authorized to receive exports under the requesting consignee's validated Form BXA–752.

(2) The SCL holder or consignee making direct shipments authorized by this section must have internal controls procedures in place relative to such shipments.

(b) *Procedures*—(1) *Exports by a SCL holder.* The license holder may make a direct shipment by entering on the Shipper's Export Declaration (SED) the name and address of the customer as ultimate consignee and adding the notation ''by order of (name and address of consignee requesting the direct shipment)''. The notation must appear

below the commodity description and must cite the SCL number followed by the three digit number of the consignee requesting the ''by order of'' shipment.

(2) *Reexports by a consignee.* An approved consignee may make a direct reexport shipment to a customer of another approved consignee on the same SCL by showing on the commercial invoice the name and address of the customer as ultimate consignee and adding the notation ''by order of (name and address of consignee requesting the direct shipment).'' SCL holders and consignees utilizing the direct shipment provision may invoice the shipments directly to the requesting consignee's customers if copies of applicable invoices are maintained by both the shipping party and requesting consignee. This procedure may not be used for items identified by the letters ''NP'', ''CB'', ''SS'', ''CC'', or ''RS'' in the ''Reason for Control'' paragraph on the CCL (Supplement No. 1 to part 774 of this subchapter), unless specifically authorized by BXA.

§ 752.8 License application process.

(a) *Scope of review.* Under a SCL, you are authorized to make multiple export and reexports without review and approval of each individual transaction by BXA. To approve a SCL, BXA must be satisfied that the persons benefiting from this license will adhere to the conditions of the license and the EAR, and that approval of the application will not be detrimental to U.S. national security or foreign policy interests.

(b) *Elements of review.* To permit BXA to make such judgments, BXA, including BXA's Office of Export Enforcement, and other departments and agencies will thoroughly analyze your past export transactions, inspect your export documents, and interview company officials of both the applicant and the consignees. If BXA cannot verify that appropriate internal control procedures are in place, and establish the reliability of the proposed parties to the application, it may deny the application, or modify it by eliminating certain consignees, items, countries, or activities.

(c) *Order requirement.* You do not need to have in your possession an order, as defined in § 748.6(b)(2) of this subchapter, from the proposed consignee at the time you apply for a SCL. However, evidence of a consignee's firm intention to place orders on a continuing basis is required.

(d) *Criteria for review.* The following factors are among those that BXA will consider in determining what action to take on your application for a SCL:

(1) The specific nature of proposed end-uses/end-users;

(2) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of nuclear, missile and/or chemical or biological weapons;

(3) The non-proliferation credentials of the importing country;

(4) Corporate commitment to the necessary resources to implement an adequate ICP;

(5) The types of assurances against design, development, production, stockpiling, or use of nuclear, missiles and CBW weapons that are included in the ICP;

(6) Evidence of past licensing history of the applicant and consignees, and projected, continuous large volume exports and/or reexports;

(7) Reliability of all parties;

(8) Information on all parties' compliance with U.S. export controls;

(9) Your knowledge of U.S. export controls.

(e) In reviewing and approving specific SCL, BXA retains the full right to limit the eligibility of items or to prohibit the export, reexport, or transfer of items under this procedure to specific firms, individuals, or countries.

(f) *Application processing time-frames.* (1) Within 30 days of receipt of the application for SCL, BXA will advise you of any correctable deficiencies or clarifications before it proceeds with full review of your application.

(2) Generally, BXA will process all applications that are complete in all respects and do not require additional information from you within 60–90 days of receipt. Certain individual consignees and end-users may require more time for review.

§ 752.9 Action on applications.

(a) *Approval*—(1) *Validity period.* SCLs are valid for four years. You may request an extension of a valid SCL for an additional four years, but such request must be received by BXA at least 60 days before the expiration of the SCL. To apply for an extension, submit a statement on company letterhead indicating:

(i) That you continue to abide by the provisions and conditions of the SCL; and

(ii) If there are changes to the SCL that you are requesting (see § 752.10 of this part for procedures on changing your SCL).

(2) If approved, the extension letter will be validated and returned to you, extending the validity period for an additional four more years. A complete new application and support documentation is required at the end of that eight-year period.

(3) *Support documentation.* BXA will validate all approved support documentation with the Department of Commerce seal and date of validation.

(4) *Special license conditions.* BXA may place special conditions on your license, such as restrictions on eligible items, countries, end-uses, end-users or activities, or a requirement that certain sales or transfers of items under the SCL are subject to prior reporting to BXA. Such special conditions will be listed on an Approval Rider attached to the license in a letter from BXA to the SCL holder. You must inform all consignees of all license conditions prior to effecting any shipments under the SCL.

(b) *Denial.* BXA may at any time prohibit the sale or transfer of items under the SCL to specified individuals, companies, or countries. In such cases, the SCL holder must inform all consignees, and apply for a license described in part 748 of this subchapter for subsequent transactions with such denied individual, companies, or countries.

(c) *Return without action.* If BXA determines to return the SCL application without action, the application and all related documents will be returned to the applicant. BXA will also include a letter of explanation, stating the reason for return of the license application, explaining the deficiencies or additional information required for reconsideration, or advising you to apply for a license described in part 748 of this subchapter.

§ 752.10 Action on Form BXA–752.

(a) *Approval.* With the approved SCL or amendment to the SCL, you will receive two validated copies of each approved Form BXA–752. You must retain one copy, and send one copy to the approved consignee. You must attach a letter to each Form BXA–752 that includes each of the following elements:

(1) A description of recordkeeping requirements, applicable to the activities of the consignee;

(2) Information on reexport restrictions on any item received under the SCL;

(3) A description or copy of part 766 of this subchapter, listing administrative actions that may be taken for improper use of, or failure to comply with, the SCL procedures;

(4) A description of any special conditions or restrictions on the license applicable to the consignee, including approved lists of customers, when required;

(5) A description of the elements of the SCL holder's ICP relevant to the SCL;

(6) A copy of the high risk customer profile contained in § 752.12(d) of this part, when required;

(7) A copy of the Table of Denial Orders currently in effect and notification that you will send the consignee regular updates to this list;

(8) A notice that the consignee, in addition to other requirements, may not sell or otherwise dispose of any U.S. origin items when it knows that the items will be used in the activities described in part 744 of this subchapter;

(9) A requirement that the consignee acknowledge, in writing, receipt of the letter of transmittal and certify that it will comply with all of the requirements, including establishment of an ICP, when required by § 752.12; and

(10) A description of any special documentation requirements for consignees reexporting items to destinations having such requirements.

(b) *Rejection.* If a consignee is not approved, the Form BXA–752 will be returned to the SCL holder with a letter explaining the reason for denial.

§ 752.11 Changes to the Special Comprehensive License.

You may request a change to the provisions of your Special Comprehensive License by either an amendment or written notice to BXA, depending upon the nature of the change.

(a) *Changes made by amendments.* Amendments require authorization by BXA, and must be received by BXA 60 days before the change will occur, unless other arrangements are specifically agreed to by that office. Amendment requests must be submitted by the SCL holder on company letterhead (in duplicate) to the address listed in § 752.19 of this part. Amendments are not effective until the SCL holder receives a validated copy of the original request.

(1) *Action requiring amendments.* You must request an amendment for the following types of changes:

(i) *Change of company name.* For changes to the company name of the SCL holder, the SCL holder must send a copy of the validated letter to all consignees and inform them to attach the copy of the validated letter to their validated Form BXA–752. If a consignee changes its name, the SCL holder must advise BXA promptly, and provide a new Form BXA–752 following the procedures described in § 752.5(c) of this part.

(ii) *Additional consignees.* Requests to add consignees must be accompanied by a Form BXA–752 and a Comprehensive Narrative Statement according to the provisions of § 752.5(c) of this part. However, a new Form BXA–752 is not required where the proposed consignee is the same entity as SCL holder or when the proposed consignee is a foreign government agency. However, this fact must be stated in the amendment letter as well as a complete address of that entity.

(iii) *Consignee move from one country to another.* Amendments to change the address of a consignee that moves to another country must be accompanied by a new Form BXA–752 in accordance with the provisions of § 752.5(c) of this part.

(iv) *Additional items.* Requests to add more items to the license must include the ECCN and item category, as defined in the Commerce Control List, Supplement No. 1 to part 774 of this subchapter.

(2) *Amendment approval.* Upon approval of an amendment, BXA will return to you a validated copy of the original letter, indicating any changes that may have been made to your amendment request, or any special conditions that may have been imposed.

(b) *Changes made by notices.* You may make the following changes to your SCL without prior approval from the Bureau of Export Administration. Such changes only require letters of notification on company letterhead, in duplicate. BXA must receive such notices no later than 30 days after the change has been made. BXA will validate the notice letter and return one copy to you for your records.

(1) *Deletion, suspension or revocation of consignees.* In the event that you remove a consignee from eligibility to receive items under your SCL, you must notify BXA as well as all SCL consignees of that action. The notice must state that the deleted party is no longer eligible to receive items under the SCL, and include the reason for removal of a consignee and whether it was due to non-compliance with the provisions of the SCL. If BXA suspends or revokes a consignee, BXA will notify both you and the consignee, and provide the reason for the suspension or revocation.

(2) *Deletion of ECCNs.* If you remove items from export and reexport eligibility under your SCL, you must notify BXA as well as all consignees of that action.

(3) *Within-country change of SCL holder or consignee address or phone number.* Include in the letter of notice to BXA the effective date of change, the new address, and phone number of the point of contact within the firm responsible for export controls.

(4) *Changes in ownership or control of the SCL holder or SCL consignee.* If you or a consignee change ownership or control, you must notify BXA by letter on company letterhead. This letter must describe the circumstances necessitating the change (i.e., mergers), and include changes in persons who have official signatory authority on the license.

(c) *Changes made by BXA.* If BXA revises or adds an ECCN in the CCL or a country's eligibility already covered by the SCL changes, BXA will notify the SCL holder by letter or through the publication of notice in the **Federal Register**. The SCL holder is responsible for immediately complying with either the notification by letter or amendment in the **Federal Register**.

§ 752.12 Internal Control Programs.

(a) *Scope*—(1) *Introduction.* It is through Internal Control Programs (ICPs) that the SCL holder and the consignee assure that exports and reexports are not made contrary to the national security, nonproliferation, and foreign policy objectives of the EAR.

(2) *General requirements.* To qualify for a SCL, you must have an ICP in place that is designed to ensure compliance with all conditions of the SCL and the EAR.

(3) *Levels of ICPs.* There are three levels of ICPs provided for in this part 752. The elements of each ICP reflect the complexity of the activities authorized under the SCL, the countries involved, and the relationship between the SCL holder and the approved consignees. BXA may require you to include in your ICP any combination of elements from one or more levels, depending upon the nature of your SCL request.

(b) *Certification requirements.* You must certify, according to the provisions of § 752.5(c)(3)(viii) of this part that you have an ICP in place or you are ready to implement an ICP upon approval of the application. You may not make any shipments under a SCL until you implement all the elements of the required ICP. If any of the elements for an ICP will not be implemented at the time of SCL approval, you must explain why these elements were deemed inapplicable. Existence of a properly constructed ICP will not relieve the SCL holder of liability for improper use or failure to comply with the requirements of all applicable regulations pertaining to its SCL.

(c) *Elements of an ICP.* The elements of your ICP are dependent upon the activities you and your consignees are

authorized to perform under the SCL. Each level describes the responsibilities of both the SCL holder and consignees. However, Level I only describes the responsibilities of the SCL holder because shipments are made directly to customers, not through consignees. There are three levels of ICPs:

(1) *Level I ICP*. Examples of activities that may require the elements of a Level I ICP include services for customers. Activities covered by Level I ICPs do not include reexport of items by the receiving company. The Level I ICP must include at least the following elements:

(i) A clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of SCL compliance;

(ii) Methods for screening customers against the Table of Denial Orders;

(iii) A system for assuring compliance with product and country restrictions;

(iv) Evidence that you have no knowledge or reason to believe through the normal course of business that the item was delivered without the appropriate BXA authorization;

(v) Identification of export control personnel; and

(vi) A program for recordkeeping as required by the EAR.

(2) *Level II ICP*. This plan requires the SCL holder as well as consignees to develop an ICP. A Level II ICP is required when authorized activities involve items controlled for proliferation reasons, or for end-user activities described in § 752.2(a)(2) of this part, such as exporting items subject to the EAR to support capital expansion projects. The Level II ICP must include the following elements:

(i) *For the SCL holder*: (A) A clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of SCL compliance;

(B) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm and consignee firms responsible for compliance with the requirements of the SCL procedure;

(C) Methods for screening customers' orders/shipments against the Table of Denial Orders (TDO);

(D) A system for assuring compliance with product and country restrictions;

(E) A system for timely distribution to consignees and verification of receipt by consignees of the TDO (Supplement No. 2 to part 764 of this subchapter);

(F) A program for recordkeeping as required by the EAR;

(G) A system for notifying BXA promptly if the SCL holder has knowledge that a consignee is not in compliance with terms of the SCL.

(H) A system for assuring compliance with controls over missile-related items and end-uses described in §§ 742.5 and 744.3 of this subchapter;

(I) A system for assuring compliance with controls over chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of this subchapter; and

(J) A system to screen against customers who are known to have, or are suspected of having unauthorized dealings with specially designated regions and countries for which non-proliferation controls apply. See paragraph (d) of this Section for signs of potential diversion.

(ii) *For consignees*: (A) Statement of consignee policy, communicated from consignee management to consignee employees, directing compliance with provisions of the EAR pertaining to the SCL procedure;

(B) Maintenance of a current list of employees charged with export compliance responsibilities.

(C) A system for screening hardware, software, training and servicing transactions against Table of Denial Orders (Supplement No. 2 to part 764 of this subchapter) and any relevant updates supplied by the SCL holder;

(D) A system for assuring compliance with the product and country restrictions for reexports authorized on the Form BXA–752, and for exports of products incorporating controlled items received under the SCL;

(E) A program for recordkeeping as required by the EAR; and

(F) An order processing system that documents employee clearance of transactions in accordance with applicable elements described in this section.

(3) *Level III ICP*. This plan requires the SCL holder as well as consignees to develop an ICP. A Level III ICP is generally required in instances where the SCL authorizes export of items under an international marketing program. It may include various activities and generally involves three or more consignees that have been approved in advance as foreign distributors and/or users. The elements of a level III ICP include:

(i) *For the SCL holder*: (A) A clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of compliance with the SCL;

(B) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm and consignee firms responsible for compliance with the requirements of the SCL procedure;

(C) A system for timely distribution to consignees and verification of receipt by consignees of the Table of Denial Orders (Supplement No. 2 to part 764 of this subchapter) and other regulatory materials necessary to ensure compliance;

(D) A method for screening customers' orders and shipments of all items and activities against the Table of Denial Orders (Supplement No. 2 to part 764 of this subchapter);

(E) A system for assuring compliance with product and country restrictions, including controls over reexports by consignees and direct exports to consignees' customers;

(F) An internal audit system or compliance review program covering the SCL holder and extending to all consignees;

(G) A system for assuring compliance with the limits on delivery to nuclear end-uses and/or end-users as described in § 744.2 of this subchapter;

(H) An on-going program for informing and educating those parties in the license holder firm and consignee firms concerning applicable regulations, limits and restrictions of the Special License;

(I) A program for recordkeeping as required by the EAR;

(J) An order processing system affixing responsibility for all required internal control reviews;

(K) A system for monitoring in-transit shipments and shipments to bonded warehouses and free trade zones;

(L) A system for notifying BXA promptly if the license holder has knowledge that a consignee is not in compliance with terms of the SCL;

(M) A system for assuring compliance with controls over missile-related items and end-uses described in §§ 742.5 and 744.3 of this subchapter;

(N) A system for assuring compliance with controls over chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of this subchapter; and

(O) A system to screen against customers who are known to have, or are suspected of having unauthorized dealings with specially designated regions and countries for which non-proliferation controls apply. See paragraph (d) of this section for signs of potential diversion.

(ii) *For consignees:* (A) A clear statement of consignee company policy, communicated from consignee management to consignee employees,

directing compliance with provisions of the EAR pertaining to the SCL;

(B) Maintenance of current list of employees charged with export compliance responsibilities;

(C) A system for screening hardware, software, technology, training and servicing transactions against Table of Denial Orders and updates thereto supplied by the SCL holder;

(D) A system for assuring compliance with the product and country restrictions for reexports authorized on the Form BXA–752, and for exports and reexports of items received under the SCL;

(E) A system for assuring compliance with the limits on delivery to nuclear end-uses and/or end-users as described in § 744.2 of this subchapter;

(F) A system for assuring compliance with controls over missile-related items and end-uses described in §§ 742.5 and 744.3 of this subchapter;

(G) A system for assuring compliance with controls over chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of this subchapter;

(H) An internal audit program to verify consignee compliance with its ICP;

(I) An education program for employees processing transactions involving items received under the procedure;

(J) A process for screening customers against the diversion risk profile described in paragraph (d) of this section;

(K) A program for recordkeeping as required by the EAR; and

(L) An order processing system that documents employee clearance of transactions in accordance with applicable elements described above.

(d) *Signs of potential diversion.* (1) The signs of potential diversion that you should take into consideration include, but are not limited to, the following:

(i) Your customer is little known (financial information unavailable from normal commercial sources and corporate principals unknown by trade sources);

(ii) Your customer does not wish to use commonly available installation and maintenance services;

(iii) Your customer is reluctant to provide end-use and end-user information;

(iv) Your customer requests atypical payment terms or currencies;

(v) Customer order amounts, packaging, or delivery routing requirements do not correspond with normal industry practice.

(vi) The performance/design characteristics of the items ordered are incompatible with customer's line of business or stated end-use;

(vii) Your customer provides only a ''P.O. Box'' address or has facilities that appear inappropriate for the items ordered;

(viii) Your customer's order is for parts known to be inappropriate, or for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought); and

(ix) Your customer is known to have, or is suspected of having, unauthorized dealings with parties and/or destinations in ineligible countries.

(2) When any of the above characteristics have been identified, but through follow-up inquiries or investigation have not been satisfactorily resolved, the consignee should not transact any business with the customer before contacting the SCL holder. If the SCL holder is unable to resolve the problem, the SCL holder should request assistance, in writing, from BXA's Special Licensing and Compliance Division. The request should explain the basis for the concern regarding the proposed customer and seek a determination if there is information available on the reliability of the customer (see § 752.19 of this part for appropriate addresses). Consignees and holders should consider use of a license described in part 748 of this subchapter before establishing an ongoing relationship with new customers under a SCL.

§ 752.13 Recordkeeping requirements.

(a) *Introduction.* In addition to the recordkeeping requirements in part 762 of this subchapter, the SCL holder and each consignee must maintain certain other records for a period of two years beyond the expiration date of the SCL. These records must be made readily available for review by the BXA upon request by BXA, in accordance with the provisions of part 762 of this subchapter.

(b) *License holder and consignees*—(1) *Form BXA–752.* The consignee named on the Form BXA–752 must retain the original, validated Forms BXA–752 and all applicable attachments. The SCL holder must maintain one copy of each validated Form BXA–752 as well as all forms not approved.

(2) *Transmittal letter to consignees.* The SCL holder and the consignee must retain one copy of the transmittal letter required under § 752.19(a) of this part and any attachments by the SCL holder and the consignee.

(3) *Amendment and notice letters.* The SCL holder must retain all original, validated copies of amendment and notice letters.

(4) *Export and reexport documentation.* (i) *License holder.* The SCL holder must keep, in accordance with the recordkeeping requirements of part 762 of this subchapter, all forms, documents, correspondence, memoranda, specifications and other records, including invoices, shipping documents and orders relating to all exports from the United States. Other records that must be kept under part 762 of this subchapter include records on special documentation for specific destinations, records relating to special conditions on license applications, and other records and reports confirming compliance with the requirements of the regulations in this subchapter and the SCL.

(ii) *Consignees.* All consignees must retain all records of the types of activities identified in § 752.3(a)(3). Records on such sales or reexports must include the following:

(A) Full name and address of individual or firm to whom sale or reexport was made;

(B) Full description of each item sold or reexported;

(C) Units of quantity and value of each item sold or reexported; and

(D) Date of sale or reexport.

(5) *Table of Denial Orders (TDO) and other regulatory materials necessary to ensure compliance.* Copies of the most current list of denied parties TDO (see Supplement No. 2 to part 764 of this subchapter) and all other regulatory materials necessary to ensure compliance, such as relevant changes to the EAR, product classification, and additions, deletions, or other administrative changes to the SCL, must be maintained by all parties. Copies of the transmittal letters and consignee's confirmations of receipt of these materials must also be maintained by both the license holder and the consignees.

(6) *ICP.* Copies of manuals, guidelines, policy statements, internal audit procedures reports, and other documents making up the ICP of each party included under a SCL must be maintained on a current basis.

§ 752.14 Inspection of records.

(a) *Availability of records.* You and all consignees must make available all of the records required by § 752.13 of this part for inspection, upon request, by BXA or by any other representative of the U.S. Government, in accordance with part 762 of this subchapter.

(b) *Relationship of foreign laws.* Foreign law may prohibit inspection of records by a U.S. Government representative in the foreign country where the records are located. In that event, the consignee must submit with the required copies of Form BXA–752 an alternative arrangement for BXA to review consignee activities and determine whether or not the consignee has complied with U.S. export control laws and regulations.

(c) *Failure to comply.* Parties failing to comply with requests to inspect documents may be subject to orders denying export privileges described in part 764 of this subchapter or to the administrative actions described in part 766 of this subchapter.

§ 752.15 Audits.

(a) *Pre-license audits.* In addition to the requirement for pre-license consultation with BXA, BXA may require new SCL applicants (or upon extension) to cooperate in pre-license audits to establish the firm's credentials and reliability to participate in the SCL procedure. This review may also include, but not be limited to, reviews of information collected to establish the reliability of proposed consignees.

(b) *Post-license audits*—(1) *Authority of BXA.* BXA may conduct audits of the SCL holder as well as any consignee. Generally, BXA will give reasonable notice to SCL holders and consignees in advance of such audits.

(2) *Scope.* The audits will involve interviews with officials familiar with, or responsible for, SCL compliance, inspection or records and the review of ICPs. BXA may conduct special unannounced audits if BXA has reason to believe a SCL holder or consignee has improperly used or has failed to comply with the SCL regulations and conditions. Alleged violations established during the course of audits will be referred to BXA's Office of Export Enforcement.

(c) *Mini audits.* BXA may require a SCL holder or consignee to submit to its office a list of all sales made under the SCL during a specified time-frame. Also, from time to time, BXA may request from any consignee a list of transactions during a specified, limited period involving direct shipments of commodities received under SCLs to customers of other consignees and sales to customers in reexport territories authorized by BXA on the consignee's validated Form BXA–752.

§ 752.16 Export clearance.

(a) *Shipper's Export Declaration (SED).* The SED covering an export made under a SCL must be prepared in accordance with standard instructions described in § 758.3 of this subchapter. If the SCL holder has implemented the Bureau of Census Monthly Reporting System, the SCL holder is to comply with the Census requirements. Firms authorized to file summary SED reports to the U.S. Census Bureau may, on the request of BXA, be required to submit for BXA inspection copies of such report applicable to exports under a SCL.

(1) *Item descriptions.* Item descriptions on the SED must indicate specifically the ECCN and item description conforming to the applicable Commerce Control List description and incorporating any additional information where required by Schedule B; (e.g., type, size, name of specific item, etc.).

(2) *Value of shipments.* There is no value limitation on shipments under the SCL; however, the value of each shipment must be shown on the SED.

(3) *SCL number.* The SED must include the SCL Number.

(4) *License number.* The SED must include in the lower portion of column 10 the SCL number followed by a blank space, and then the consignee numerical designation identifying the SCL's approved consignee to whom the shipment is authorized. The consignee numbers will be assigned by BXA to all approved consignees in order to monitor exports.

(5) *Recordkeeping.* A copy of the SED must be prepared and retained by the exporter for recordkeeping purposes for a period of five years after shipment. BXA may require submission of copies of the SEDs upon notification.

(b) *Destination control statement—(1) Exports.* The U.S. exporter must enter a destination control statement on all copies of the bill of lading, air way-bill, and the commercial invoice covering exports under the SCL, in accordance with the provisions of § 758.6 of this subchapter. Use of a destination control statement does not preclude the consignee from reexporting to any of the SCL holder's other approved consignees or to other countries for which specific prior approval has been received from BXA. In such instances, reexport is not contrary to U.S. law and, hence is not prohibited. A different destination control statement may be required or approved by BXA on a case-by-case basis.

(2) *Reexports.* See § 752.6(d) of this part for information on destination control requirements for reexports of items under the SCL.

(c) *Exports by mail.* Exports by mail must be made in accordance with the provisions of part 758 of this subchapter. The SCL number must be entered on the address side of the wrapper on the package.

§ 752.17 Effect of other regulations.

Insofar as consistent with the provisions of this part 752, all of the provisions of the EAR shall apply equally to applications for licenses and licenses issued under this part.

§ 752.18 Administrative actions.

(a) *General information.* Failure to strictly comply with all conditions and requirements to the SCL by SCL holders, consignees, U.S. suppliers or customers increases the risk of diversion contrary to U.S. national and economic interests.

(b) *Administration actions.* (1) If BXA is not satisfied that you or other parties to the SCL are complying with such conditions and requirements, or that control systems employed by parties to such licenses are not adequate, BXA may, in addition to any enforcement action pursuant to part 764 of this subchapter, take any licensing action it deems appropriate, including the following:

(i) Suspend the privileges under the SCL in whole or in part, or impose other restrictions;

(ii) Revoke the SCL in whole or in part;

(iii) Prohibit consignees from receiving items covered by the SCL, or otherwise restrict their activities;

(iv) Restrict items that may be shipped under the SCL;

(v) Require that certain exports or reexports be individually authorized by BXA;

(vi) Restrict parties to whom consignees may sell; and

(vii) Require that a license holder provide an audit report to BXA of selected consignees or overseas operations.

(2) Whenever necessary to protect the national interest of the U.S., BXA may take any licensing action it deems appropriate, without regard to contracts or agreements entered into before such action, including those described in paragraphs (b)(1) (i) through (vi) of this section.

(c) *Appeals.* Actions taken pursuant to paragraph (b) of this section may be appealed under the provisions of part 756 of this subchapter.

§ 752.19 BXA mailing addresses.

(a) *Special Licensing and Compliance Division.* You should use the following addresses when submitting to BXA applications, reports, documentation, or other requests required in this part 752: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273,

Washington, D.C. 20044, ''Attn: Special Licensing and Compliance Division''. If you wish to send the required material via overnight courier, use the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 2705, Washington D.C. 20230 ''Attn: Special Licensing and Compliance Division''.

(b) *Office of Export Enforcement.* Mail all documentation and reports submitted to the Office of Export Enforcement under this part 752 to the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 4069, Washington, D.C. 20230, ''Attn: Office of Export Enforcement''.

Supplement No. 1 to Part 752—Instructions for Completing Forms BXA–748P and BXA–752 for Requests for Special Comprehensive Licenses—[Reserved]

PART 754—SHORT SUPPLY CONTROLS

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 754.1 Introduction.

(a) *Scope.* This part implements the provisions of Section 7, ''Short Supply Controls,'' of the Export Administration Act of 1979, and similar provisions in other laws that are not based on national security and foreign policy grounds.

(b) *Contents.* Specifically, this part deals with the following:

(1) It sets forth the license requirements and licensing policies for commodities that contain the symbol ''SS'' in the ''Reason for Control'' part of ''License Requirements'' section of the applicable Export Control Classification Number (ECCN) identified on the Commerce Control List (Supplement No. 1 to part 774 of this subchapter). In appropriate cases, it also provides for License Exceptions from the short supply licensing requirements described in this part. The license requirements and policies that are set forth in this part, cover the following:

(i) Crude oil described by ECCN 1C81D (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil listed in Supplement No. 1 to this part). For specific licensing requirements for these items, see § 754.2 of this part.

(ii) Petroleum products other than crude oil listed in Supplement No. 1 to this part, described by the following ECCNs. For specific licensing requirements for these items, see § 754.3 of this part.

(A) ECCN 1C80D (Inorganic chemicals);

(B) ECCN 1C82D (Other petroleum products);

(C) ECCN 1C83D (Natural gas liquids and other natural gas derivatives); and

(D) ECCN 1C84D (Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy)).

(iii) Unprocessed western red cedar described by ECCN 1C88D (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). For specific licensing requirements for these items, see § 754.4 of this part.

(iv) Horses exported by sea for slaughter covered by ECCN 0A80D (Horses for export by sea). For specific licensing requirements, § 754.5 of this part.

(2) It incorporates provisions for the registration of U.S. agricultural commodities for exemption from short supply limitations on export (see § 754.6 of this part); and

(3) It incorporates procedures for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials and procedures for related public hearings (see § 754.7 of this part).

(c) *Reexports.* Reexports of items controlled by this part require a license only if such a requirement is specifically set forth in this part or is set forth on the license authorizing the export from the United States.

(d) *Additional requirements for embargoed destinations.* For exports involving embargoed destinations, you must satisfy the requirements of this part and also of part 746 of this subchapter (Embargoes and Other Special Controls).

§ 754.2 Crude oil.

(a) *License requirement.* As indicated by the SS notation in the ''License Requirements'' section of ECCN 1C81D on the CCL (Supplement No. 1 to part 774 of this subchapter), a license is required for the export of crude oil, as defined in paragraph (g) of this Section, to all destinations, including Canada.

(b) *License policy.* (1) Except as provided in paragraph (c) of this section, BXA will generally approve applications to export crude oil if BXA determines that the proposed export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

(2) Generally, BXA will determine that the following kinds of transactions involving the exports of crude oil are in the national interest and consistent with the purposes of EPCA:

(i) Exports from Alaska's Cook Inlet (see paragraph (d) of this section);

(ii) Exports to Canada for consumption or use therein (see paragraph (e) of this section);

(iii) Exports in connection with refining or exchange of strategic petroleum reserve oil (see paragraph (f) of this section);

(iv) The export is part of an overall transaction:

(A) That will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of crude oil;

(B) That will take place only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened;

(C) In which the applicant can demonstrate that, for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States; and

(D) That the crude oil to be imported into the United States would not be available for import if the export had not taken place;

(v) The export will be part of an overall transaction:

(A) That will result directly in the importation into the United States of a quantity and quality of petroleum products listed, other than crude oil in Supplement No. 1 to this part that is not less than the quantity and quality of commodities that would be derived from the refining of the commodity for which an export license is sought; and

(B) In which the applicant can demonstrate that, for compelling economic or technological reasons that are beyond the control of the applicant,

the crude oil cannot reasonably be marketed in the United States;

(vi) Exports involving temporary exports or exchanges that are consistent with the exceptions from the restrictions of the statutes listed in paragraph (c) of this section;

(vii) Exports that are consistent with international agreements as described in the statutes listed in paragraph (c) of this section;

(viii) Exports that are consistent with findings made by the President under an applicable statute, including the statutes described in paragraph (c) of this section; and

(ix) Exports of foreign origin crude oil where, based on written documentation satisfactory to BXA, the exporter can demonstrate that the oil is not of U.S. origin and has not been commingled with oil of U.S. origin.

(c) *Additional statutory restrictions.* (1) The following Statutes restrict the export of domestically produced crude oil based on its place of origin or mode of transport. If such other statutory restrictions apply, a license may only be approved if the President makes the findings required by the applicable law.

(i) Section 7(d) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(d)). Restricts exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the TransAlaska Pipeline Authorization Act (43 U.S.C. 1652) (''TAPS'').

(ii) The Mineral Leasing Act of 1920 restricts exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 (u) of that Act (30 U.S.C. 185(u)) (''MLA'').

(iii) The Outer Continental Shelf Lands Act restricts exports of crude oil produced from the outer Continental Shelf (29 U.S.C. 1354) (''OCSLA'').

(iv) The Naval Petroleum Reserves Production Act restricts the export of crude oil produced from the naval petroleum reserves (10 U.S.C. 7430) (''NPRPA'').

(2) Supplement No. 3 to this part provides the relevant statutory provisions. In cases where a particular statute applies, a Presidential finding is necessary before BXA can approve the export. You should note that it is possible that more than one statute could apply to a particular export of crude oil.

(d) Exports from Alaska's Cook Inlet. Exports of crude oil that was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not been, nor will not be, transported by a pipeline over a federal right-of-way subject to the MLA or TAPS.[1]

(e) *Exports to Canada for consumption or use therein.* (1) Except for crude oil subject to TAPS, the licensing policy is to approve applications for exports of crude oil to Canada for consumption or use therein.

(2) The licensing policy for crude oil subject to TAPS is to approve applications for an average of no more than 50,000 barrels of oil per day for consumption or use in Canada, subject to the following procedures and conditions:

(i) Any ocean transportation of the commodity will be made by vessels documented for United States coastwise trade under 46 U.S.C. 12106. Only barge voyages between the State of Washington and Vancouver, British Columbia, and comparable barge movements across waters between the U.S. and Canada may be excluded from this requirement. The Department of Commerce will determine, in consultation with the Maritime Administration, whether such transportation is ''ocean'' transportation; and

(ii) Authorization to export such Alaska crude oil will be granted on a quarterly basis. Applications will be accepted by BXA no earlier than two months prior to the beginning of the calendar quarter in question, but must be received no later than the 25th day of the second month preceding the calendar quarter. For example, for the calendar quarter beginning April 1 and ending June 30, applications will be accepted beginning February 1, but must be received no later than February 25.

(iii) The quantity stated on each application must be the total number of barrels for the quarter, not a per day rate. This quantity must not exceed 50,000 barrels times the number of calendar days in the quarter.

(iv) Each application must include support documents providing evidence that the applicant has either:

(A) Title to the quantity of barrels stated in the application; or

(B) A contract to purchase the quantity of barrels stated in the application.

(v) The quantity of barrels authorized on each validated license for export during the calendar quarter will be determined by the BXA as a prorated amount based on:

(A) The quantity requested on each license application; and

(B) The total number of barrels that may be exported by all license holders during the quarter (50,000 barrels per day multiplied by the number of calendar days during the quarter).

(vi) Applicants may combine their licensed quantities for as many as four consecutive calendar quarters into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(vii) BXA will carry forward any portion of the 50,000 barrels per day quota that has not been allocated during a calendar quarter, except that no un-allocated portions will be carried over to a new calendar year. The un-allocated volume for a calendar quarter will be added, until expended, to the quotas available for each quarter through the end of the calendar year.

(f) *Refining or exchange of Strategic Petroleum Reserve Oil.* (1) Exports of crude oil withdrawn from the Strategic Petroleum Reserve (SPR) will be approved if BXA, in consultation with the Department of Energy, determines that such exports will directly result in the importation into the U.S. of refined petroleum products that are needed in the U.S. and that otherwise would not be available for importation without the export of the crude oil from the SPR.

(2) Licenses may be granted to export, for refining or exchange outside of the United States, SPR crude oil that will be sold and delivered, pursuant to a drawdown and distribution of the SPR, in connection with an arrangement for importing refined petroleum products into the United States.

(3) BXA will approve license applications subject to the following conditions:

(i) You must provide BXA evidence of the following:

(A) A title to the quantity of barrels of SPR crude stated in the application; or

(B) A contract to purchase, for importation, into the United States the quantity of barrels of SPR crude stated in the application.

(ii) The following documentation must be submitted to BXA no later than fourteen days following the date that the refined petroleum products are imported in the U.S. in exchange for the export of SPR crude:

(A) Evidence that the exporter of the SPR crude has title to or a contract to purchase refine petroleum product;

(B) A copy of the shipping manifest that identifies the refined petroleum products; and

(C) A copy of the entry documentation required by the U.S. Customs Service that show the refined petroleum

[1] On November 6, 1985, the Secretary of Commerce determined that the export of crude oil derived from State waters in Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

products were imported into the United States, or a copy of the delivery receipt when the refined petroleum products are for delivery to the U.S. military outside of the United States.

(4) You must complete both the export of the SPR crude and the import of the refined petroleum products no later than 30 days following the issuance of the export license, except in the case of delivery to the U.S. military outside of the United States, in which case the delivery of the refined petroleum products must be completed no later than the end of the term of the contract with the Department of Defense.

(g) *Definition of ''crude oil''.* ''Crude oil'' is defined as a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and which has not been processed through a crude oil distillation tower. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

§ 754.3 Petroleum products not including crude oil.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph in the ''License Requirements'' section of ECCNs 1C80D, 1C82D, 1C83D, and 1C84D on the CCL (Supplement No. 1 to part 774 of this subchapter), a license is required to all destinations, including Canada, for the export of petroleum products, excluding crude oil, listed in Supplement No. 1 to this part. See paragraph (c) of this section for License Exceptions for non-naval petroleum reserves products.

(b) *License policy.* (1) Applications for the export of petroleum products listed in Supplement No. 1 to this part that were produced or derived from the Naval Petroleum Reserves, or that became available for export as a result of an exchange for a Naval Petroleum Reserves-produced or derived commodity, other than crude oil, will be denied, unless the President makes a finding required by the Naval Petroleum Reserves Production Act (10 U.S.C. 7430).

(2) Applications that involve temporary exports or exchanges excepted from that Act will be approved. See paragraph (c) of this section for License Exceptions that apply to non-naval petroleum reserve products.

(c) *License Exception for Non-Naval Petroleum Reserve products (NPR).* Subject to the requirements set forth in this paragraph, License Exception NPR may be used to export without a license petroleum products that were not produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of a Naval Petroleum Reserves-produced or derived commodity.

(1) The requirements and restrictions set forth in § 740.1 and § 740.2 of this subchapter that apply to all License Exceptions also apply to the use of License Exception NPR.

(2) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code ''SS-NPR''.

§ 754.4 Unprocessed western red cedar.

(a) *License requirement.* (1) As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph in the ''License Requirements'' section of ECCN 1C88D on the CCL Supplement No. 1 to part 774 of this subchapter), a license is required to all destinations, including Canada, for the export of unprocessed western red cedar covered by ECCN 1C88D (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). See paragraph (c) of this section for License Exceptions for timber harvested from public lands in the State of Alaska, private lands, or Indian lands, and see paragraph (d) of this section for relevant definitions.

(2)(i) Applicants requesting export of unprocessed western red cedar must submit a properly completed Form BXA–748P, Multipurpose License Form, other documents as may be required by BXA, and a signed statement from an authorized representative of the exporter, reading as follows:

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feed scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979,

(Signature) _____

(Date) _____

(ii) For Items [6] and [7] on Form BXA–748P, ''Various'' may be entered when there is more than one purchaser or ultimate consignee.

(3) For each Form BXA–748P submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period prescribed in part 762 of this subchapter, and produce or make available for inspection, the following:

(i) A signed statement(s) by the harvester or producer, and each subsequent party having held title to the commodities, that the commodities in question were harvested under a contract to harvest unprocessed western red cedar from State or Federal lands, entered into before October 1, 1979; and

(ii) A copy of the Shipper's Export Declaration.

(4) A shipping tolerance of 5 percent in cubic feet or board feet scribner is allowed on the un-shipped balance of a commodity listed on a license. This tolerance applies only to the final quantity remaining un-shipped on a license against which more than one shipment is made and not to the original quantity authorized by such license.

(b) *Licensing policy.* (1) BXA will generally deny applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into after September 30, 1979.

(2) BXA will consider, on a case-by-case basis, applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into prior to October 1, 1979.

(3) BXA will approve license applications for unprocessed western red cedar timber harvested from public lands in Alaska, private lands, and Indian lands. Applications must be submitted in accordance with the procedures set forth in paragraph (a) of this section. See paragraph (c) of this section for the availability of a License Exception.

(c) *License Exception for western red cedar (WRC).* (1) Subject to the requirements set forth below, License Exception WRC may be used to export without a license unprocessed western red cedar timber harvested from Federal, State and other public lands in Alaska, all private lands, and, lands held in trust for recognized Indian tribes by Federal or State agencies.

(2) Exporters who use License Exception WRC must obtain and retain on file the following documents:

(i) A statement by the exporter (or other appropriate documentation) indicating that the unprocessed western red cedar timber exported under this License Exception was not harvested from State or Federal lands outside the State of Alaska, and did not become available for export through substitution of commodities so harvested or produced. If the exporter did not harvest or produce the timber, the records or statement must identify the harvester or producer and must be accompanied by

an identical statement from the harvester or producer. If any intermediate party or parties held title to the timber between harvesting and purchase, the exporter must also obtain such a statement, or equivalent documentation, from the intermediate party or parties and retain it on file.

(ii) A certificate of inspection issued by a third party log scaling and grading organization, approved by the United States Forest Service, that:

(A) Specifies the quantity in cubic meters or board feet, scribner rule, of unprocessed western red cedar timber to be exported; and

(B) Lists each type of brand, tag, and/or paint marking that appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed timber was produced.

(3) The requirements and restrictions set forth in §§ 740.1 and 740.2 of this subchapter that apply to all License Exceptions also apply to the use of License Exception WRC.

(4) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code ''SS-WRC''.

(d) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) ''Unprocessed western red cedar'' means western red cedar (thuja plicata) timber, logs, cants, flitches, and processed lumber containing wane on one or more sides, as defined in ECCN 1C88D, that has not been processed into:

(i) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better grades, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar (WRC) being exported, regardless of grade;

(ii) Chips, pulp, and pulp products;

(iii) Veneer and plywood;

(iv) Poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; and

(v) Shakes and shingles.

(2) ''Federal and State lands'' means Federal and State lands, excluding lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

(3) ''Contract harvester'' means any person who, on October 1, 1979, had an outstanding contractual commitment to harvest western red cedar timber from State and Federal lands and who can show by previous business practice or other means that the contractual commitment was made with the intent of exporting or selling for export in unprocessed form all or part of the commodities to be harvested.

(4) ''Producer'' means any person engaged in a process that transforms an unprocessed western red cedar commodity (e.g., western red cedar timber) into another unprocessed western red cedar commodity (e.g., cants) primarily through a saw mill.

§ 754.5 Horses for export by sea.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph of the ''License Requirements'' section of ECCN 0A80D on the CCL (Supplement No. 1 to part 774 of this subchapter) a license is required for the export of horses exported by sea to all destinations, including Canada.

(b) *License policy.* (1) License applications for the export of horses by sea for the purposes of slaughter will be denied.

(2) Other license applications will be approved if BXA, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter. You must provide a statement in the additional information section of the Form BXA–748P, certifying that no horse under consignment is being exported for the purpose of slaughter.

(3) Each applications for export may cover only one consignment of horses.

§ 754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.

(a) *Scope.* Under the provisions of section 7(g) of the Export Administration Act of 1979 (EAA), agricultural commodities of U.S. origin purchased by or for use in a foreign country and stored in the United States for export at a later date may be registered with BXA for exemption from any quantitative limitations on export that may subsequently be imposed under section 7 of the EAA for reasons of short supply.

(b) *Applications for registration.* Applications to register agricultural commodities must be submitted by a person or firm subject to the jurisdiction of the United States who is acting as a duly authorized agent for the foreign purchaser.

(c) *Mailing address.* Submit applications pursuant to the provisions of section 7(g) of the EAA to: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20230.

§ 754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

(a) *Scope.* Section 7(c) of the Export Administration Act of 1979 (EAA) provides for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials.

(b) *Eligibility for filing petitions.* Any entity, including a trade association, firm or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may submit a written petition to BXA requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such materials.

(c) *Public hearings.* The petitioner may also request a public hearing. Public hearings may also be requested by an entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes, produces or exports the metallic materials which are the subject of a petition.

(d) *Mailing address.* Submit petitions pursuant to section 7(c) of the EAA to: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20230.

Supplement No. 1 to Part 754—Petroleum and Petroleum Products.

This Supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCNs 1C80D, 1C81D, 1C82D, 1C83D, and 1C84D.

SCHEDULE B

Number	Commodity description [1]
Crude Oil	
2709.0710	Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil.
2710.0710	Petroleum, partly refined for further refining.
Petroleum Products	
2804.29.0010	Helium.
2804.10.0000	Hydrogen.

SCHEDULE B—Continued

Number	Commodity description [1]
2814.20.0000	Ammonia, aqueous.
2811.21.0000	Carbon dioxide and carbon monoxide.
2710.00.0550	Distillate fuel oils, having a Saybolt Universal viscosity at 100& F. of less than 45 seconds.
2710.00.1007	Distillate fuel oils (No. 4 type) having a Saybolt Universal viscosity at 100& F. of 45 seconds or more, but not more than 125 seconds.
2710.00.1050	Fuel oils, having a Saybolt Universal viscosity at 100& F. of more than 125 seconds.
2711.11.0000	Natural gas, methane and mixtures thereof (including liquefied natural gas and synthetic or substitute natural gas).[2]
2711.14.0000	Ethane with a minimum purity of 95 liquid volume percent.
2711.12.0000	Propane with a minimum purity of 90 liquid volume percent.
2711.13.0000	Butane with a minimum purity of 90 liquid volume percent.
2711.19.0000	Other natural gases (including mixtures), n.s.p.f. and manufactured gas.
2710.00.1510	Gasoline, motor fuel (including aviation).
2710.00.1520	Jet fuel, naphtha-type.
2710.00.1530	Jet fuel, kerosene-type.
2710.00.1550	Other motor fuel (including tractor fuel and stationary turbine fuel).
2710.00.2000	Kerosene derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
2710.00.2500	Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
2710.00.5030	Mineral oil of medicinal grade derived from petroleum, shale oil or both.
3819.00.0000	Hydraulic fluids, including automatic transmission fluids.
2710.00.3010	Aviation engine lubricating oil, except jet engine lubricating oil.
2710.00.3020	Jet engine lubricating oil 475.4520 Automotive, diesel, and marine engine lubricating oil.
2710.00.3030	Turbine lubricating oil, including marine.
2710.00.3040	Automotive gear oils.
2710.00.3050	Steam cylinder oils.
2710.00.5045	Insulating or transformer oils.
2710.00.3070	Quenching or cutting oils.

SCHEDULE B—Continued

Number	Commodity description [1]
2710.00.3080	Lubricating oils, n.s.p.f., except white mineral oil.
2710.00.3700	Greases.
2710.00	Carbon black feedstock oil.
2712.10.0000	Petroleum jelly and petrolatum, all grades.
2710.00.5040	White mineral oil, except medicinal grade.
2710.00.5060	Other non-lubricating and non-fuel petroleum oils, n.s.p.f.
2814.10.0000	Ammonia, anhydrous.
2712.20.0000	Paraffin wax, crystalline, fully refined.
2712.90.0000	Paraffin wax, crystalline, except fully refined.
2712.90.0000	Paraffin wax, all others (including microcrystalline wax).
2517.30.0000	Paving mixtures, bituminous, based on asphalt and petroleum.
2713.12.0000	Petroleum coke, calcined.
2714.	Petroleum asphalt.
2713.11.0000	Petroleum coke, except calcined.

[1] The commodity descriptions provided in this Supplement for the most part reflect those found in the U.S. Department of Commerce, Bureau of the Census, (1990 Edition) Statistical Classification of Domestic and Foreign Commodities Exported from the United States (1990 Ed., as revised through Jan. 1994). In some instances the descriptions are expanded or modified to ensure proper identification of products subject to export restriction. The descriptions in this Supplement, rather than Schedule B Number, determine the commodity included in the definition of ''Petroleum'' under the Naval Petroleum Reserves Production Act.

[2] Natural gas and liquefied natural gas (LNG), and synthetic natural gas commingled with natural gas (Schedule B Nos. 2711.11.0000, 2711.14.0000, and 2711.19.0000) require export authorization from the U.S. Department of Energy.

Supplement No. 2 to Part 754—Unprocessed Western Red Cedar

This Supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCN 1C88D.

SCHEDULE B

Number 1[1]	Commodity description	Unit of quantity[2]
200.3516	Western red cedar (Thuja plicata) logs and timber	MBF
202.2820	Western red cedar lumber; rough, containing wane	MBF
202.2840	Western red cedar lumber; dressed or worked, containing wane	MBF

[1] Schedule B Numbers are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 7525 V.

[2] For export licensing purposes, report commodities on Form BXA–748P in units of quantity indicated.

Supplement No. 3 to Part 754—Statutory Restrictions on Exports of Crude Oil [1]

Export Administration Act of 1979, as Amended

50 U.S.C. App. 2406(d)

(d) *Domestically produced crude oil.*

(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this section, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (d)(2) of this section are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if:

(A) The President makes and publishes express findings that exports of such crude oil, including exchanges:

(i) Will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

[1] The statutory material published in this Supplement is provided for the information of the reader only. See the U.S. Code for the official text of this material.

(ii) Will, within 3 months following the initiation of such exports or exchanges, result in:

(A) Acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange; and

(B) Not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) Will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) Are clearly necessary to protect the national interest; and

(v) Are in accordance with the provisions of this Act; and

(B) The President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

Mineral Lands Leasing Act

30 U.S.C. 185(u)

(u) *Limitations on export.*

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the Unites States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential finding shall cease.

Naval Petroleum Reserves Production Act

10 § 7430(e)

(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

Outer Continental Shelf Lands Act

43 U.S.C. 1354

(a) *Application of Export Administration provisions.*

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969.

(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas. Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President. The President shall submit reports to Congress containing findings made under this section, and after the date of receipt of such reports Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether export under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation. The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increase efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

PART 756—APPEALS

Sec.

Authority: 18 U.S.C. 2510 *et seq.;* 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.;* 46 U.S.C. 466(c); E.O. 12924.

§ 756.1 Introduction.

(a) *Scope.* This part 756 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act of 1979, as amended (EAA) or the Export Administration Regulations (EAR). Any person directly and adversely affected by an administrative action taken by the U.S. Department of Commerce may appeal to the Under Secretary for reconsideration of that administrative action. The following types of administrative actions are not subject to the appeals procedures set forth in this part 756:

(1) Issue, amend or revoke or appeal a regulation. (These requests may be submitted to the Department at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of this subchapter.

(b) *Definitions.* The following are definitions of terms used in this part 756:

Administrative action. Any action taken by the U.S. Department of Commerce under the EAA or the EAR with respect to a particular person including denial of a license application, return without action of a license application for other than procedural deficiencies or additional information, or classification of an applicant's commodity. Administrative actions do not include enforcement actions under part 764 of this subchapter.

Appeal. A request for relief from an administrative action taken by the Bureau of Export Administration.

Appellant. A person, or their representative, requesting relief from an administrative action taken by the Bureau of Export Administration.

Person. Any individual, partnership, corporation, or other form of association.

Under Secretary. The term ''Under Secretary'' refers to the Under Secretary and any other official delegated authority, by the Under Secretary to review and decide an appeal submitted pursuant to § 756.2(a)(2) of this part.

§ 756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Export Administration or to another Department of Commerce official the authority to review and decide the appeal. In addition, the Under Secretary may designate any Department official to be an appeals coordinator to assist in the review and processing of an appeal under this part. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(b) *Appeal procedures*—(1) *Filing.* An appeal under this part must be received by the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H–3886C, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230, not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal.* A full written statement in support of the request must be filed with the appeal. The request must include a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified. The Under Secretary may request additional information that would be helpful in resolving the appeal and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or any requested submission.

(3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request for an informal hearing. All hearings, if granted, will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) *Informal hearing procedures.* (i) *Presentations.* The Under Secretary will provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) *Evidence.* The rules of evidence prevailing in courts of law will not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding, and not unduly repetitious, will be received and given appropriate weight.

(iii) *Procedural questions.* The Under Secretary has the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript.* A transcript of an informal hearing will not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) *Report.* When the Under Secretary designates another Departmental official to conduct an informal hearing, that designee will submit a written report containing a summary of the hearing and recommended action to the Under Secretary.

(c) *Decisions*—(1) *Determination of appeals.* In addition to the documents specifically submitted in connection with the appeal, the Under Secretary will consider any recommendations, reports, or relevant documents available to the Department of Commerce in determining the appeal, but will not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary will decide an appeal within a reasonable time after receipt of the appeal. The decision will be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) *Effect of the determination.* The decision of the Under Secretary will be final.

(d) *Effect of appeal.* Acceptance and consideration of an appeal will not affect any administrative action, pending or in effect, unless the Under Secretary, upon request by the appellant and with opportunity for response, grants a stay.

PART 758—GENERAL EXPORT CLEARANCE REQUIREMENTS

Sec.

758.1 General export clearance requirements.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

(a) *Responsibility of licensee, exporter and agent.* (1) If you are issued a Bureau of Export Administration (BXA) license, or you rely on a License Exception described in part 740 of this subchapter, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

(2) If you export without a license issued by BXA, you are responsible for determining that the transaction is outside the scope of the EAR or the export is designated as ''No License Required'' or ''Not on List'', as described in paragraph (a)(3) and (4) of this section.

(3)(i) ''*No License Required*''. Items that are listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of this subchapter) but that do not require a license by reason of the Commerce Country Chart contained in Supplement 1 to part 738 of this subchapter, must be designated as ''NLR'', or ''no license required'', on your shipping documents in accordance with the provisions of this part.

(ii) *NLR notation.* Entering the symbol NLR is a representation to the U.S. government that the items being exported are listed on the Commerce Control List but do not require a license by reason of the Commerce Country Chart (Supplement No. 1 to part 738 of this subchapter); that they do not

require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and the items are subject to the EAR.

(4)(i) *''Not on List'' designation.* Some items that are not on the Commerce Control List are subject to the EAR (see § 732.3 of this subchapter). When exporting such items, you must designate them on your shipping documents as ''NOL'', or ''not on list'', in accordance with the provisions of this part.

(ii) *NOL notation.* Entering the symbol NOL is a representation to the U.S. government that the items being exported are not listed on the Commerce Control List but are subject to the Export Administration Regulations and therefore do not require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity.

(5) *License Exception symbol.* Entering a License Exception symbol is a representation to the U.S. Government that the transaction meets all of the terms and conditions of the License Exception cited. (See part 740 of this subchapter for details regarding License Exceptions)

(b) *Forwarding agent.* (1) *Authorizing a forwarding agent.* A forwarding agent is a person the exporter authorizes to perform services that facilitate the export described on the Shipper's Export Declaration. The agent must be authorized to act on behalf of the exporter either for the specific transaction for which he is submitting the Shipper's Export Declaration or under a general power of attorney. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) set forth the specific requirements for obtaining authorization as a forwarding agent.

(2) *Forwarding agent as licensee.* If the forwarding agent is appointed at the suggestion of a foreign buyer, the seller may insist that the agent apply for the export license.

(3) *Record and proof of agent's authority.* The power-of-attorney or other authorization from the exporter must be retained on file in the forwarding agent's office while the authorization is in force and for a period of five years after the last action taken by the forwarding agent under the authority. During this retention period, the forwarding agent must make its delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of § 762.6 of this subchapter. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates its authority. (For further recordkeeping requirements see part 762 of this subchapter)

(c) *Responsibility for compliance.* Acting through a forwarding agent, or other agent or delegation or redelegation of authority, does not relieve anyone of responsibility for compliance with this subchapter.

(d) *Exports by mail.* (1) *Exports made under a license issued by the Bureau of Export Administration.* Before making by mail an export that is authorized by a license issued by BXA, you must enter the license number on the address side of the parcel and submit a properly executed Shipper's Export Declaration (SED) to the post office at the place of mailing, when required by these regulations and/or the Foreign Trade Statistics Regulations of the U.S. Bureau of the Census.[1]

(2) *Shipments without a license.* The requirements of this paragraph apply whenever you export items that do not require a license under the EAR. These requirements apply regardless of whether you ship under one of the ''No License Required'' or ''Not On List'' provisions or under a License Exception as described in part 740 of this subchapter.

(i) *Shipments to Canada for consumption therein.* An SED is not required for exports of items to Canada if the items are for consumption in Canada and the export transaction does not require a license from BXA. Note that if the item you are exporting to Canada is controlled by another government agency, the regulations of that agency may require you to file a Shipper's Export Declaration.

(ii) *Shipments to Puerto Rico or U.S. territories or possessions.* Exports of items to Puerto Rico or the U.S. territories or possessions do not require a license issued by BXA. However, the regulations of the Census Bureau (15 CFR part 30) may still require you to file a Shipper's Export Declaration.

(iii) *Shipments valued over $500.* When mailing an item from one business concern to another where the total value of the items being shipped exceeds $500, you must present an executed SED to the post office at the place of mailing unless the EAR or the Bureau of the Census Foreign Trade Statistics Regulations specifically provide an exception to this requirement. If either the exporter or recipient is not a business concern, no SED is required.

(iv) *Designation on Shipper's Export Declaration and/or parcel.* If you are exporting an item that is not listed on the Commerce Control List, or one that is listed but for the export of which no license is required, or you are exporting pursuant to a License Exception as described in part 740 of this subchapter, you must enter the appropriate symbol indicating the absence of a license requirement (either NLR, meaning ''No License Required'' or NOL meaning ''Not On List'') or of the applicable License Exception on the SED and on the address side of the parcel along with the phrase ''Export License Not Required.'' If your transaction is one for which you are not required to file a SED, you must enter the appropriate symbol indicating the absence of a license requirement (either NLR, meaning ''No License Required'' or NOL meaning ''Not On List'') or of the applicable License Exception on the address side of the parcel along with the phrase ''Export License Not Required.''

(A) By entering the symbol NLR you are representing to the U.S. government that: the items you are exporting are listed on the Commerce Control List (See Supplement No. 1 to part 774 of this subchapter) but do not require a license by reason of the Country Chart (Supplement No. 1 to part 738 of this subchapter); that it does not require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and the item is subject to the EAR.

(B) By entering the symbol NOL, you are representing to the U.S. government that the items you are exporting are not listed on the Commerce Control List but is subject to the Export Administration Regulations and therefore does not require a license under General

[1] The Shipper's Export Declaration (U.S. Department of Commerce form 7525–V) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or it may be privately printed. Form 7525–V-Alt (Intermodal), must be privately printed. Privately printed forms must strictly conform to the official form in all respects. Samples of these forms may be obtained from the Bureau of the Census, Washington, DC 20233, local Customs offices, and the U.S. Department of Commerce District Offices (see list beginning on page ii under Commerce Office Addresses).

Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity.

(C) By entering a License Exception symbol, you are representing to the U.S. Government that your transaction meets all of the terms and conditions of the License Exception you are using. (See part 740 of this subchapter for details regarding License Exceptions)

(v) *Gift parcels.* If you are sending a gift parcel to Cuba, North Korea or Libya pursuant to the requirements of part 746 of this subchapter, you must enter the phrase ''Gift—export license not required'' on any customs declaration documents and on the address side of the parcel.

(vi) *Software and technology.* If you are exporting software or technology, the export of which is authorized under the License Exceptions set forth in § 740.15 through § 740.18 of this subchapter, you do not need to make any notation on the package. If you are exporting software or technology that is outside the scope of the EAR, check to see if any other agency's regulations require specific markings on the package.

(3) When you enter any of the symbols or phrases referred to in paragraph (b) of this section on the documents or packages, you are certifying to the post office and to the Bureau of Export Administration that you are exporting the package in compliance with all of the terms and provisions of the License Exception or other authority to export.

(c) *Exports by means other than mail.* (1) (i) Exemptions to Shipper's Export Declaration. A Shipper's Export Declaration is not required for:

(A) Any shipment, other than a shipment made under a license issued by BXA, to any country in Country Group B (See Supplement No. 1 to part 740 of this subchapter) or to the People's Republic of China if the shipment is valued at $2,500 or less per Schedule B Number. The schedule B number of an item is that shown in the current edition of Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States. As used here ''shipment'' means all commodities classified under a single Schedule B Number, shipped on the same carrier, from one exporter to one importer;

(B) Any shipment reported under the provisions of the Monthly Reporting Procedure (§ 758.3(p) of this part); or

(C) Any shipment made under any other exception to the Shipper's Export Declaration requirements provided elsewhere in this part 758 or in part 740 of this subchapter. (A complete list of exceptions to the Shipper's Export Declaration requirement is set forth in Subpart D of the Bureau of the Census' Foreign Trade Statistics Regulations. See Supplement No. 1 to this part 758.)

(ii) *Exceptions from Shipper's Export Declaration requirements.*

(A) *Statement on shipping documents.* If you are exempt by paragraph (c)(1) of this section from the requirement of filing a Shipper's Export Declaration, the Bureau of the Census Foreign Trade Statistics Regulations (FTSR) (15 CFR § 30.50), require you to make a statement on the bill of lading, air waybill, or other loading document describing the basis for the exemption and referencing the specific section of the FTSR where the exemption is provided, unless the exemption is based on value and destination. If the exemption is based on the value and destination of your shipment, you must state the basis for the exemption, but you do not have to cite a reference to the specific section of the FTSR containing the exemption.

(B) *Monthly reporting procedures.*

(*1*) All forwarders or brokers who use the monthly reporting procedures described in FTSR § 30.39 (15 CFR 30.39) on behalf of exporters who are not themselves exempt from the individual filing requirement must also include on the bill of lading, air waybill (including house air waybill), or other loading document either the number of and expiration date of an export license issued by the Bureau of Export Administration, or the appropriate symbol indicating the absence of an export license requirement (either NLR, meaning ''No License Required'' or NOL meaning ''Not On List'') or of the applicable License Exception from part 740 of this subchapter.

(*2*) The notation required by paragraph (c)(1)(ii)(B)(1) of this section applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a ''master'' bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the goods or data prior to lading on the carrier.

(2) *Presentation of declaration.* The exporting carrier is responsible for the accuracy of the following items of information (where required) on the Shipper's Export Declaration:

(i) Name of carrier (including flag of vessel),

(ii) U.S. Customs port of export,

(iii) Method of transportation,

(iv) Foreign port of unloading,

(v) Bill of lading or air waybill number, and

(vi) Whether or not containerized.

(3) *Exports not requiring a license.* Even if your shipment does not require a license from the Bureau of Export Administration, it may still require a Shipper's Export Declaration. Before shipping, check the Bureau of the Census Foreign Trade Statistics Regulations for the complete Shipper's Export Declaration requirements.

(d) *Shipments transiting Canada en route to other countries.*

(1) *Shipments moving under individual Shipper's Export Declaration.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual Shipper's Export Declaration is required pursuant to this part 758, the U.S. exporter must submit to the Canadian Customs authorities at the Canadian port of entry a copy of the U.S. Shipper's Export Declaration, Form 7525–V, certified by the exporter as ''A True Copy'' of the original Shipper's Export Declaration.

(i) *Shipments for which individual Shipper's Export Declarations are not required.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual Shipper's Export Declaration is not required because:

(A) The forwarder or broker is authorized to report export information to Census by means other than an individual Shipper's Export Declaration; or

(B) The shipment qualifies for a specific exemption (listed in Subpart D of the Census Bureau Foreign Trade Statistics Regulations), the forwarder or broker must include the number of and expiration date of the license issued by the Bureau of Export Administration, or the appropriate symbol indicating the absence of an export license requirement (either NLR, meaning ''No License Required'' or NOL meaning ''Not On List'') or of the applicable License Exception from part 740 of these Export Administration Regulations on the bill of lading or other loading document as directed in paragraph (c)(2) of this section. The properly annotated bill of lading or other loading document, along with the license authorization, when required, must be displayed to the Canadian Customs authorities at the Canadian

port of entry and a copy provided, if requested by the Canadian authorities.

(2) Reserved.

§ 758.2 Use of export license.

(a) *License valid for shipment from any port.* A license issued by BXA authorizes exports from the United States from any U.S. port of export unless the license notes otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before final export to a foreign country will be treated as an export from the last U.S. port of export.

(b) *Shipments against expiring license.* (1) Any item that has not departed from the last U.S. port of export by midnight of the expiration date of the license may not be exported under that license unless the shipment meets the requirements of paragraph (b)(1)(i) or (ii) of this section are met.

(i) The Bureau of Export Administration grants an extension; or

(ii) Prior to midnight of the expiration date of the license, the items:

(A) Were laden aboard the vessel; or

(B) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(2) When the vessel is expected to be available at the pier for loading before the license expires, but exceptional and unforeseen circumstances delay it, the items may be exported without an extension of the license, if in the judgment of the U.S. Customs Service or the Bureau of Export Administration, undue hardship would otherwise result.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item in the same quantity and of the same value to the same consignee and destination under the same license. Before reshipping, the exporter must submit to the Office of Exporter Services of the Bureau of Export Administration of the U.S. Department of Commerce satisfactory evidence of the original export and of the failure to deliver the shipment, together with a satisfactory explanation of the delivery failure. If an item is to be reshipped to any person other than the original consignee, the shipment is deemed to be a new export and is subject to all current Export Administration Regulations regarding the specific item and destination.

§ 758.3 Shipper's Export Declaration.

(a) *Shipper's Export Declaration presentation requirement.* Both the Foreign Trade Statistics Regulations of the Census Bureau (15 CFR part 30) and these Export Administration Regulations require that Shipper's Export Declarations be submitted to the U.S. government. There are a few exceptions to this rule, but if you are required to submit a Shipper's Export Declaration you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port of export.

(b) *Shipper's Export Declaration is a statement to the U.S. government.* Your Shipper's Export Declaration is a statement to the U.S. government in which you assert that all of the information shown on the Shipper's Export Declaration is true. You may execute and submit the Shipper's Export Declaration only if you are the exporter or the duly authorized forwarding agent of an exporter.

(c) *Limitation on time when Shipper's Export Declaration may be used.* No one may use a Shipper's Export Declaration to export, or facilitate or effect an export, after the expiration of the applicable license or after the termination of the applicable License Exception or provisions of the Export Administration Regulations that authorize export without a license, except as provided in § 750.6(d) of this subchapter and § 758.2(b) of this part.

(d) *Additional copies of the Shipper's Export Declaration.* You are required to submit additional copies of the SED when:

(1) The Bureau of Export Administration or one of its component offices asks you to send it copies of the Shipper's Export Declaration for exports:

(i) Authorized by a license (See paragraph (l) of this section);

(ii) Authorized by a Special Comprehensive License (See § 752.16(a)(5) of this subchapter; or

(iii) Of items controlled for short supply reasons (See part 754 of this subchapter); or

(iv) Required by § 758.1(d) of this part.

(2) Reserved.

(e) *Statements on Shipper's Export Declaration.* Whenever a SED is presented to a carrier, a customs office, or a postmaster, the exporter and the person making the presentation represent that:

(1) All statements and information on the SED have been furnished by the exporter or on the exporter's behalf to effect an export under the provisions of this subchapter;

(2) Export of the items described on the SED is authorized under the ''No License Required'' or ''Not on List'' provisions of this subchapter, a License Exception described in part 740 of this subchapter, or the license identified on the SED;

(3) Statements contained on the SED are consistent with the contents of the license or the terms, provisions, and conditions of the applicable License Exception or of the applicable ''No License Required'' provisions or ''Not on List'' provisions of this subchapter; and

(4) All other terms, provisions, and conditions of the EAR applicable to the export have been met.

(f) *Items that may be listed on the same Shipper's Export Declaration.* (1) *General.* Except as described in paragraph (f)(2) of this section, more than one item may be listed on the same Shipper's Export Declaration provided they are contained in one shipment on board a single carrier and are going from the same exporter to the same consignee. Even if some of the items are being shipped under authority of a license and others under a License Exception or the ''No License Required'' or ''Not On List'' provisions of this subchapter, they may still be shown on one Shipper's Export Declaration. The applicable license number and expiration date, License Exception symbol, the ''No License Required'' symbol (NLR) or the ''Not on List'' symbol (NOL) must be shown under each of the properly aligned line item descriptions (including quantity, if required, Schedule B Number, and value) to which each authorization applies. The following apply for notations made on Shipper's Export Declarations:

(i) Entering the license number and date is a representation to the U.S. government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or ''NLR'' or ''NOL'' is a representation to the U.S. government that the shipment meets one of the applicable provisions of paragraphs (a)(3) through (a)(5) of § 758.1 to this part.

(2) *Exception.* Separate Shipper's Export Declarations must be prepared and presented for each vehicle when more than one vehicle is used to make the shipment. Customs Directors may waive this requirement if a shipment is made under a single bill of lading or other loading document and all the items listed on the Shipper's Export Declaration are cleared simultaneously.

(g) *Schedule B Number and item description.* (1) *Schedule B number.* You must enter the Schedule B number, as shown in the current edition of Schedule B, Statistical Classification of

Domestic and Foreign Commodities Exported from the United States, in the designated column of the Shipper's Export Declaration regardless of whether the shipment is being exported under authority of a license issued by the Bureau of Export Administration, a License Exception described in part 740 of this subchapter, or the ''No License Required'' or ''Not on List'' provisions of this subchapter.

(2) *Item description for exports under a license.* (i) *General.* If your export is being made under the authority of a license issued by the Bureau of Export Administration, you must enter the item description shown on the license on the Shipper's Export Declaration. However, if part of the description on the license is underlined, you need place only the underlined portions on the Shipper's Export Declaration. The item description on the license will be stated in Commerce Control List terms, which may be inadequate to meet Census Bureau requirements. In this event, the item description you place on the Shipper's Export Declaration must give enough additional detail to permit verification of the Schedule B number (e.g., size, material, or degree of fabrication).

(ii) *Distinguishing characteristics or specifications.* If a commodity classification in Schedule B has instructions such as ''specify by name,'' ''state species,'' etc., you must furnish that information in the column of the Shipper's Export Declaration provided for the commodity description. When a single Shipper's Export Declaration covers more than one item classifiable under a single classification carrying the ''specify by name'' or similar requirement, you must enter each item separately in this column. However, if more than five items are involved, all classifiable under one Schedule B number, only the five items of greatest value in the classification need be shown separately. Separate quantities, values, and shipping weights for individual items are not required in either case.

(3) *Item description for License Exception shipments or shipments for which no license is required.* For items that may be exported under the authority of a License Exception, or are exported under the ''No License Required'' or a ''Not on List'' provision of this subchapter, you must enter a description in sufficient detail to permit review by the U.S. government and verification of the Schedule B number entered on the Shipper's Export Declaration.

(h) *License number or other authorization designation.* (1) *Exports under authority of a license issued by the Bureau of Export Administration.* You must show the license number and expiration date, the Export Control Classification Number (ECCN) and the item description, in the designated spaces of a Shipper's Export Declaration covering an export under a license issued by the Bureau of Export Administration (The space for the item description on the SED form may be headed ''commodity description''). If you have also included other items on the Shipper's Export Declaration that may be exported under a License Exception, or under a ''No License Required'' or ''Not on List'' provision of this subchapter, you must show the license number and expiration date immediately below the specific description (quantity, Schedule B, value) of the item(s) to which the license applies.

(2) *Exports not needing a license.* In addition to the item description, the License Exception symbol, ''No License Required'' symbol (NLR) or ''Not on List'' symbol (NOL) must be shown in the appropriate column of each Shipper's Export Declaration covering a shipment under authority of a License Exception (see part 740 of this subchapter), or a ''No License Required'' or ''Not on List'' provision of this subchapter. If several items, authorized by different License Exceptions, ''No License Required'' provisions or ''Not on List'' provisions are listed on one declaration, the appropriate symbol for each item must be placed under the properly aligned description of that item. If the item will be exported under the provisions of License Exceptions GBS, CIV, LVS or CSR, the ECCN must also be shown in the designated space. The following apply for notations made on Shipper's Export Declarations:

(i) Entering the license number and date is a representation to the U.S. government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or ''NLR'' or ''NOL'' is a representation to the U.S. government that the shipment meets one of the applicable provisions of paragraphs (a)(3) through (a)(5) of § 758.1 to this part.

(i) *Optional Ports of Unlading.* (1) *Applicability.* If, prior to the departure of the exporting carrier, the exporter does not know at what port the shipment will be unloaded, the exporter may designate optional ports of unlading on the SED and bill of lading or air waybill in accordance with the provisions of this paragraph. There are restrictions on the countries in which these optional ports may be located. The restrictions depend on whether the export is authorized under the ''No license Required'' or ''Not on List'' provisions of this subchapter, the License Exceptions described in part 740 of this subchapter, or a license (See paragraph (j)(3) of this section).

(2) *Exemptions.* You may never designate an optional port of unlading for a shipment destined directly or indirectly to Country Group D:1 (except for the People's Republic of China), Libya, Cuba, or North Korea.

(3) *Shipments for which no license is required or which are authorized by a License Exception.* (i) For exports under the authority of the ''No License Required'' or ''Not on List'' provisions of this subchapter, if the exporter does not know which of several countries in Country Group B or the People's Republic of China is the country of ultimate destination, the exporter may name optional ports of unlading in one or more of these countries.

(ii) When an export under any License Exception is shipped in transit through a country other than the country of ultimate destination, the exporter may designate optional ports of unlading in one or more countries, together with the name and address of the intermediate consignee in each country designated.

(4) *Restrictions on optional ports of unlading.* The optional ports of unlading, which the exporter designates on the Shipper's Export Declaration pursuant to paragraph (i)(3)(i) of this section, must be in a country to which the item being unloaded may be exported directly from the United States under the same or another applicable ''No License Required'' provision, ''Not on List'' provision or License Exception to these Export Administration Regulations.

(5) *Shipments under a license issued by the Bureau of Export Administration.* For exports under a license, optional ports of unlading are restricted to the country of ultimate destination, unless either the transaction complies with the provisions of § 750.7 of this subchapter dealing with continuity of shipments, or the license designates intermediate consignees in other countries. In the latter case, the optional ports of unlading must be designated as optional intransit points on the Shipper's Export Declaration, or if there is no Shipper's Export Declaration, on the Shipper's Letter of Instructions, or, if there is neither, the optional port of unlading must appear on another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, and on the bill of lading or air waybill.

(6) *Correcting the Shipper's Export Declaration.* As soon as the exporter, or the exporter's forwarding agent or carrier determines at which port the shipment is to be unloaded (whether in the country of ultimate destination or in a country of transit), that person must correct the SED to show the specific port of unloading and the name and address of the intermediate consignee to whom delivery is to be made. An intermediate consignee must be shown if the port of unloading is located in a country other than the country of destination. If the export is unloaded at more than one port, the quantity and value unloaded at each port and the name and address of each intermediate consignee must be given. The procedures for correcting and filing SEDs are set forth in § 758.3(n) of this part.

(j) *Signature on Shipper's Export Declaration.* The exporter or the exporter's authorized forwarding agent, or an authorized employee of either, may sign the Shipper's Export Declaration. In general, the requisite authority rests with employees who, by their official titles, are apparently vested with power to deal with exports, such as export managers or such corporate officers as the president, vice president, treasurer, and secretary of a corporation, any partner of a partnership, and any responsible head of any other form of private or quasi-governmental organization, and assistant officers. The signature of such person, whether that of the exporter or authorized agent or employee, constitutes a representation by the exporter that all statements and information in the Shipper's Export Declaration are true and correct. In addition, if the signature is that of the forwarding agent, or the forwarding agent's duly authorized officer or employee, such signature constitutes a like representation by the forwarding agent.

(k) *Attachment to Shipper's Export Declaration.* If you need additional space for any information on the SED, you may use additional copies of the Shipper's Export Declaration or copies of the continuation sheet. In such cases, only one Shipper's Export Declaration need be signed. You must number the additional sheets in sequence and securely attach them to the executed Shipper's Export Declaration. You must insert the following statements between the column provided for marks and numbers of the shipment and the column provided for its value:

This Shipper's Export Declaration consists of this sheet and _____ continuation sheets.

No portion of any form attached as a continuation sheet may be torn off or removed.

(l) *Special requirements for additional information and documents.* (1) A license may bear on its face a requirement to submit a Shipper's Export Declaration or other documents (or information) to the Office of Export Enforcement in addition to that furnished when the application was filed. The exporter and the person submitting the documents represent that the documents are complete, truthful and accurate. The Export Administration Regulations prohibit the making of false representations to the U.S. government in any export control matter (see § 764.2(g) of this subchapter). The licensee must furnish the documents to:

Office of Export Enforcement, Room H–4520, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

(2) When required, the licensee must:

(i) Prepare one copy of the SED in addition to the number of copies otherwise required;

(ii) Enter the additional information called for by the license in the space between the column provided for marks and numbers of the shipment and the column provided for its value on all copies of the SED; and

(iii) Unless otherwise specified on the license, attach the required documents (either original or certified copy) to the extra copy of the Shipper's Export Declaration.

(m) *Shipper's Export Declaration for shipments moving in-transit.* (1) *Applicability.* Use the Shipper's Export Declaration for In-transit Goods, Commerce Form 7513,[2] for the following types of transactions:

(i) Items departing the United States by vessel, which transited through, or transshipped in, ports of the United States, destined from one foreign country or area to another.

(ii) Foreign merchandise exported from a General Order Warehouse and the export of foreign origin merchandise that was rejected after government inspection or examination. Shipments in bond transiting the United States being exported by means of any carrier other than a vessel may be cleared for export without presenting a Form 7513, unless a license is required for the export.

(2) *Exports from Foreign Trade Zones.* You may not use Form 7513 for any exports from Foreign Trade Zones. Such shipments require the filing of the Shipper's Export Declaration (Form 7525–V), unless otherwise exempted, with the applicable zone number reported on the Document.

(3) *Additional information.* The following additional information must be entered on a Shipper's Export Declaration for In-transit Goods:

(i) The name and address of the intermediate consignee in a foreign destination, if any, must be shown below the description of the items.

(ii) Underneath the name and address of the intermediate consignee, one of the following statements, whichever is appropriate, must be entered:

(A) For intransit shipments of foreign-origin merchandise (see part 772 of this subchapter for a definition of ''foreign-origin,''), enter the following statement:

The merchandise described herein is of foreign origin.

(B) For intransit shipments of domestic (U.S.) merchandise, enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States.

(C) For intransit shipments of items of U.S. origin eligible for License Exception TUS (See § 740.9 of this subchapter), enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States, but has been so altered by further processing, manufacture, or assembly in a foreign country that it has either been substantially enhanced in value, or has lost its original identity with respect to form.

(iii) The items must be described in terms of Schedule B, including the appropriate Schedule B number.

(4) See section 30.8 of the Foreign Trade Statistics Regulations (15 CRF 30.8) for additional requirements concerning the information that must be placed on a Shipper's Export Declaration for In-transit Goods.

(n) *Correction, change, alteration, or amendment of Shipper's Export Declaration.* (1) *Methods of changing declarations.* The exporter or the exporter's agent must report corrections, cancellations, additions or amendments to information reported on SEDs to the Customs Director at the port of exportation (or, in the case of mail shipments, to the Postmaster at the post office where the shipment was mailed) as soon as the need for such changes is determined. See the Foreign Trade Statistics Regulations (15 CFR part 30) for additional information about how to correct SEDs and file the corrections. If

[2] Form 7513 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, the local customs offices, or may be privately printed.

you are required by paragraph (l) of this section to file a copy of the original SED with the Office of Export Enforcement (OEE), a copy of the changed SED should be sent to OEE at the address shown in paragraph (l) of this section with the words ''Correction Copy'' conspicuously shown in the upper right portion of the form.

(2) *Responsibility.* Nothing herein relieves you or any person or firm making changes on the Shipper's Export Declaration from responsibility for any such changes. Acceptance of a changed Shipper's Export Declaration by the Customs office does not imply approval of any act involved in the shipment or acceptance of the truth or accuracy of the information provided.

(o) *Summary monthly reports in lieu of individual Shipper's Export Declarations.* (1) *Scope.* This paragraph contains only basic information about the monthly filing procedures for the SED. Details of the procedure are set forth in § 30.39 of the Foreign Trade Statistics Regulations (FTSR) of the Bureau of the Census (15 CFR § 30.39). Exporters interested in the procedure should consult § 30.39 of the FTSR to ascertain qualifications, how to apply for the privilege of participating, how to file electronically after approval is given, and other pertinent facts.

(2) *Applicability.* Approved parties may file monthly SEDs with the Bureau of the Census for export to Canada and destinations in Country Group B (see Supplement No. 1 to part 740 of this subchapter).

(3) *How to request monthly reporting privileges.* (i) *Addresses.* (A) A request for the privilege of participating in monthly reporting procedures should be forwarded to: Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233.

(B) A copy of all requests must be sent to: Office of Export Enforcement, Room H–4616, U.S. Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230.

(ii) *Certification requirements.* The request must include the following certification by the applicant:

I (We) certify that I (we) have established adequate internal procedures and safeguards to assure compliance with the requirements set forth in the U.S. Department of Commerce Export Administration Regulations and Foreign Trade Statistics Regulations. Among other things, these procedures and safeguards assure:

(1) A proper determination as to whether a license is required for a particular export;

(2) Actual receipt of the export license, if required, before the shipment is exported;

(3) Compliance with all the terms of the license or License Exception, as applicable;

(4) Return of licenses to the Bureau of Export Administration in accordance with § 750.7 of the Export Administration Regulations, if requested;

(5) Compliance with the destination control statement provisions of §§ 758.5 and 758.6 of the Export Administration Regulations;

(6) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(7) Compliance with the recordkeeping requirements of part 762 of the Export Administration Regulations and, in addition, I (we) agree that my (our) office records will be made available for inspection by the Bureau of the Census, the Bureau of Export Administration or the U.S. Customs Service, upon request, to verify that a given shipment was properly included in a particular monthly report.

(4) *Exporter's agent.* If the exporter intends to authorize a forwarding agent to file electronically on the exporter's behalf, the exporter's request must include the name and address of each such forwarding agent.

(5) *Authorization by Census to use monthly reporting procedure.* Any authorization to file summary monthly reports in lieu of individual SEDs may be granted only by the Bureau of the Census with the concurrence of BXA.

(6) *Export clearance.* (i) *Destination control statement.* In addition to the exporter's responsibility for assuring that the proper destination control statement is placed on the commercial invoice as required by § 758.6 of this part, the exporter or the exporter's forwarding agent is responsible for assuring that the carrier places the proper destination control statement on the related bill of lading or air waybill.

(ii) *Detention and examination.* Shipments being reported under the summary filing procedure described in this paragraph are subject to inspection, examination and detention, as provided in § 758.8 of this part, whenever an official of the Bureau of Export Administration, a customs officer, or a postmaster deems such action necessary to assure compliance with the Export Administration Regulations.

(7) *Revocation of authorization.* An authorization to file summary monthly reports in lieu of individual Shipper's Export Declarations, granted under the provisions of § 30.39 of the Foreign Trade Statistics Regulations (15 CFR § 30.39) and this paragraph, may be revoked, suspended, or revised at any time.

(8) *Effect of other provisions.* Insofar as consistent with the provisions of this paragraph that relate specifically to filing electronically in lieu of individual Shipper's Export Declarations, the other provisions of this part 758 apply to exports reported under this procedure.

§ 758.4 Conformity of documents for shipments under export licenses.

(a) *Applicability.* The rules of conformity set forth in this section apply to shipping documents used in connection with any shipment under the authority of a license issued by BXA except ''master'' air waybills issued by consolidators. These rules apply to any individual air waybill issued by a consolidator (indirect carrier) for an export included in a consolidated shipment and to any air waybill issued by anyone in connection with an export not included in a consolidated shipment.

(b) *Compliance.* You may not issue, prepare, or procure a bill of lading that is contrary to the provisions of this section. Officials of the Bureau of Export Administration and the U.S. Customs Service are authorized to require any document or to use any other appropriate methods to ensure compliance with the rules of conformity in this section.

(c) *Rules of conformity.* (1) *General.* The following documents must be consistent with each other:

(i) The license issued by BXA;

(ii) One of the following applicable documents:

(A) The SED;

(B) If there is no SED, the Shipper's Letter of Instructions; or

(C) If there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, and the outbound bill of lading (including a railroad through bill of lading) covering a particular export shipment must be consistent with one another.

(2) *Signs of inconsistent documents.* The bill of lading, whether in negotiable or nonnegotiable form, is not consistent with those other documents if:

(i) It does not provide for delivery of the shipment (cargo) at a port located in the country of either the ultimate or intermediate consignee named in the documents described in paragraph (c)(1)(ii) of this section;

(ii) It contains any indication that the shipment is intransit to a country of ultimate destination different from that named in the appropriate one of the documents described in paragraph (c)(1)(ii) of this section, or that the shipment is not for consumption in such country of ultimate destination. For example, it would be inconsistent to consign a shipment to the ultimate destination with a qualifying phrase indicating the shipment is ''in transit''

at that destination, or to consign the shipment to a free zone or free port;

(iii) It names as shipper any person other than the licensee (the person to whom a license is issued) or the licensee's duly authorized forwarding agent. Where shipments from more than one licensee are consolidated on a single bill of lading, the shipper named on the bill of lading must also appear as the authorized forwarding agent for each exporter on each document described in paragraph (c)(1)(ii) of this section.

(iv) The name and address of the ultimate consignee are not shown either in the space provided for ''consignee'' or in the body of the bill of lading under the caption ''ultimate consignee and notify party'' or, in the case of the air waybill, under the caption ''also notify.'' However, where shipments to more than one ultimate consignee are consolidated on one bill of lading and not all are shown in the body of the bill of lading, the name of the intermediate consignee (customs broker or consolidator's agent in the foreign country) who will receive and distribute the items to the ultimate consignees must appear on the bill of lading, the export license(s), and documents listed in paragraph (c)(1)(ii) of this section.

(2) *Additional rules for negotiable bills of lading.* A negotiable bill of lading (an ''order'' bill of lading) is deemed consistent with the appropriate one of the documents described in paragraph (c)(1)(ii) of this section only if the consignee or order party named on the bill of lading is also named in the Shipper's Export Declaration, the Shipper's Letter of Instructions or the other document.

(i) Sometimes ''order'' bills of lading consign the items they cover to the order of the shipper, to the order of an intermediate consignee such as a bank, foreign freight forwarder, or other intermediary, or to the order of a purchaser who is not the same person as the ultimate consignee. An ''order'' bill of lading issued in any of these forms constitutes a representation by the shipper that:

(A) The items covered by the appropriate one of the documents described in paragraph (c)(1)(ii) of this section and bill of lading are ultimately destined to the ultimate consignee stated on the license;

(B) The ''order'' bill of lading has not been used for the purpose of evading the terms and conditions of the license; and

(C) Pursuant to the contract of carriage, the items will be delivered at a port located in the country of the ultimate consignee or of the intermediate consignee named on the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

(3) *Item description.* On the bill of lading the items may be described in terms of the freight tariff classification or other type of classification, but may not be inconsistent with the description shown on the appropriate one of the documents described in paragraph (c)(1)(ii). These documents must include the same item description as shown on the related license, and, in addition, it must include more detailed information where required by the Bureau of the Census.

(4) *Carrier's manifest.* If the carrier's outward foreign manifest filed with the U.S. customs office contains the names of shippers or consignees, these names must not be inconsistent with the names shown on the bill of lading and the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

§ 758.5 General destination control requirements.

(a) *Scope.* This section sets forth some actions the parties to a transaction authorized by a license issued by BXA are prohibited from taking. The purpose of these prohibitions is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the goods are unloaded in a country other than that of the ultimate consignee or intermediate consignee as stated on the export license.

(b) *Destination on bill of lading or air waybill.* (1) *Requirements to prevent diversions.* (i) *Statements on bill of lading or air waybill.* (A) A carrier (or any other person on behalf of any carrier) may not issue a bill of lading or air waybill providing for delivery of cargo at any foreign port located outside the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part.

(B) *Optional ports on bill of lading or air waybill.* No carrier may issue a bill of lading or air waybill providing for delivery of cargo at optional ports to the ultimate consignee named on one of the appropriate documents described in § 758.4(c)(1)(i) and (ii) of this part where one of such optional ports is not in the country of ultimate destination named on the license or Shipper's Export Declaration, or if there is no Shipper's Export Declaration, the Shipper's Letter of Instructions, or if there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, without prior written authorization from the Bureau of Export Administration. However, where the appropriate document described in § 758.4(c)(1)(i) and (ii) of this part provide for delivery of cargo to optional intermediate consignees located in ports in different countries, the carrier may issue a bill of lading or air waybill providing for delivery at such optional ports.

(2) *Delivery of cargo.* No carrier may deliver cargo to any country other than the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) at the request or option of the shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person having custody or control of the shipment, without prior written authorization from BXA to the carrier or its agent.

(c) *Duties when items are unloaded in a unauthorized country.* If the items are unloaded in a country other than that of the intermediate or ultimate consignee as stated on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, the procedures described in this paragraph must be followed.

(1) *Reasons beyond carrier's control.* Nothing contained in this subchapter shall be deemed to prohibit a carrier from unloading cargo at a port outside the country of intermediate or ultimate destination shown on the appropriate one of the documents described in § 758.4(c)(1)(ii), where for reasons beyond the control of the carrier (as set forth in the standard provisions of the carrier's bill of lading or air waybill, such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances, or insurrections), it is not feasible to deliver the cargo at the licensed port of destination.

(2) *Required actions for unscheduled unloading.* (i) If the item is unloaded in a country to which that item may be exported without a license issued by the Bureau of Export Administration, no one is required to notify BXA of the unloading. The exporter may dispose of the items in that country without approval of the BXA. When making such a disposition you must still comply with any conditions or requirements of the License Exception or other provisions of the EAR that would authorize the export of the item being unloaded to the country in which you are disposing of it, and any regulations of other government agencies that apply to the transaction. This paragraph does not authorize anyone to take any action with knowledge or reason to know that a violation of the Export Administration Act, the EAR, or any order, license or

authorization issued thereunder, has occurred, is about to occur or is intended to occur, or to deliver to a denied party or to take any other action prohibited by the EAR.

(ii) If a license issued by the Bureau of Export Administration would be required to export the item to the country in which it is unloaded:

(A) No person may take any steps to effect delivery or entry of the items into the commerce of the country where unloaded without prior approval of the Bureau of Export Administration;

(B) The carrier must take steps to assure that the items are placed in custody under bond or other guaranty not to enter the commerce of such country or any country other than the countries of the ultimate and intermediate consignees shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, without prior approval of BXA;

(iii) The carrier, the carrier's agent located in the United States, and the exporter each have specific responsibilities to notify the Bureau of Export Administration regarding any unscheduled unloading. The specific responsibilities of each party are as follows:

(A) The carrier must, within 10 days after date of unloading, report the facts to the nearest American Consulate and to the agent of the carrier located in the United States. Within 10 days after receipt of such report, the agent must send a copy of the report to BXA. The report must include:

(*1*) A copy of the manifest of such diverted cargo;

(*2*) A statement of the place of unloading; and;

(*3*) The name and address of the person in whose custody the items were delivered.

(B) BXA will inform the exporter of the unloading. Within 10 days following receipt of this notice, the exporter must inform the BXA of the proposed disposition of the items. The exporter may not dispose of the items without approval of the BXA.

§ 758.6 Destination control statements.

(a) *Requirement for destination control statement.* One of the destination control statements shown in paragraph (b) of this section must be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering any export made under a license, or that is authorized by the following License Exceptions: PTS, GBS, CIV, CSR, LVS, NSG, SLV, TUS, or TMP. In addition, if an item would require a license to be exported to any destination in County Group D:1, and the total value of all such items in a particular shipment exceeds $250, a destination control statement found in paragraph (b) of this section must be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering the export of that item even if the export would be authorized by the ''no license required'' provision described in § 758.1(a)(2)(i) of this part. An exporter or the exporter's agent may enter a destination control statement on the shipping documents for exports for which no destination control statement is required.

(b) *Text of destination control statement.* (1) For exports authorized by a license or License Exceptions CSR or NSG, either statement 1 or 2 may be used.

(i) *Statement 1.* These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations for ultimate destination [*name of country*]. Diversion contrary to U.S. law is prohibited.

(ii) *Statement 2.* These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations for ultimate destination [*name of country*] and may be resold or redistributed in [*names of countries*]. Diversion contrary to U.S. law is prohibited.

(2) *Completion of country information in Statements 1 and 2.* (i) *Shipments authorized by a license.* If the shipment is authorized by a license, enter the name of the country to which the exports are licensed in the blank for ''name of country'' in either statement one or two. The country must be the same as the country of ultimate destination stated on the license and Shipper's Export Declaration or other document described in § 758.4(c)(1)(ii) of this part. If the license authorizes resale or redistribution in other countries you may use the second statement, in which case, in the space for ''names of countries'' enter either the names of the countries to which the license authorizes resale or redistribution or you may enter the phrase ''all countries except'' followed by a list of the countries to which the license does not authorize resale or redistribution.

(ii) *Shipments authorized by License Exceptions CSR or NSG.* For shipments authorized by License Exceptions CSR or NSG, enter the name of the country to which you are exporting the item in the blank for ''name of country''. This country must the same as the country of ultimate destination stated on the appropriate document described in § 758.4(c)(1)(ii) of this part. If you use Statement 2, enter either the names of the countries to which direct exports from the United States would be authorized under the License Exception you are using or the phrase ''all countries except'' followed by a list of the countries to which exports would not be permitted under the License Exception you are using.

(3) *Other exports.* If the item would require a license to be exported to any destination in County Group D:1, but does not require a license to be exported to the country to which it is destined and the export would not be authorized under License Exceptions CSR or NSG and the total value of all such items in a particular shipment exceeds $250 or if the export is authorized by License Exception GBS or LVS, you may use the following statement 3:

Statement 3: United States law prohibits disposition of these items in Cuba, Iraq, Libya, North Korea and other countries as stated in Country Group D, Number 1 of the Export Administration Regulations, unless otherwise authorized by the United States. Diversion to countries, persons or uses contrary to U.S. law is prohibited.

(4) *Shipments License Exceptions PTS, CIV, TUS or TMP.* If the export is authorized by License Exceptions PTS, CIV, TUS, or TMP (see part 740 of this subchapter for additional information), you may use the following statement:

Statement 4. United States law prohibits disposition of these items in Cuba, Iraq, Libya, or North Korea. Diversion to countries, persons or uses contrary to U.S. law is prohibited.

(5)(i) *Special statement for approved consignees under Special Comprehensive Licenses.* Approved consignees under Special Comprehensive Licenses may comply with the requirements of § 752.6(d) of this subchapter by using the following statement:

These items were authorized for export from the United States under a Special Comprehensive License procedure on the condition that they may not be reexported without prior approval from United States authorities.

(ii) The approved consignee may use more specific wording referring to the need for BXA approval. The notice may be translated into an appropriate language.

(c) *Responsibility for assuring that the destination control statement is used. (1) Exporters.* The exporter is responsible for assuring entry of the destination control statement on the commercial invoice, regardless of whether the exporter actually prepares this document. The exporter has this

responsibility even if the invoice is prepared by an order party or the exporter acts through an agent.

(2) *Agents of exporters (forwarding agents).* Agents of exporters are also responsible for assuring entry of the destination control statement on the commercial invoice.

(i) If the agent receives from the exporter a copy of a commercial invoice without the correct destination control statement, the agent must:

(A) Notify the exporter in writing;

(B) Request written assurance from the exporter that:

(*1*) The destination control statement has been properly entered on all other copies of the commercial invoice; and

(*2*) Any person who received an invoice without the statement has been informed in writing of the restrictions set forth in the statement;

(ii) Either:

(A) Enter the appropriate statement on the agent's copy of the invoice; or

(B) Return it to the exporter for completion; and

(iii) Keep and make available for inspection, in accordance with part 762 of this subchapter, a copy of his notification to the exporter and the original of the exporter's assurance required by paragraph (c)(2)(i) of this section. (For further recordkeeping requirements, see part 762 of this subchapter)

(iv) If the agent prepares the invoice, the agent's responsibilities are governed by paragraph (c)(3) of this section.

(3) *Forwarders, carriers and other parties who prepare invoices.* If a forwarder, a carrier acting as a forwarder, or any other party prepares, presents, and/or executes the invoice, the forwarder, carrier, or other party is also responsible for assuring that an appropriate statement is entered on the invoice.

(4) *Carriers and other parties who issue bills of lading or air waybills.* The carrier, or any other party that issues the bill of lading or air waybill, is responsible for assuring that the destination control statement appearing on the corresponding invoice also appears on the bill of lading or air waybill.

(d) *Responsibility for distributing copies of the invoice.* The exporter or other person issuing any invoice containing a destination control statement must promptly send copies to:

(1) The ultimate consignee and the purchaser named in the declaration;

(2) The intermediate consignee; and

(3) Any other persons named in the invoice who are located in a foreign country. Nothing contained in this part shall be construed to limit the persons or classes of persons to whom such invoices, bills of lading or air waybills are usually and customarily sent in the course of export trade. The shipper or other person issuing the commercial invoice may comply with the requirements of this section even if the copy of the invoice sent to any of the persons listed in this section omits all reference to price or sales commission provided such invoice otherwise adequately identifies the shipment. As an alternative in lieu of a copy of the commercial invoice, such person may send a copy of the bill of lading or air waybill containing the destination control statement.

(e) *Requirements for bill of lading or air waybill.* (1) *General.* No carrier may issue (and no one may prepare or procure) a bill of lading or air waybill covering an export for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of such bill of lading or air waybill (including all non-negotiable and office copies) contain the destination control statement in clearly legible form.

(2) *Exception for ''master'' air waybills.* In the case of shipments by air (other than airmail or air parcel post), the requirement of paragraph (c)(2)(i) of this section applies to any air waybill, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, the provisions of paragraph (e) of this section do not apply to a ''master'' air waybill issued by a carrier to cover a consolidated shipment.

(f) *Requirements for the commercial invoice.* No licensee, shipper, consignor, exporter, agent, or any other person may prepare or issue a commercial invoice for a shipment for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of the invoice(s) contain the statement in clearly legible form.

(g) *Carrier's responsibility before releasing cargo.* No carrier may release custody of a shipment covered by the provisions of this section to any party without surrender by that party, to the carrier, of a copy of the bill of lading or air waybill bearing on its face the applicable destination control statement, unless either:

(1) Simultaneously with the release, the carrier delivers to such party a written copy of the destination control statement, contained in the carrier's copy of the bill of lading or air waybill for the shipment. The written copy must identify the shipment by bill of lading or air waybill number, name of carrier, voyage or flight number, date, and port of arrival. The carrier must also secure either a signed receipted copy of the written statement or other equivalent written evidence that the statement has been delivered by the carrier; or,

(2) The regulations of the importing country require the carrier to deliver the items directly into the physical possession and control of customs or other government agency for delivery to the consignee or the consignee's agent. In this case, the carrier need not give to, or receive from, the customs or other government agency, or the consignee or the consignee's agent, any document bearing the destination control statement.

§ 758.7 Authority of BXA, the Office of Export Enforcement, Customs offices and Postmasters in clearing shipments.

(a) *Actions to assure compliance with the regulations.* Officials of BXA, the Office of Export Enforcement, the U.S. Customs Service and postmasters, including post office officials, are authorized and directed to take appropriate action to assure compliance with the EAR. This includes assuring that:

(1) Exports without a license issued by the Bureau of Export Administration are either outside the scope of the license requirements of the Export Administration Regulations or authorized by a License Exception; and

(2) Exports purporting to be authorized by licenses issued by the Bureau of Export Administration are, in fact, so authorized and the transaction complies with the terms of the license.

(b) *Types of actions.* The officials designated in paragraph (a) of this section are authorized to take the following types of actions:

(1) *Inspection of items.* (i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the Shipper's Export Declaration, or if there is no Shipper's Export Declaration, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to all exports within the scope of the Export Administration Act or Export Administration Regulations whether or not such exports require a license issued by BXA. The inspection may include, but is not limited to, item identification, technical appraisal (analysis), or both.

(ii) *Place of inspection.* Inspection shall be made at the place of lading or where officials authorized to make those inspections are stationed for that purpose.

(iii) *Technical identification.* Where, in the judgment of the official making the inspection, the item cannot be properly identified, a sample may be taken for more detailed examination or for laboratory analysis.

(A) *Obtaining samples.* The sample will be obtained by the official making the inspection in accordance with the provisions for sampling imported merchandise. The size of the sample will be the minimum representative amount necessary for identification or analysis. This will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(B) *Notification to exporter and consignee.* When a sample is taken, the exporter (or the exporter's agent) and the ultimate consignee will be notified by letter from one of the officials designated in paragraph (a) of this section, showing the port of export, date of sampling, export license number (if any) or other authorization, invoice number, quantity of sample taken, description of item, marks and packing case numbers, and manufacturer's number for the item. The original letter will be sent to the exporter or the exporter's agent, the duplicate will be placed in the container that had been opened, and the triplicate will be retained by the inspecting office.

(C) *Disposal of samples.* Samples will be disposed of in accordance with the U.S. Customs Service procedure for imported commodities.

(2) *Inspection of documents.* (i) *General.* Officials designated in paragraph (a) of this section are authorized to require exporters or their agents, and owners and operators of exporting carriers or their agents, to produce for inspection or copying: invoices, orders, letters of credit, inspection reports, packing lists, shipping documents and instructions, correspondence, and any other relevant documents, as well as furnish other information bearing upon a particular shipment being exported or intended to be exported.

(ii) *Cartridge and shell case scrap.* When cartridge or shell cases are being exported as scrap (whether or not they have been heated, flame-treated, mangled, crushed, or cut) from the United States, the U.S. Customs Service is authorized to require the exporter to furnish information bearing on the identity and relationships of all parties to the transaction and produce a copy of the bid offer by the armed services in order to assure that the terms of the Export Administration Regulations are being met and that the material being shipped is scrap.

(3) *Questioning of individuals.* Officials designated in paragraph (a) of this section are authorized to question the owner or operator of an exporting carrier and the carrier's agent(s), as well as the exporter and the exporter's agent(s), concerning a particular shipment exported or intended to be exported.

(4) *Prohibiting lading.* Officials designated in paragraph (a) of this section are authorized to prevent the lading of items on an exporting carrier whenever those officials have reasonable cause to believe that the export or removal from the United States is contrary to the Export Administration Regulations.

(5) *Inspection of exporting carrier.* The U.S. Customs Service is authorized to inspect and search any exporting carrier at any time to determine whether items data are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations. Officials of the Office of Export Enforcement may conduct such inspections with the concurrence of the U.S. Customs Service.

(6) *Seizure and detention.* Customs officers are authorized, under Title 22 of the United States Code, section 401, et seq., to seize and detain any items whenever an attempt is made to export them in violation of the Export Administration Regulations, or whenever they know or has probable cause to believe that items are intended to be, are being, or have been exported in violation of the EAR. Seized items are subject to forfeiture. In addition to the authority of Customs officers to seize and detain items, both customs officials and officials of the Office of Export Enforcement are authorized to detain any shipment held for review of the Shipper's Export Declaration, or if there is no Shipper's Export Declaration, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

(7) *Preventing departure of carrier.* The U.S. Customs Service is authorized under Title 22 of the U.S. Code, section 401, et seq., to seize and detain, either before or after clearance, any vessel or vehicle or air carrier that has been or is being used in exporting or attempting to export item intended to be, being, or having been exported in violation of the EAR.

(8) *Ordering the unloading.* The U.S. Customs Service is authorized to unload, or to order the unloading of, items from any exporting carrier, whenever the U.S. Customs Service has reasonable cause to believe such items are intended to be, or are being, exported or removed from the United States contrary to the EAR.

(9) *Ordering the return of items.* If, after notice that an inspection of a shipment is to be made, a carrier departs without affording the U.S. Customs Service, Office of Export Enforcement, or BXA personnel an adequate opportunity to examine the shipment, the owner or operator of the exporting carrier and the exporting carrier's agent(s) may be ordered to return items exported on such exporting carrier and make them available for inspection.

(10) *Designating time and place for clearance.* The U.S. Customs Service is authorized to designate times and places at which U.S. exports may move by land transportation to countries contiguous to the United States.

§ 758.8 Return or unloading of cargo at direction of U.S. Department of Commerce or Customs Service.

(a) *Exporting carrier.* As used in this section, the term ''exporting carrier'' includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in charge of the vessel, aircraft, or other kind of carrier, whether such person is located in the United States or in a foreign country.

(b) *Ordering return or unloading of shipment.* Where there are reasonable grounds to believe that a violation of the Export Administration Regulations has occurred, or will occur, with respect to a particular export from the United States, the BXA, the Office of Export Enforcement, or the U.S. Customs Service may order any person in possession or control of such shipment, including the exporting carrier, to return or unload the shipment. Such person must, as ordered, either:

(1) Return the shipment to the United States or cause it to be returned or;

(2) Unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of the BXA. For the purpose of this section, the furnishing of a copy of the order to any person included within the definition of exporting carrier will be sufficient notice of the order to the exporting carrier.

(c) *Requirements regarding shipment to be unloaded.* The provisions of § 758.5(b) of this part, relating to reporting, notification to BXA, and the prohibition against unauthorized delivery or entry of the item data into a foreign country, shall apply also when

items are unloaded at a port of call, as provided in paragraph (b)(2) of this section.

(d) *Notification.* Upon discovery by any person included within the term ''exporting carrier,'' as defined in paragraph (a) of this section, that a violation of the EAR has occurred or will occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person must immediately notify both:

(1) The Office of Export Enforcement at the following address: Room H–4520, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230, Telephone: (202) 482–1208, Facsimile: (202) 482–0964; and

(2) The person in actual possession or control of the shipment.

§ 758.9 Other applicable laws and regulations.

The provisions of this part 758 apply only to exports regulated by the Bureau of Export Administration, U.S. Department of Commerce. Nothing contained in this part 758 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing Shipper's Export Declarations and manifests, or any applicable rules and regulations of the U.S. Customs Service.

Supplement No. 2 to Part 778—[Redesignated as Supplement No. 2 to Part 742]

2. Supplement No. 2 to part 778 is redesignated as Supplement No. 2 to part 742.

Part 769—[Redesignated as Part 760]

3. Part 769 is redesignated as part 760, and references to ''769'' are revised to read ''760'' wherever they appear.

4. Parts 762, 764, and 766 are added and parts 768, 770, and 772 are revised to read as follows:

PART 762—RECORDKEEPING

Sec.

Authority: 18 U.S.C. 2510 *et seq.;* 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.;* 46 U.S.C. 466(c); E.O. 12924.

§ 762.1 Scope.

(a) *Transactions subject to this part.* The recordkeeping provisions of this part apply to the following transactions:

(1) Transactions involving restrictive trade practices or boycotts described in part 760 of this subchapter;

(2) Exports of commodities, software, or technology from the United States and any known reexports, transshipment, or diversions of items exported from the United States;

(3) Exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein, or that item involved is to be reexported, transshipped, or diverted from Canada to another foreign country; or

(4) Any other transactions subject to the Export Administration Regulations. This part also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction that a reasonably prudent exporter would believe likely lead to a violation of the Export Administration Act, the Export Administration Regulations or any order, license or authorization issued thereunder.

(b) *Persons subject to this part.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and maintain records under any provision of the Export Administration Regulations, shall keep and maintain all records described in § 762.2 of this part, that are made or obtained by that person, and shall produce them in a manner provided by § 762.6 of this part.

§ 762.2 Records to be retained.

(a) *Records required to be retained.* The records required to be retained under this part 762 include the following:

(1) Export control documents, as defined in part 772 of this subchapter;

(2) Memoranda;

(3) Notes;

(4) Correspondence;

(5) Contracts;

(6) Invitations to bid;

(7) Books of account;

(8) Financial records;

(9) Restrictive trade practice or boycott documents and reports, and

(10) Other records pertaining to the types of transactions described in § 762.1(a) of this part, or that are made or obtained by a person described in § 762.1(b) of this part.

(b) *Additional record retention requirements.* In addition to the records required to be retained by paragraph (a) of this section, other sections of the Export Administration Regulations require the retention of records including, but not limited to part 734 and § 736.14, § 740.1, § 740.20, Supplement No. 4 to part 742, §§ 746.17, 748.6, 748.7, 748.10, 748.11, 748.13, 748.14, 750.7, 750.8, 750.9, 750.10, 752.5, 752.7, 752.10, 752.11, 752.12, 752.13, 752.14, 752.15, 752.16, 754.4, 758.3, 758.6, 760.6, 762.2, 764.2, 764.5, and 766.10.

§ 762.3 Records exempt from recordkeeping requirements.

(a) The following types of records have been determined to be exempt from the recordkeeping requirement procedures:

(1) Export information page;

(2) Special export file list;

(3) Vessel log from freight forwarder;

(4) Inspection certificate;

(5) Warranty certificate;

(6) Guarantee certificate;

(7) Parking material certificate;

(8) Goods quality certificate;

(9) Notification to customer of advance meeting;

(10) Letter of indemnity;

(11) Financial release form;

(12) Financial hold form;

(13) Export parts shipping problem form;

(14) Draft number log;

(15) Expense invoice mailing log;

(16) Financial status report;

(17) Bank release of guarantees;

(18) Cash sheet;

(19) Commission payment back-up;

(20) Commissions payable worksheet;

(21) Commissions payable control;

(22) Check request forms;

(23) Accounts receivable correction form;

(24) Check request register;

(25) Commission payment printout;

(26) Engineering fees invoice;

(27) Foreign tax receipt;

(28) Individual customer credit status;

(29) Request for export customers code forms;

(30) Acknowledgement for receipt of funds;

(31) Escalation development form;

(32) Summary quote;

(33) Purchase order review form;

(34) Proposal extensions;

(35) Financial proposal to export customers; and

(36) Sales summaries.

(b) Reserved.

§ 762.4 Original records required.

The regulated person must maintain the original records in the form in

which he or she receives or creates them unless he or she meets all of the conditions of § 762.5 of this part relating to reproduction of records.

§ 762.5 Reproduction of original records.

(a) The regulated person may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(b) In order to maintain the records required by § 762.2 of this part, the regulated persons defined in § 762.1 may use any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) The regulated person must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) The regulated person must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) The regulated person must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(9) Upon request by the Office of Export Enforcement, the Office of Antiboycott Compliance, or any other agency of competent jurisdiction, the regulated person must furnish, at the examination site, the records, the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

(c) *Requirements applicable to systems based on the storage of digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. With respect to records of transactions, including those involving restrictive trade practices or boycott requirements or requests. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction; or

(3) A document reference number that was on any original document.

(d) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

§ 762.6 Period of retention.

(a) *Five year retention period.* All records required to be kept by this subchapter must be retained for five years from the latest of the following times:

(1) The export from the United States of the item involved in the transaction to which the records pertain;

(2) Any known reexport, transshipment, or diversion of such item;

(3) Any other termination of the transaction, whether formally in writing or by any other means; or

(4) In the case of records of pertaining to transactions involving restrictive trade practices or boycotts described in part 760 of this subchapter, the date the regulated person receives the boycott related request or requirement.

(b) *Destruction or disposal of records.* If the Bureau of Export Administration or any other government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies even if such records have been retained for a period of time exceeding that required by paragraph (a) of this section.

§ 762.7 Producing and inspecting records.

(a) *Persons located in the United States.* Persons located in the United States may be asked to produce records that are required to be kept by any provision of the Export Administration Regulations, or any license, order, or authorization issued thereunder and to make them available for inspection and copying by any authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or the U.S. Government, without any charge or expense to such agent, official, or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming, the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition a district court to have a subpoena enforced.

(b) Persons located outside of the United States. Persons located outside of the United States that are required to keep records by any provision of the Export Administration Regulations or by any license, order, or authorization issued thereunder shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or a Foreign Service post, or by any accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee.

PART 764—ENFORCEMENT

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 764.1 Introduction.

This part describes conduct which constitutes a violation of the Export Administration Act (EAA) and/or the Export Administration Regulations (EAR), and sets forth the sanctions that may be imposed for such violations. Although the violations and sanctions set forth in this part may be applicable to antiboycott cases, other antiboycott violations are identified in part 760 of this subchapter. This part explains administrative sanctions that may be imposed by Bureau of Export Administration (BXA) and criminal sanctions that may be imposed by a United States court, and also refers to protective administrative measures, as well as to other sanctions which are neither administrative nor criminal. Information is provided on how to report and disclose violations.

§ 764.2 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

(b) *Causing, aiding and abetting a violation.* No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.

(c) *Solicitation and attempt.* No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(d) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(e) *Acting with knowledge of a violation.* No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any items exported or to be exported from the United States, or which is otherwise subject to the EAR, with knowledge or reason to know that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur.

(f) *Possession with intent to export illegally.* No person may possess any items controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA: (1) with intent to export such items in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or (2) with knowledge or reason to know that the items would be so exported.

(g) *Misrepresentation and concealment of facts.*

(1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to BXA, the United States Customs Service, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or any foreign government agency or official:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, or restrictive trade practice or boycott request report, as defined in § 760.6 of this subchapter; or

(iii) For the purpose of or in connection with effecting an export from the United States, the reexport, transshipment, or diversion of any such export, or any other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BXA and any other relevant agency(ies), in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

(h) *Evasion.* No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.

(i) *Failure to comply with reporting, recordkeeping requirements.* No person may fail or refuse to comply with any reporting or recordkeeping (see part 762 of this subchapter) requirements in violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(j) *Misuse of license, export control documents. (1) Unauthorized use and alteration.* Except as specifically authorized in the EAR or in writing by BXA, no licensee or other person may obtain, use, alter, assist in, or permit the use or alteration of any export control document for the purpose of, or in connection with, facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

(2) *Trafficking and advertising export control documents.* Without prior written approval of the BXA, no person may do any of the following with respect to any export or reexport in connection with any export control document:

(i) Effect any transfer of, or other change in the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; permit any person to use an export control document other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(ii) Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(iii) Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited above. Such communication shall be deemed unlawful:

(A) Even though coupled with a condition requiring approval by BXA of a new consignor or consignee or other change in the export license, by way of transfer or otherwise;

(B) Where, in offering or soliciting the sale for export of any items, the communication indicates that the proposed seller of such items holds or will furnish a license or other export control document for the export of such items;

(C) Where, in offering or soliciting the purchase for export of any items, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will

furnish a license or other export control document for the export of those items.

(iv) *Other unlawful practices.* It is unlawful:

(A) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the items described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those items;

(B) For any person to effect the export of the commodities referred to in § 764.2(j)(2) of this part for the benefit of or ''for the account'' of any person other than the licensee, regardless of the device, means, or fiction employed;

(C) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee's principal or agent for the same purpose;

(D) For the named consignee to act ''for the account'' of a new unlicensed consignee; or

(E) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization from BXA.

(k) *Acting contrary to the terms of a denial order.* No person may take any action that is prohibited by the terms or conditions of a denial order.

§ 764.3 Sanctions.

(a) *Administrative.* Violations of the EAA, the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions set forth in this section, and to any other liability, sanction or penalty available under law. Administrative sanctions for violations, which are imposed pursuant to the administrative enforcement procedures set forth in part 766 of this subchapter, are separate and distinct from protective administrative measures taken by BXA, such as temporary denial orders, license suspension and revocation, and suspension of eligibility for license exceptions, all of which are inherent in the exercise of BXA's regulatory and licensing authority, but not all of which are subject to part 766 administrative enforcement procedures.

(1) *Civil penalty.* (i) In addition to, or instead of, any or all of the administrative sanctions described in this section, a civil penalty not to exceed $10,000 for each violation of the EAA, the EAR, or any order, license or authorization thereunder may be imposed, except that a civil penalty not to exceed $100,000 may be imposed for each violation of the EAA, the EAR, or any order, license or authorization thereunder involving national security controls imposed under section 5 of the EAA.

(ii) The payment of any civil penalty imposed may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. Moreover, the payment of any penalty imposed may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(2) *Denial of export privileges.* An order may be issued in accordance with the procedures in part 766 of this subchapter that restricts the ability of the named persons to engage in export-related transactions involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. Such an order denying export privileges may be imposed either as a sanction for a violation specified in this part; as a temporary denial order, an administrative protective measure that may be taken pursuant to § 766.24 of this subchapter; or as an order issued against a person convicted for violating one or more of the statutes listed in section 11(h) of the EAA, an administrative protective measure that may be taken pursuant to § 766.25 of this subchapter. A denial order may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order, may deny or restrict exports and reexports by or to such person of any item subject to the EAR, and may restrict dealings in which that person may benefit from any export or reexport of such items. The standard denial order, used either as a sanction for a violation, as a temporary denial order, or as an order issued pursuant to section 11(h) of the EAA and § 766.25 of this subchapter, is set forth in Supplement No. 1 to this part, and this section is to be construed as authorizing an order of such breadth. A non-standard denial order, narrower in scope, may be issued in a specific case. Authorization for actions prohibited by a denial order may be given by the Office of Exporter Services (OExS), in consultation with the Office of Export Enforcement (OEE), on application filed either by a person named in the denial order or by a person seeking permission to deal with a named person.

(3) *Exclusion from practice.* Any person acting as attorney, accountant, consultant, freight forwarder, or in any other representative capacity with regard to any license application or other matter before BXA may be excluded from any or all such activities before BXA.

(b) *Criminal.* Conduct which constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or which occurs in connection with such a violation, may also be subject to criminal sanctions under one or more laws of the United States. Either administrative sanctions, criminal sanctions, or both, may be imposed for the same conduct.[1]

(1) *General.* Except as provided in paragraph (b)(2) of this section, whoever knowingly violates or conspires to or attempts to violate the EAA, the EAR, or any order or license issued thereunder, shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.[2]

(2) *Willful violations.* (i) Whoever willfully violates or conspires to or attempts to violate any provision of the EAA, the EAR, or any order or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the items involved is, any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined per violation not more than five times the value of the export involved or $1,000,000, whichever is greater; and, in the case of an individual, shall be fined per violation not more than $250,000, or imprisoned not more than 10 years, or both.

(ii) Any person who is issued a license under the EAA or the EAR for the export of any items to a controlled country and who, with knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary

[1] The Federal Sentencing Guidelines found in § 2M5.1 of Appendix 4 to Title 18 of the United States Code apply, to the extent followed by the court, to sentencing for convictions for violating the EAA.

[2] 18 U.S.C. 3571, a broad criminal code provision, establishes a maximum criminal fine for a felony that is the greater of the amount provided by the statute that was violated, or an amount not more than $250,000 for an individual, or an amount not more than $500,000 for an organization.

to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined per violation not more than five times the value of the exports involved or $1,000,000, whichever is greater; and, in the case of an individual, shall be fined per violation not more than $250,000, or imprisoned not more than five years, or both.

(iii) Any person who possesses any item with intent to export such item in violation of an export control imposed under sections 5 or 6 of the EAA, the EAR, or any order or license issued thereunder, or knowing or having reason to believe that the item would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the EAA (or the EAR, or any order or license issued thereunder), be subject to the penalties set forth in paragraph (b)(2) of this section and shall, in the case of a violation of an export control imposed under section 6 of the EAA (or the EAR, or any order or license issued thereunder), be subject to the penalties set forth in paragraph (b)(1) of this section.

(iv) Any person who takes any action with intent to evade the provisions of the EAA, the EAR, or any order or license issued thereunder, shall be subject to the penalties set forth in paragraph (b)(1) of this section, except that in the case of an evasion of an export control imposed under sections 5 or 6 of the EAA (or the EAR, or any order or license issued thereunder), such person shall be subject to the penalties set forth in paragraph (b)(2) of this section.

(3) *Other criminal sanctions.* Conduct which constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or which occurs in connection with such a violation, may also be prosecuted under 18 U.S.C. 371 (conspiracy), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341, 1343, and 1346 (mail and wire fraud), and 18 U.S.C. 1956 and 1957 (money laundering).

(c) *Other sanctions.* In addition to the administrative and criminal sanctions available under the EAA and the EAR, conduct that violates the EAA, the EAR, or any order, license or authorization issued thereunder, as well as conduct specifically identified in the EAA, may be subject to statutory or other sanctions or protective measures. These may include, but are not limited to, the following:

(1) *Statutory sanctions.* Statutorily-mandated sanctions may be imposed on account of specified conduct related to weapons proliferation. Such statutory sanctions do not involve civil or criminal penalties, but rather impose restrictions on imports and procurement under EAA section 11A (multilateral export control violations) and EAA section 11C (chemical and biological weapons proliferation), and restrict the issuance of export licenses under EAA section 11B (missile proliferation violations) and the Iran-Iraq Arms Non-Proliferation Act of 1992. If the conduct for which such statutory sanctions are imposed also constitutes a violation of the EAR, it may be subject to administrative and criminal sanctions set forth in § 764.3(a) and (b) of this part.

(2) *Other actions.* (i) *Seizure and forfeiture.* Items which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such items. Seized items are subject to forfeiture. (50 U.S.C. app. 2411(g); 22 U.S.C. 401).

(ii) *Temporary denial orders.* BXA may obtain a temporary denial order on an ex parte basis when it believes such an order is necessary to prevent the occurrence of an imminent export violation. (15 CFR 766.24; EAA section 13(d)).

(iii) *Denial based on criminal conviction.* BXA may deny the export privileges for a period of up to ten years of any person who has been convicted criminally of violations of certain statutes such as the EAA, the Arms Export Control Act, and the International Emergency Economic Powers Act, Sections 793, 794 or 798 of Title 18 of the United States Code and Section 783 of Title 50 of the United States Code. (EAA section 11(h); 15 CFR 766.25).

(iv) *Cross-debarment.* (A) The Department of State may deny licenses or approvals for defense articles and defense services controlled under the Arms Export Control Act to persons for a variety of reasons, including indictments and/or convictions for specified criminal offenses, including violations of the EAA. This section does not provide an exhaustive list of other acts whose violation may lead to denial of licenses or approvals by the Department of State. (22 CFR 126.7(a)).

(B) The Department of State may deny licenses or approvals for defense articles and defense services controlled under the Arms Export Control Act to persons denied export privileges by other agencies, such as BXA. (22 CFR 127.11(a)).

(C) The Department of Defense, among other agencies, may suspend the right of any person to contract with the United States Government based on export control violations. (48 CFR 9.407–2(b)).

§ 764.4 Reporting of violations.

(a) *Where to report.* If a person, or Federal, state, or local agency, learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, Room H–4520, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, Tel: (202) 482–1208, Facsimile: (202) 482–0964.

or, for violations of part 760 of this subchapter:

Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–6099C, Washington, D.C. 20230, Tel: (202) 482–2381, Facsimile: (202) 482–0913.

(b) *Failure to report violations.* Failure to report potential violations may result in the unwarranted issuance of export licenses or unlicensed exports to the detriment of national security, foreign policy, proliferation or short supply interests of the United States.

(c) *Reporting requirement distinguished.* The reporting provisions set forth in paragraph (a) of this section are not ''reporting requirements'' within the meaning of § 764.2(i) of this part.

§ 764.5 Voluntary self-disclosure.

(a) *General policy.* BXA strongly encourages the disclosure of information to OEE by persons who believe that they may have violated the export control provisions of the EAA, the EAR, or any order, license or authorization issued thereunder. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE.

(b) *Limitations.*

(1) The provisions of this section do not apply to disclosures of violations of either section 8 of the EAA or of part 760 of the EAR.

(2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of this subchapter concerning violations of the export control provisions of the EAA and the EAR.

(3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, 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.

(4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Moreover, voluntary self-disclosure does not prevent transactions from being referred to the Justice Department for criminal prosecution. In such a case, OEE would notify the Justice Department of the voluntary self-disclosure, but the Justice Department is not required to give that fact any weight.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management.

(6) 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 to the Office of Export Enforcement in connection with a voluntary self-disclosure.*

(1) *General.* Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined in this paragraph (c), initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected.

(2) *Initial notification.* (i) The initial notification should be in writing and be sent to one of the addresses set forth in § 764.5(c)(7) of this part. The notification should include the name of the person making the disclosure and a brief description of the suspected violations.

(ii) OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required export license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at one of the locations listed in § 764.5(c)(7) of this part.

(iii) The initial notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by § 764.5(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of § 764.5(b)(3) of this part.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. OEE recommends that the review cover a period of five years prior to the date of the initial notification. If the person making the disclosure undertakes a review of more limited scope than that recommended, he risks failing to discover violations that may later 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 EAR or other provision of law requires disclosure. Upon completion of the review, OEE 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 an unlicensed shipment, or dealing with a party denied U.S. export privileges;

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

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

(iv) Export license numbers;

(v) Commodity classification numbers, product descriptions and quantities, and value in U.S. dollars of the commodities or technical data involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of those documents that explain and support it, including:

(A) Licensing documents such as licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be handled in accordance with the recordkeeping rules set forth in part 762 of this subchapter.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part, relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) *Oral presentations.* OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *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:

Office of Export Enforcement, Director, Intelligence Division, U.S. Department of Commerce, Ben Franklin Station, P.O. Box 70, Washington, D.C. 20044

Office of Export Enforcement, Director, Intelligence Division, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230, Tel: (202) 482–1208, Facsimile: (202) 482–0964

or to any of the following field offices:

Special Agent in Charge, Boston Field Office, Office of Export Enforcement,

New Boston Federal Building, 10 Causeway Street, Room 350, Boston, Massachusetts 02222, Tel: (617) 565–6030

Special Agent in Charge, Chicago Field Office, Office of Export Enforcement, 2400 East Devon, Suite 300, Des Plaines, Illinois 60018, Tel: (312) 353–6640

Special Agent in Charge, Dallas Field Office, Office of Export Enforcement, 525 Griffin Street, Room 622, Dallas, Texas 75202, Tel: (214) 767–9294

Special Agent in Charge, Los Angeles Field Office, Office of Export Enforcement, 2601 Main Street, Suite 310, Irvine, California 92714–6299, Tel: (714) 251–9001

Special Agent in Charge, Miami Field Office, Office of Export Enforcement, 200 East Las Olas Blvd., Suite 1260, Fort Lauderdale, Florida 33301, Tel: (305) 356–7540

Special Agent in Charge, New York Field Office, Office of Export Enforcement, Teleport II, 2 Teleport Drive, Staten Island, New York 10311–1001, Tel: (718) 370–0070

Special Agent in Charge, San Jose Field Office, Office of Export Enforcement, 96 North 3rd Street, Suite 250, San Jose, California 95112–5572, Tel: (408) 291–4204

Special Agent in Charge, Washington, D.C. Field Office, Office of Export Enforcement, 8001 Forbes Place, Room 201, Springfield, Virginia 22151–0838, Tel: (703) 487–4950

(d) *Action by the Office of Export Enforcement.* After OEE has been provided with the required narrative and supporting documentation, it will 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, OEE may take any of the following actions:

(1) Inform the person or firm making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 766.18 of this subchapter and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of this subchapter if a settlement is not reached; and/or

(5) Refer the matter to the United States Department of Justice for criminal prosecution.

(e) *Criteria.* For purposes of determining what administrative action to take and what sanctions, if any, to seek, the fact that a voluntary self-disclosure has been made will be a mitigating factor. OEE will take that factor into account along with other mitigating and aggravating factors when determining what, if any, administrative sanction should be imposed. The factors that OEE will consider are in its sole discretion, but may include:

(1) The extent to which the purpose of the control is undermined by the transaction;

(2) Whether the transaction would have been authorized had proper application been made;

(3) The quantity and value of the items involved;

(4) Why the violations occurred. For example, OEE may consider whether the violations were intentional or inadvertent; the degree to which the person or firm responsible for the violation making the disclosure was familiar with the EAR; and whether the violator has been the subject of prior administrative or criminal action under the EAA;

(5) Whether, as a result of the information provided, OEE is able to prevent any items exported illegally from reaching unauthorized persons or destinations;

(6) The degree of cooperation with the ensuing investigation;

(7) Whether the person or firm has instituted or improved an internal compliance program to reduce the likelihood of future violations.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge or reason to know that a violation of the EAA or the EAR has occurred has violated § 764.2(e) of this part of the EAR. Any person who has made a voluntary self-disclosure has reason to believe that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BXA to engage in the activities set forth in § 764.2(e) of this part which would otherwise be prohibited. If the request is granted by Export Administration (EA), in consultation with Export Enforcement (EE), future activities with respect to those items that would otherwise violate § 764.2(e) of this part, will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed, nor is he relieved from the obligation to obtain any required reexport authorizations.

(2) Reexport authorization for items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BXA in accordance with the provisions of part 748 of this subchapter. If the applicant for reexport authorization knows or has reason to know that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

Supplement No. 1 To Part 764—Standard Terms Of Orders Denying Export Privileges

Orders denying export privileges may be ''standard'' or ''non-standard.'' This Supplement sets forth the terms of the standard order denying export privileges. All orders denying export privileges are published in the **Federal Register**. The failure by any person to comply with any order denying export privileges is a violation of the Export Administration Regulation (EAR). (See General Prohibition Four at § 734.2(b)(4) of this subchapter; § 764.2(k) of this part). All persons whose export privileges are denied by any form of denial order are identified on the Denied Persons List (Supplement No. 2 to this part), with an indication of whether an order is standard or non-standard denoted in the ''Term of order'' column. The Denied Persons List also tells you where each denial order can be found in the **Federal Register**. Reference should be made to the text of the denial order, as published in the **Federal Register**, to learn the scope of any order that denies export privileges, including any non-standard denial order.

Denial orders issued prior to [THE EFFECTIVE DATE OF THE FINAL RULE] are to be construed, insofar as possible, as having the same scope and effect as this standard denial order.

The introduction to each order imposing a denial of export privileges shall be specific to that order, and shall include: (1) The name and address of any denied persons and any related persons subject to the denial order; (2) the basis for the denial order, such as final decision following charges of violation, settlement agreement, section 11(h) of the EAA, or temporary denial order request; and (3) the period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation.

The standard denial order shall provide:

''IT IS THEREFORE ORDERED:

FIRST, that [the denied person(s)] may not, directly or indirectly, participate in any way in any transaction involving any commodity,

technology or software (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

SECOND, that no person may, directly or indirectly, do any of the following: [1]

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

[1] But see § 764.3(a)(2) which permits BXA, by request, to authorize certain actions prohibited by a denial order.

THIRD, that after notice and opportunity for comment as provided in § 766.23 of the EAR, any person, firm, corporation, or business organization hereafter related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

FOURTH, that this order does not prohibit an export, reexport,or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

This order, which constitutes the final agency action in this matter, is effective immediately.''

Supplement No. 2 To Part 764—Denied Persons List

(a) *General.* (1) The Denied Persons List identifies those persons denied export privileges by the Bureau of Export Administration (BXA) pursuant to the terms of an order. Part A of the Denied Persons List lists all denied persons in alphabetical order and provides supplementary information, while Part B lists all denied persons by geographic area. Part A of the Denied Persons List is organized into five columns, including the name and address of the denied person, the effective and expiration dates of the order, a brief description of the terms of the order, and a citation to the **Federal Register** here the terms of the order can be located. Reference should always be made to the text of a denial order when using the Denied Persons List.

(2) Denial orders issued subsequent to [THE EFFECTIVE DATE OF THE FINAL RULE] shall be identified in Part A as being standard or non-standard, and denial orders issued prior to [THE EFFECTIVE DATE OF THE FINAL RULE] shall be construed, insofar as possible, as having the same scope and effect as the standard denial order. Non-standard orders are denoted by the phrase ''non-standard'' in the ''Terms of order'' column in Part A, standard orders are denoted by the word ''standard,'' and orders issued prior to [THE EFFECTIVE DATE OF THE FINAL RULE] are denoted by the same brief description entered at the time of issuance. Standard orders denying export privileges contain the standard terms set forth in Supplement No. 1 to part 764.

(3) You are responsible for ensuring that you take no action involving items subject to the Export Administration Regulations (EAR) that is contrary to the terms of a denial order.

(b) *Related persons.* Related persons who are denied export privileges subsequent to [THE EFFECTIVE DATE OF THE FINAL RULE] shall appear in Part A of the Denied Persons List with a note identifying the denied persons to whom they are related in the column entitled ''Terms of order.''

(c) *Publication.* New and amended denial orders are published in the **Federal Register** as they are issued. This publication constitutes the only official notice to the public, and the **Federal Register** is the only source that can be relied on to provide current and accurate information with respect to denied persons.

(d) *Updates and availability.* As a convenience for the public, issuance of denial orders is announced in Export Administration Bulletins, as well as in printed Denied Persons List updates. The printed version of the Denied Persons List is revised and updated by BXA semi-annually, adding new or amended orders and deleting orders which have expired. Between the semi-annual revisions of the Denied Persons List, additions and changes are published in Export Administration Bulletins. The Denied Persons List does not appear in the CFR, but you may contact the Office of Exporter Services to request a copy:

Office of Exporter Services, P.O. Box 273, Washington, DC 20044

or

U.S. Department of Commerce, Bureau of Export Administration, Room 2705, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Tel: (202) 482–0074

The Denied Persons List is also available electronically on the National Trade Data Base, which is updated only as frequently as the printed version of the Denied Persons List.

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 766.1 Scope.

This part describes the procedures for imposing administrative sanctions for violations of the Export Administration Act of 1979, as amended (the EAA), the Export Administration Regulations (EAR), or any order, license or authorization issued thereunder. Parts 760 and 764 of this subchapter define those actions that constitute violations, and part 764 describes the sanctions that apply. In addition, this part describes the procedures for imposing temporary denial orders to prevent imminent violations of the EAA, the EAR, or any order, license or authorization issued thereunder. Finally, this part describes the procedures for taking the discretionary protective administrative action of denying the export privileges of persons who have been convicted of violating any of the statutes, including the EAA, listed in section 11(h) of the EAA. Nothing in this part shall be construed as applying to or limiting other administrative or enforcement action relating to the EAA or the regulations in this subchapter, including the exercise of any investigative authorities conferred by the EAA. This part does not confer any procedural rights or impose any requirements based on the Administrative Procedure Act to proceedings charging violations under the EAA, except as expressly provided for in this part.

§ 766.2 Definitions.

As used in this part, the following definitions apply:

Administrative Law Judge. The person authorized to conduct hearings in administrative enforcement proceedings brought under the EAA or to decide appeals from the imposition of temporary denial orders.

Assistant Secretary. The Assistant Secretary for Export Enforcement, Bureau of Export Administration.

Bureau of Export Administration (BXA). Bureau of Export Administration, United States Department of Commerce, and all of its component units, including, in particular for purposes of this part, the Office of Antiboycott Compliance, the Office of Export Enforcement, and the Office of Exporter Services.

EAR. The Export Administration Regulations (15 CFR parts 730 through 774), including the regulations concerning Restrictive Trade Practices or Boycotts (15 CFR part 760).

Final decision. A decision or order assessing a civil penalty, denial of export privileges or other sanction, or otherwise disposing of or dismissing a case, which is not subject to further review under this part, and 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 in proceedings involving violations relating to section 8 of the EAA, and which is subject to appellate review by the Under Secretary for Export Administration, but which becomes the final decision in the absence of such an appeal.

Party. BXA and any person named as a respondent under this part.

Recommended decision. A decision of the administrative law judge in proceedings involving violations other than those relating to section 8 of the EAA, and which is subject to review by the Under Secretary of Commerce for Export Administration, who issues a written order affirming, modifying or vacating the recommended decision.

Respondent. Any person named in a charging letter, proposed charging letter, temporary denial order, or other order proposed or issued under this part.

Under Secretary. The Under Secretary for Export Administration, United States Department of Commerce.

§ 766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement [1] (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BXA. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under part 764 of this subchapter. The charging letter will inform the respondent that failure to answer as provided in § 766.6 of this part will be treated as a default under § 766.7 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 who has a power of attorney to represent the respondent. 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. BXA 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 his 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.

[1] By agreement with the Director of the Office of Strategic Industries and Economic Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the EAA.

§ 766.4 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. A respondent personally, or through counsel or other representative, shall file a notice of appearance with the administrative law judge. BXA will be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

§ 766.5 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be delivered or mailed to ''EAR Administrative Enforcement Proceedings,'' U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, or by express or equivalent parcel delivery service, 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 BXA shall be addressed to the Chief Counsel for Export Administration, Room H–3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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.

§ 766.6 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 § 766.16 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 BXA 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 § 766.15 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.

§ 766.7 Default.

(a) *General.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations in the charging letter and to authorize the administrative law judge, on BXA's motion and without further notice to the respondent, to find the facts to be as alleged in the charging letter and to enter a recommended decision containing findings of fact and appropriate conclusions of law and a proposed order imposing appropriate sanctions. The recommended decision and proposed order shall be reviewed by the Under Secretary in accordance with the procedures set forth in § 766.22 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 § 766.6(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.

§ 766.8 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 or recommended decision and 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.

§ 766.9 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 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 further 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 he 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 he deems reasonable and appropriate. The judge 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 section 12(a) of the EAA.

§ 766.10 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 will 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 judge deems relevant and material to the proceedings, and reasonable in scope.

(b) *Service.* Subpoenas issued by the administrative law judge may be served in any of the methods set forth in § 766.5(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.

§ 766.11 Matter protected against disclosure.

(a) *Protective measures.* It is often necessary for BXA to receive and consider information and documents that are sensitive from the standpoint of national security or business confidentiality and that are to be protected against disclosure. Accordingly, and without limiting the discretion of the administrative law judge to give effect to any other applicable privilege, it is proper for the administrative law judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his judgment may be consistent with the objective of preventing undue disclosure of the sensitive documents or information. Where the administrative law judge determines that documents containing the sensitive matter need to be made available to a respondent to avoid prejudice, the judge may direct BXA to prepare an unclassified and nonsensitive summary or extract of the documents. 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 classified or 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 judge may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising national security or confidential business information. Such arrangements may include obtaining security clearances, obtaining a national interest determination under section 12(c) of the EAA, or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 766.12 Prehearing conference.

(a) The administrative law judge, on his 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 judge.

(c) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with him to achieve the purposes of such a conference.

(d) For all conference proceedings, the administrative law judge will prepare a summary of any actions agreed on or taken at the conference. The summary will include any written stipulations or agreements made by the parties.

§ 766.13 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, D.C., 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 he deems this necessary or advisable in order to protect sensitive matter (see § 766.11 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 judge 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.

§ 766.14 Interlocutory review of rulings.

(a) At the request of a party, or on the 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 materially advance 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.

§ 766.15 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.

§ 766.16 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 his/her 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.

§ 766.17 Decision of the administrative law judge.

(a) *Predecisional matters.* Except insofar as the default procedures of § 766.7 of this part may be applicable, 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 him/her 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 decision.

(1) *Initial decision.* For proceedings charging violations relating to section 8 of the EAA, the decision rendered shall be an initial decision. The decision will include findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAA, the EAR, or any order, license or authorization 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 judge 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 judge may issue an order imposing administrative sanctions, as provided in part 764 of this subchapter. 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 § 766.21 of this part.

(2) *Recommended decision.* For proceedings not involving violations relating to section 8 of the EAA, the decision rendered shall be a recommended decision. The decision will include recommended findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAA, the EAR or any order, license or authorization issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a recommended finding that a violation has occurred with respect to one or more charges, the judge shall recommend dismissal of any such charge. If the administrative law judge finds that one or more violations have been committed, the judge shall recommend an order imposing administrative sanctions, as provided in part 764 of this subchapter, or such other action as the judge deems appropriate. The administrative law judge shall immediately certify the record, including the original copy of the recommended decision and order, to the Under Secretary for review in accordance with § 766.22 of this part. The administrative law judge shall also immediately serve the recommended decision on all parties. Because of the time limits established in the EAA for review by the Under Secretary, service upon parties shall be by personal delivery, express mail or other overnight carrier.

(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 of BXA 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 § 766.3 of this part, and with such opportunity for response as the responsible signing official in his 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 § 766.3 of this part.

(d) *Time for decision.* Administrative enforcement proceedings not involving violations relating to section 8 of the EAA shall be concluded, including review by the Under Secretary under § 766.22 of this part, within one year of the submission of a charging letter, unless the administrative law judge, for good cause shown, extends such period. The charging letter will be deemed to have been submitted to the administrative law judge on the date the respondent files an answer or on the date BXA files a motion for a default order pursuant to § 766.7(a) of this part, whichever occurs first.

§ 766.18 Settlement.

(a) *Cases may be settled before service of a charging letter.* In such event, a proposed charging letter will be prepared, and a settlement proposal consisting of a settlement agreement and order 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 administrative law judge 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 § 766.21 or § 766.22 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 § 766.21 or § 766.22 of this part, as appropriate.

(c) If the respondent neither admits nor denies BXA's allegations of violation, the order disposing of a case by settlement shall not contain a finding of violation.

(d) 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 § 766.17(c) of this part.

(e) 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 BXA has neither the authority nor the responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(f) Cases that are settled may not be reopened or appealed.

§ 766.19 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 judge deems appropriate for receiving the new evidence and completing the record. The administrative law judge will then issue a new initial or recommended decision and order, and the case will proceed to final decision and order in accordance with § 766.21 or § 766.22 of this part, as appropriate.

§ 766.20 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 § 766.21 of this part or review under § 766.22 of this part, the decision of the administrative law judge and such submissions as are provided for by §§ 766.21 and 766.22 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 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 § 766.20(c)(2) of this part, 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.* (i) For proceedings started on or after October 12, 1979, all charging letters, answers, initial and recommended 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 N.W., Washington, D.C. 20230. The complete record for decision, as defined in § 766.20(a) and (b) of this part, will be made available on request. In addition, all decisions of the Under Secretary on appeal pursuant to § 766.22 of this part and those final orders providing for denial, suspension or revocation of export privileges shall be published in the **Federal Register**.

(ii) For proceedings started before October 12, 1979, the public availability of the record for decision will be governed by the applicable regulations in effect when the proceedings were begun.

(2) *Timing.* (i) *Antiboycott cases.* For matters brought under section 8 of the EAA, 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 § 766.20(b) of this part must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

(ii) *Other cases.* In all other cases brought under the EAA, documents will be available only after the final administrative disposition of the case. In these cases, parties desiring to restrict access to any portion of the record under § 766.20(b) of this part must assert their claim of confidentiality, together with the reasons for supporting the claim, before the close of the proceeding.

§ 766.21 Appeals.

(a) *Grounds.* For proceedings charging violations relating to section 8 of the EAA, a party may appeal to the Under Secretary from an order disposing of a proceeding, denying a petition to set aside a default or a petition for reopening, or from refusal to approve a settlement proposal 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 of 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 N.W., Washington, D.C. 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.

§ 766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to section 8 of the EAA, the administrative law judge shall immediately refer the recommended decision and proposed order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision in which to submit simultaneous responses. Parties thereafter shall have 8 days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the times specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision of the administrative law judge. If he/she vacates the recommended decision, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(c)(3).

§ 766.23 Related persons.

(a) *General.* In order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or related services. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BXA.

(b) *Procedures.* The procedures for making orders applicable to related persons are as follows:

(1) If, at the time an order is issued, BXA has reason to believe that a person is related to the respondent, BXA will name that related person in the order; and

(2) If, subsequent to the time an order is issued, BXA has reason to believe that a person is related to the respondent, BXA shall, through the Office of Chief Counsel for Export Administration, give that person notice and an opportunity to comment why the order should not be made applicable to that person. The Assistant Secretary may, thereafter, issue an order naming that person as related to the respondent.

(c) *Appeals.* Any person named by BXA in an order as related to the respondent may file an appeal with the administrative law judge. The sole issue to be raised and ruled on in any such appeal is whether the person so named is related to the respondent. The recommended decision and proposed order of the administrative law judge shall be reviewed by the Under Secretary in accordance with the procedures set forth in § 766.22 of this part.

§ 766.24 Temporary denials.

(a) *General.* The procedures in § 766.24 of this part apply to temporary denial orders issued on or after July 12, 1985. For temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued. Without limiting any other action BXA may take under the EAR with respect to any application, order, license or authorization issued under the EAA, BXA may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined in paragraph (b) of this section, of the EAA, the EAR, or any order, license or authorization issued thereunder. The temporary denial order will deny any or all of the export privileges specified in part 764 of this subchapter to any person named in the order.

(b) *Issuance.* (1) The Assistant Secretary may issue an order temporarily denying to a party any or all of the export privileges specified in part 764 of this subchapter upon a showing by BXA that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(2) The temporary denial order shall define the imminent violation and state why it was issued without a hearing. Because all denial orders are public, the description of the imminent violation and the reasons for proceeding on an *ex parte* basis set forth therein shall be stated in a manner that is consistent with national security, foreign policy and investigative concerns.

(3) A violation may be ''imminent'' either in time or in degree of likelihood. To establish grounds for the temporary denial order, BXA may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. In support of its position concerning the likelihood of future violations, BXA may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.

(4) The temporary denial order will be issued for a period not exceeding 180 days.

(c) *Related persons.* In order to prevent evasion or circumvention of the temporary denial order, the order or any renewal thereof may name and deny export privileges to, in addition to any person designated as a respondent, any other person who is then related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BXA may seek to add to a temporary denial order, at a time other than initial issuance or renewal, any person who BXA then has reason to believe is related to a respondent by following the procedures in § 766.23 of this part.

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, BXA believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BXA may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. BXA's request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 766.5(b) of this part which will constitute notice of the renewal application.

(2) *Non-resident respondents.* To facilitate timely notice of renewal requests, a respondent not a resident of the United States may designate a local agent for this purpose and provide written notification of such designation to BXA in the manner set forth in § 766.5(b) of this part.

(3) *Hearing.* (i) A respondent may oppose renewal of a temporary denial order by filing with the Assistant Secretary a written submission, supported by appropriate evidence, to be received not later than seven days before the expiration date of such order. For good cause shown, the Assistant Secretary may consider submissions received not later than five days before the expiration date. The Assistant Secretary ordinarily will not allow discovery; however, for good cause shown in respondent's submission, he/she may allow the parties to take limited discovery, consisting of a request for production of documents. If requested by the respondent in the written submission, the Assistant Secretary shall hold a hearing on the renewal application. The hearing shall be on the record and ordinarily will consist only of oral argument. The only issue to be considered on BXA's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined in this section.

(ii) Any person designated as a related person may not oppose issuance or renewal of the temporary denial order but may file an appeal in accordance with § 766.24(e) of this part.

(iii) If no written opposition to BXA's renewal request is received within the specified time, the Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(4) A temporary denial order may be renewed more than once.

(e) *Appeals.* (1) *Filing.* (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the administrative law judge.

(ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor will it operate to bar the Assistant Secretary's consideration of any renewal application.

(2) *Grounds.* Grounds for an appeal must be specified.

(i) A respondent may appeal to the administrative law judge from an order issuing or renewing a temporary denial order on the ground that a finding of an imminent violation is unsupported.

(ii) Any related person may appeal any finding that he/she is related to a respondent, but may not appeal the underlying issuance or renewal of the temporary denial order.

(3) *Appeal procedure.* A full written statement in support of the appeal must be filed with the appeal together with appropriate evidence, and be simultaneously served on BXA, which shall have seven days from receipt to file a reply. Service on the administrative law judge shall be addressed to the Office of the Administrative Law Judge, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Service on BXA shall be as set forth in § 766.5(b) of this part. The administrative law judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended decision.* Within 10 working days after an appeal is filed, the administrative law judge shall submit a

recommended decision to the Under Secretary, and serve copies on the parties, stating whether the issuance or the renewal of the temporary denial order should be affirmed, modified or vacated.

(5) *Final decision.* Within five working days after receipt of the recommended decision, the Under Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or other authorization issued under the EAA. The Under Secretary's written order is final and is not subject to judicial review, except as provided in § 766.24(g) of this part.

(f) *Delivery.* A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the **Federal Register** and shall be delivered to BXA and to the respondent, or any agent designated for this purpose, and to any related person in the same manner as provided in § 766.5 of this part for filing for papers other than a charging letter.

(g) *Judicial review.* A respondent temporarily denied export privileges by order of the Under Secretary may appeal to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(d)(3).

§ 766.25 Administrative action denying permission to apply for or use export licenses.

(a) *General.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny permission to apply for or use any export license, including any license exceptions, to any person who has been convicted of a violation of the EAA, the EAR, or any order, license or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; Section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, will determine whether to deny permission to apply for or use any export license, including any license exception, to any such person. The Director of the Office of Exporter Services, will notify each person denied under this section by letter stating that permission to apply for or use export licenses has been denied.

(c) *Criteria.* In determining whether and for how long to deny U.S. export privileges to a person previously convicted of one or more of the statutes set forth in paragraph (a) of this section, the Director of the Office of Exporter Services, may take into consideration any relevant information, including, but not limited to, the seriousness of the offense involved in the criminal prosecution, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures.

(d) *Duration.* Any denial of permission to apply for or use export licenses, including any license exception, under this section shall not exceed 10 years.

(e) *Effect.* Any person denied permission to apply for and use licenses under this section will be considered a ''person denied export privileges'' for purposes of § 734.2(b)(4) (General Prohibition 4—Engage in actions prohibited by a denial order) and § 764.2(k) of this subchapter.

(f) *Publication.* The name and address(es) of any person denied permission to apply for or use export licenses under this section will be published in Supplement No. 2 to part 764 of this subchapter, noting that such action was taken pursuant to this section and section 11(h) of the EAA.

(g) *Appeal.* An appeal of an action under this section will be pursuant to part 756 of this subchapter.

(h) *Applicability to related person.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may, through the Office of Chief Counsel for Export Administration, notify any person related through affiliation, ownership, control, or position of responsibility to any person denied export privileges under paragraph (a) of this section, of his/her intent to deny that person permission to apply for or use any export license, including any license exceptions. Such person so notified may request a hearing by filing a request for a hearing with the Office of the Administrative Law Judge, Room H–6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and by serving a copy of the request for a hearing on the Office of Chief Counsel for Export Administration, Room H–3839, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The sole issue to be raised and ruled on under this paragraph is whether the person notified is, in fact, related to any person denied export privileges under paragraph (a) of this section, and not the scope or duration of the underlying denial. The procedures set forth in this part will apply to any hearing requested under this paragraph.

PART 768—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 768.1 Introduction.

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA), the Under Secretary of Commerce for Export Administration directs the Bureau of Export Administration (BXA) in gathering and analyzing all the evidence necessary for the Secretary to determine foreign availability.

(b) *Scope.* This part applies only to the extent that items are controlled for national security purposes.

(c) *Types of programs.* There are two general programs of foreign availability:

(1) *Foreign availability to controlled countries.* In this category are denied license assessments (see §§ 768.4(b) and 768.7 of this part) and decontrol assessments (see §§ 768.4(c) and 768.7 of this part).

(2) *Foreign availability to non-controlled countries.* In this category are

denied license assessments, decontrol assessments, and evaluations of eligibility for expedited licensing (see § 768.8 of this part).

(d) *Definitions.* The following are definitions of terms used in this part 768:

Allegation. See Foreign availability submission.

Applicant. Any person or firm as defined in part 772 of this subchapter.

Assessment. An evidentiary analysis that BXA conducts concerning the foreign availability of a given item in light of the assessment criteria, data gathered by BXA, and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry.

Assessment criteria. Statutorily established criteria that must be assessed for the Secretary to make a determination with respect to foreign availability. They are: ''available-in-fact''; ''from a non-U.S. source''; ''in sufficient quantity so as to render the control ineffective''; and ''of comparable quality''. (See § 768.6 of this part).

Available-in-fact. An item is ''available-in-fact'' to a country if it is produced within the country or if it may be obtained by that country from a third country. (Ordinarily, items will not be considered available-in-fact to non-controlled countries that are available only under a validated national security license or a comparable authorization from a country that maintains export controls on such items cooperatively with the United States.

Claimant. Any applicant who makes a foreign availability submission, excluding TACs.

Comparable quality. An item is of comparable quality to an item controlled under the regulations in this subchapter if it possesses the characteristics specified in the Commerce Control List for that item and is alike in key characteristics that include, but are not limited to: (1) function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Controlled countries. Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgystan, Laos, Latvia, Lithuania, Moldova, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam and the People's Republic of China.

Decontrol. Removal of license requirements under the Export Administration Regulations (EAR).

Decontrol assessment. An assessment of the foreign availability of an item to a country or countries for purposes of determining whether decontrol is warranted. Such assessments may be conducted after the Department receives a foreign availability submission or a TAC certification, or on the Secretary's own initiative.

Denied license assessment. A foreign availability assessment conducted as a result of an applicant's allegation of foreign availability for an item (or items) for which the Department of Commerce has denied or has issued a letter of intent to deny a license. If the Secretary finds foreign availability, the Department's approval of a license will be limited to the items, countries, and quantities in the application.

Determination. The Secretary's decision that foreign availability within the meaning of the EAA does or does not exist. (See § 768.7 of this part).

Expedited licensing procedure eligibility evaluation. An evaluation that BXA initiates for the purpose of determining whether an item is eligible for the expedited licensing procedure. (See § 768.8 of this part).

Expedited licensing procedures. Under expedited licensing procedures, BXA reviews and processes a license application for the export of an eligible item to a non-controlled country within statutory time limits. Licenses are deemed approved unless BXA denies within the statutory time limits (See § 768.8 of this part).

Foreign availability submission (FAS). An allegation of foreign availability: a claimant makes, supported by reasonable evidence, and submits to BXA. (See § 768.5 of this part).

Item. Any commodity, technology, or software.

Item eligible for non-controlled country expedited licensing procedures. An item is eligible for expedited licensing procedures if it is described as such in Supplement No. 2 of part 768 (See § 768.8 of this part).

National Security Override (NSO). A Presidential decision to maintain export controls on an item notwithstanding its foreign availability as determined under the EAA. The President's decision is based on his determination that the absence of the controls would prove detrimental to the national security of the United States. Once the President makes such a decision, the President must actively pursue negotiations to eliminate foreign availability with the governments of the sources of foreign availability. (See § 768.7 of this part).

Non-controlled countries. Any country not listed as a controlled country.

Non-U.S. source/foreign source. A person located outside the jurisdiction of the United States (as defined in part 772 of this subchapter) that makes an item available.

Reasonable evidence. Relevant information that is credible.

Reliable evidence. Relevant information that is credible and dependable.

Secretary. As used in this subchapter, the Secretary refers to the Secretary of Commerce or designee.

Similar quality. An item is of similar quality to an item that is controlled under the EAR if it is substantially alike in key characteristics that may include, but are not limited to: (1) function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Sufficient quantity. The amount of an item that would render the U.S. export control, or the denial of the license in question, ineffective in achieving its purpose with respect to a particular country or countries. For a controlled country, it is the quantity that meets the military needs of that country so that U.S. exports of the item to that country would not make a significant contribution to its military potential.

Technical Advisory Committee (TAC). A Committee created under section 5(h) of the EAA that advises and assists the Secretary of Commerce, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under the Export Administration Act on export control matters related to specific areas of controlled goods and technology.

TAC certification. A statement that a TAC submits to BXA, supported by reasonable evidence, documented as in a FAS, that foreign availability to a controlled country exists for an item that falls within the TAC's area of technical expertise.

§ 768.2 Foreign availability described.

(a) *Foreign availability.* Foreign availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective. For a controlled country, such control or denial is ''ineffective'' when maintaining such control or

denying a specific license would not restrict the availability of goods or technology that would make a significant contribution to the military potential of the controlled country or combination of countries that would prove detrimental to the national security of the United States (See sections 5(A) and 3(2)(A) of the EAA.)

(b) *Types of foreign availability.* There are two types of foreign availability:

(1) Foreign availability to a controlled country; and

(2) Foreign availability to a non-controlled country.

(Note: See § 768.7 of this part for delineation of the foreign availability assessment procedures, and § 768.6 of this part for the criteria used in determining foreign availability)

§ 768.3 Foreign availability assessment.

(a) *Foreign availability assessment.* A foreign availability assessment is an evidentiary analysis that the Bureau of Export Administration (BXA) conducts to assess the foreign availability of a given item under the assessment criteria. BXA uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that foreign availability exists, the Secretary will decontrol the item or approve the license in question, unless the President exercises a National Security Override. (See § 768.7 of this part.)

(b) *Types of assessments.* There are two types of foreign availability assessments:

(1) Denied license assessment; and

(2) Decontrol assessment.

(c) *Expedited licensing procedures.* See § 768.8 of this part for the evaluation of eligibility of an item for the Expedited Licensing Procedures.

§ 768.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant and TAC must submit a FAS or a TAC Certification to BXA. TACs are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied license assessment.* A license applicant whose license the Department of Commerce has denied, or on which it has issued a letter of intent to deny, on national security grounds may request that BXA initiate a denied license assessment by submitting a FAS within 90 days after denial of the license. As part of its submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the license for the specific items, countries, and quantities listed on the application. The denied license assessment procedure, however, is not intended to trigger the removal of the U.S. export control on an item by incrementally providing a country with amounts that taken together would constitute a sufficient quantity of an item. The Secretary will not approve on foreign availability grounds a denied license if the approval of such license would itself render the U.S. export control ineffective in achieving its purpose with respect to a particular country or countries. In the case of a positive determination, the Secretary will determine whether a decontrol assessment is warranted. If so, then BXA will initiate a decontrol assessment.

(c) *Decontrol assessment.* (1) Any claimant may at any time request that BXA initiate a decontrol assessment by making a FAS to BXA alleging foreign availability to any country or countries.

(2) A TAC may request that BXA initiate a decontrol assessment at any time by submitting a TAC Certification to BXA that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his/her own initiative, may initiate a decontrol assessment.

(d) *BXA mailing address.* All foreign availability submissions and TAC certifications are to be submitted to: Department of Commerce, Bureau of Export Administration, 14th and Pennsylvania Avenue, NW, Room 3877, Washington, DC 20230.

§ 768.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

(a) All foreign availability submissions must contain at least:

(1) The name of the claimant;

(2) The claimant's mailing and business address;

(3) The claimant's telephone number; and

(4) A contact point and telephone number.

(b) Foreign availability submissions and TAC certifications should contain as much evidence as is available to support the claim, including, but not limited to:

(1) Product names and model designations of the items alleged to be comparable;

(2) Extent to which the alleged comparable item is based on U.S. technology;

(3) Names and locations of the non-U.S. sources and the basis for claiming that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. source's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components incorporated in the items alleged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following: foreign manufacturers' catalogs, brochures, operation or maintenance manuals; articles from reputable trade and technical publications; photographs; depositions based on eyewitness accounts; and other credible evidence. Examples of supporting evidence are provided in Supplement No. 1 to part 768.

(d) Upon receipt of a FAS or TAC certification, BXA will review it to determine whether there is sufficient evidence to support the belief that foreign availability may exist. If BXA determines the FAS or TAC certification is lacking in supporting evidence, BXA will seek additional evidence from appropriate sources, including the claimant or TAC, BXA will initiate the assessment when it determines that it has sufficient evidence that foreign availability may exist. Claimant and TAC initiated assessments will be deemed to be initiated as of the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria delineated in § 768.6 of this part and the examples of evidence set forth in Supplement No. 1 to part 768 when assembling supporting evidence for inclusion in the FAS or TAC certification.

§ 768.6 Criteria.

(a) *Introduction.* BXA evaluates the evidence contained in a FAS or TAC certification and all other evidence gathered in the assessment process in light of certain criteria that must be met before BXA can recommend a positive determination to the Secretary. In order

to initiate an assessment, each FAS and TAC certification should address each of these criteria. The criteria are statutorily prescribed and are:

(1) Available-in-fact;

(2) Non-U.S. source;

(3) Sufficient quantity; and

(4) Comparable quality.

(b) *Related definition.* The criteria are defined in § 768.1(d) of this part.

§ 768.7 Procedures.

(a) *Initiation of an assessment.* (1) Once BXA accepts a FAS or TAC certification of foreign availability, BXA will notify the claimant or TAC that it is initiating the assessment.

(2) The Bureau of Export Administration will publish a **Federal Register** notice of the initiation of any assessment.

(3) BXA will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which BXA has initiated an assessment. Each such department, agency, and contractor shall provide to BXA all relevant information that it has concerning the item. BXA will invite interested departments and agencies to participate in the assessment process (See paragraph (e) of this section for details).

(b) *Data gathering.* BXA will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence set out in § 768.5(b) and (c) of this part. As soon as Commerce initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from industry sources worldwide; other U.S. organizations; foreign governments; commercial, academic and classified data bases; scientific and engineering research and development organizations; and international trade fairs.

(c) *Analysis.* BXA conducts its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis for a recommendation for a determination that foreign availability does or does not exist.

(d) *Recommendation and determination.* (1) Upon completion of each assessment, BXA on the basis of its analysis, recommends to the Secretary of Commerce that the Secretary make a determination either that there is or that there is not foreign availability, whichever the evidence supports. BXA's assessment upon which BXA based its recommendation accompanies the recommendation to the Secretary.

(2) BXA will recommend on the basis of its analysis that the Secretary determine that foreign availability exists to a country when the available evidence demonstrates that an item of comparable quality is available-in-fact to the country, from non-U.S. sources, in sufficient quantity so that continuation of the existing export control, or denial of the license application in question would be ineffective in achieving its purpose. For a controlled country, such control or denial is ''ineffective'' when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States.

(3) The Secretary makes the determination of foreign availability on the basis of the BXA assessment and recommendation; the Secretary's determination takes into account the evidence provided to BXA, the recommendations of the Secretaries of Defense and State and any other interested agencies, and any other information that the Secretary considers relevant.

(4) For all decontrol and denied license assessments (pursuant to section 5(f)(3) of the EAA) initiated by a FAS, the Secretary makes a determination within 4 months of the initiation of the assessment and so notifies the claimant. The Secretary submits positive determinations for review to appropriate departments and agencies.

(5) The deadline for determinations based on self-initiated and TAC-initiated assessments are different than the deadlines for claimant-initiated assessments (see paragraphs (f)(2) and (f)(3) of this section).

(e) *Interagency review.* Commerce notifies all appropriate U.S. agencies and Departments upon the initiation of the assessment and invites them to participate in the assessment process. Commerce provides all interested agencies and departments an opportunity to review source material, draft analyses and draft assessments immediately upon their receipt or production. For claimant-initiated assessments, Commerce provides a copy of all positive recommendations and assessments to interested agencies and departments for their review following the Secretary's determination of foreign availability. For self-initiated and TAC-initiated assessments, Commerce provides all interested agencies an opportunity to review and comment on the assessment.

(f) *Notification.* (1) No later than 5 months after the initiation of an assessment based on a FAS (claimant assessments), the Secretary informs the claimant in writing and submits for publication in the **Federal Register** a notice to the effect that:

(i) Foreign availability exists, and

(A) The requirement of a license has been removed or the license application in question has been approved; or

(B) The President has determined that for national security purposes the export controls must be maintained or the license application must be denied, notwithstanding foreign availability, and that appropriate steps to eliminate the foreign availability are being initiated; or

(C) In the case of an item controlled multilaterally under the COCOM Successor Regime, the U.S. Government will submit the proposed decontrol or approval of the license for COCOM Successor Regime review for a period of up to 4 months from the date of the publication of the determination in the **Federal Register** (The U.S. Government may remove the license requirement for exports to non-controlled countries pending completion of the COCOM Successor Regime review process.); or

(ii) Foreign availability does not exist.

(2) For all TAC certification assessments, the Secretary makes a foreign availability determination within 90 days following initiation of the assessment. BXA prepares and submits a report to the TAC and to the Congress stating that:

(i) The Secretary has found foreign availability and has removed the license requirement; or

(ii) The Secretary has found foreign availability, but has recommended to the President that negotiations be undertaken to eliminate the foreign availability; or

(iii) The Secretary has not found foreign availability.

(3) There is no statutory deadline for assessments initiated on the Secretary's own initiative or for the resulting determination. However, the Department will make every effort to complete such assessments and determinations promptly.

(g) *Foreign availability to controlled countries.* When the Secretary

determines that an item controlled for national security reasons is available to a controlled country and the President does not issue an NSO, BXA submits the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for COCOM Successor Regime approval of the license. The Department of State submits the proposal or the license to the COCOM Successor Regime review process. The COCOM Successor Regime has up to 4 months for review of the proposal.

(h) *Foreign availability to non-controlled countries.* If the Secretary determines that foreign availability to non-controlled countries exists, the Secretary will decontrol the item for export to all non-controlled countries to which it is found to be available, or approve the license in question, unless the President exercises a National Security Override.

(i) *Negotiations to eliminate foreign availability.* (1) The President may determine that an export control must be maintained notwithstanding the existence of foreign availability. Such a determination is called a National Security Override (NSO) and is based on the President's decision that the absence of the control would prove detrimental to the United States national security. Unless extended (as described in paragraph (i)(7) of this section), an NSO is effective for 6 months. Where the President invokes an NSO, the U.S. Government will actively pursue negotiations with the government of any source country during the 6 month period to eliminate the availability.

(2) There are two types of National Security Overrides:

(i) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(f) of the EAA (claimant and self-initiated assessments); and

(ii) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(h) of the EAA (TAC-certification assessments).

(3) For an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise the authority under the Act to retain the controls or deny the license notwithstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated pursuant to section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise the authority under the Act to retain the controls notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives will be notified of the initiation of the required negotiations. The notice will include an explanation of the national security interest that necessitates the retention of controls.

(6) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Bureau of Export Administration will publish notices in the **Federal Register** of:

(i) The Secretary's determination of foreign availability;

(ii) The President's decision to exercise the National Security Override;

(iii) A concise statement of the basis for the President's decision; and

(iv) An estimate of the economic impact of the decision.

(7) The 6 month effective period for an NSO may be extended up to an additional 12 months if prior to the end of the 6 months the President certifies to Congress that the negotiations are progressing, and determines that the absence of the controls would continue to be detrimental to the United States national security.

(8) After the conclusion of negotiations, the Department of Commerce will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, the Department of Commerce will decontrol the item by removing the requirement for a license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, Commerce will remove the license requirement for the export of the item to any country that has agreed to eliminate foreign availability.

(j) *Changes in foreign availability.* If BXA becomes aware of conditions, including new evidence, that affect a previous determination that foreign availability exists or does not exist, BXA may review the conditions. If BXA finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, the Office will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and the Bureau of Export Administration will publish a **Federal Register** notice of the determination.

§ 768.8 Eligibility for expedited licensing procedure for non-controlled countries.

(a) BXA determines the eligibility of an item for expedited licensing procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) BXA will initiate an eligibility evaluation:

(1) On its own initiative;

(2) On receipt of a FAS; or

(3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a FAS or TAC certification, the BXA will notify the claimant or TAC of the receipt and initiation of an evaluation and publish a **Federal Register** notice of the initiation of the evaluation.

(d) The criteria for determining eligibility for expedited licensing procedures are:

(1) The item must be available-in-fact to the specified non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S.-controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce makes a determination of foreign availability on the basis of the BXA evaluation and recommendation which takes into account the evidence the Secretaries of Defense, State, and other interested agencies provided to BXA and any other information that the Secretary considers relevant. The Secretary of Commerce will provide all interested agencies an opportunity to review and comment on the evaluation.

(f) Within 30 days of the receipt of the FAS or TAC certification, BXA will publish the Secretary's determination in the **Federal Register**, that the item will not be eligible for expedited licensing procedures to the stated countries and, where appropriate, amend Supplement No. 2 to part 768.

(g) Following completion of a self-initiated evaluation, BXA will be notified of the Secretary's determination and, where appropriate, Supplement No. 2 to part 768 will be amended.

(h) Foreign availability submissions and TAC certifications to initiate an expedited licensing procedure evaluation must be clearly designated on their face as a request for expedited licensing procedure and must specify the items, quantities and countries alleged eligible. They should be sent to: Department of Commerce, Bureau of Export Administration, 14th Street and

Pennsylvania Avenue, NW, Room 3877, Washington, DC 20230.

§ 768.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures set forth in 15 CFR part 789. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability shall not be subject to appeal.

§ 768.10 Removal of controls on less sophisticated items.

Where the Secretary has removed national security controls on an item for foreign availability reasons, the Secretary will also remove controls on similar items that are controlled for national security reasons and whose functions, technological approach, performance thresholds, and other attributes that form the basis for national security export controls do not exceed the technical parameters of the item that Department of Commerce has decontrolled for foreign availability reasons.

Supplement No. 1 to Part 768—Evidence of Foreign Availability

Below is a list of examples of evidence that the Bureau of Export Administration (BXA) has found useful in conducting assessments of foreign availability. A claimant submitting evidence supporting a claim of foreign availability should review this list for suggestions as evidence is collected. Acceptable evidence indicating possible foreign availability is not limited to these examples, nor is any one of these examples, usually, in and of itself, necessarily sufficient to meet a foreign availability criterion. A combination of several types of evidence for each criterion usually is required. A FAS should include as much evidence as possible on all four of the criteria listed below. BXA combines the submitted evidence with the evidence that it collects from other sources. BXA evaluates all evidence, taking into account factors that may include, but are not limited to: information concerning the source of the evidence, corroborative or contradictory indications, and experience concerning the reliability of reasonableness of such evidence. BXA will assess all relevant evidence to determine whether each of the four criteria has been met. Where possible, all information should be in writing. If information is based on third party documentation, the submitter should provide such documentation to BXA. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to BXA if the submitter cannot obtain a written memorandum from the source. BXA will amend this informational list as it identifies new examples of evidence.

(a) Examples of evidence of Foreign Availability: The following are intended as examples of evidence that BXA will consider in evaluating foreign availability. BXA will evaluate all evidence according to the provisions in § 768.7(c) of this part in order for it to be used in support of a foreign availability determination. This list is illustrative only.

(1) *Available-in-fact:*

(i) Evidence of marketing of an item in a foreign country (e.g., an advertisement in the media of the foreign country that the item is for sale there);

(ii) Copies of sales receipts demonstrating sales to foreign countries;

(iii) The terms of a contract under which the item has been or is being sold to a foreign country;

(iv) Information, preferably in writing, from an appropriate foreign government official that the government will not deny the sale of an item it produces to another country in accordance with its laws and regulations;

(v) Information, preferably in writing, from a named company official that the company legally can and would sell an item it produces to a foreign country;

(vi) Evidence of actual shipments of the item to foreign countries (e.g., shipping documents, photographs, news reports);

(vii) An eyewitness report of such an item in operation in a foreign country, providing as much information as available, including where possible the make and model of the item and its observed operating characteristics;

(viii) Evidence of the presence of sales personnel or technical service personnel in a foreign country;

(ix) Evidence of production within a foreign country;

(x) Evidence of the item being exhibited at a trade fair in a foreign country, particularly for the purpose of inducing sales of the item to the foreign country;

(xi) A copy of the export control laws or regulation of the source country which shows that the item is not controlled; or

(xii) A catalog or brochure indicating the item is for sale in a specific country.

(2) *Foreign (non-U.S.) source:*

(i) Names of foreign manufacturers of the item including, and if possible, addresses and telephone numbers;

(ii) A report from a reputable source of information on commercial relationships that a foreign manufacturer is not linked financially or administratively with a U.S. company;

(iii) A list of the components in the U.S. item and foreign item indicating model numbers and their sources;

(iv) A schematic of the foreign item identifying its components and their sources;

(v) Evidence that the item is a direct product of foreign technology (e.g., a patent law suit lost by a U.S. producer, a foreign patent);

(vi) Evidence of indigenous technology, production facilities, and the capabilities at those facilities; or

(vii) Evidence that the parts and components of the item are of foreign origin or are exempt from U.S. licensing requirements by the parts and components provision § 732.4 of this subchapter.

(3) *Sufficient quantity:*

(i) Evidence that foreign sources have the item in serial production;

(ii) Evidence that the item or its products is used in civilian applications in foreign countries;

(iii) Evidence that a foreign country is marketing in the specific country an item of its indigenous manufacture;

(iv) Evidence of foreign inventories of the item;

(v) Evidence of excess capacity in a foreign country's production facility;

(vi) Evidence that foreign countries have not targeted the item or are not seeking to purchase it in the West;

(vii) An estimate by a knowledgeable source of the foreign country's needs; or

(viii) An authoritative analysis of the worldwide market (i.e., demand, production rate for the item for various manufacturers, plant capacities, installed tooling monthly production rates, orders, sales and cumulative sales over 5–6 years).

(4) *Comparable quality:*

(i) A sample of the foreign item;

(ii) Operation or maintenance manuals of the U.S. and foreign items;

(iii) Records or a statement from a user of the foreign item;

(iv) A comparative evaluation, preferably in writing, of the U.S.and foreign items by, for example, a western producer or purchaser of the item, a recognized expert, a reputable trade publication, or independent laboratory;

(v) A comparative list identifying, by manufacturers and model numbers, the key performance components and the materials used in the item that qualitatively affect the performance of the U.S. and foreign items;

(vi) Evidence of the interchangeability of U.S. and foreign items;

(vii) Patent descriptions for the U.S. and foreign items;

(viii) Evidence that the U.S. and foreign items meet a published industry, national, or international standard;

(ix) A report or eyewitness account, by deposition or otherwise, of the foreign item's operation;

(x) Evidence concerning the foreign manufacturers' corporate reputation;

(xi) Comparison of the U.S. and foreign end item(s) made from a specific commodity tool(s), technical data or device; or

(xii) Evidence of the reputation of the foreign item including, if possible, information on maintenance, repair, performance, and other pertinent factors.

Supplement No. 2 to Part 768—Items Eligible for Expedited Licensing Procedures—[Reserved]

PART 770—INTERPRETATIONS

Sec.

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

§ 770.1 Introduction.

This part provides commodity, technology, and software interpretations. These interpretations clarify the scope of controls where such scope is not readily apparent from the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of this subchapter) and other provisions of the Export Administration Regulations.

§ 770.2 Commodity interpretations.

(a) *Interpretation 1: Anti-friction bearing or bearing systems and specially designed parts.* (1) Anti-friction bearings or bearing systems shipped as spares or replacements are classified under Export Control Classification Numbers (ECCNs) 2A01, 2A02, 2A03, 2A04, 2A05, 2A06 and 2A96 (ball, roller, or needle-roller bearings and parts). This applies to separate shipments of anti-friction bearings or bearing systems and anti-friction bearings or bearing systems shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

(2) An anti-friction bearing or bearing system physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identity as a bearing. In this scenario, the machine or segment of machinery containing the bearing is the item subject to export control requirements.

(3) An anti-friction bearing or bearing system not incorporated in a segment of a machine prior to shipment, but shipped as a component of a complete unassembled (knocked-down) machine, is considered a component of a machine. In this scenario, the complete machine is the item subject to export license requirements.

(b) *Interpretation 2: Classification of ''parts'' of machinery, equipment, or other items*—(1) *An assembled machine or unit of equipment is being exported.* In instances where one or more assembled machines or units of equipment are being exported, the individual component parts that are physically incorporated into the machine or equipment do not require a license. The license or general exception under which the complete machine or unit of equipment is exported will also cover its component parts, provided that the parts are normal and usual components of the machine or equipment being exported, or that the physical incorporation is not used as a device to evade the requirement for a license.

(2) *Parts are exported as spares, replacements, for resale, or for stock.* In instances where parts are exported as spares, replacements, for resale, or for stock, a license is required only if the appropriate entry for the part specifies that a license is required for the intended destination.

(c) *Interpretation 3: Wire or cable cut to length.*

(1) Wire or cable may be included as a component of a system or piece of equipment, whether or not the wire or cable is cut to length and whether or not it is fitted with connectors at one or both ends, so long as it is in normal quantity necessary to make the original installation of the equipment and is necessary to its operation.

(2) Wire or cable exported as replacement or spares, or for further manufacture is controlled under the applicable wire or cable ECCN only. This includes wire or cable, whether or not cut to length or fitted with connectors at one or both ends.

(d) *Interpretation 4: Telecommunications equipment and systems.* Control equipment for paging systems (broadcast radio or selectively signalled receiving systems) is defined as circuit switching equipment in Category 5 of the CCL.

(e) *Interpretation 5: Numerical control systems.* (1) *Classification of ''Numerical Control'' Units.* ''Numerical control'' units for machine tools, regardless of their configurations or architectures, are controlled by their functional characteristics as described in ECCN 2B01.a. ''Numerical control'' units include computers with add-on ''motion control boards''. A computer with add-on ''motion control boards'' for machine tools may be controlled under ECCN 2B01.a even when the computer alone without ''motion control boards'' is not subject to licensing requirements under Category 4 and the ''motion control boards'' are not controlled under ECCN 2B01.b.

(2) *Export documentation requirement.* (i) When preparing a license application for a numerical control system, the machine tool and the control unit are classified separately. If either the machine tool or the control unit requires a license, then the entire unit requires a license. If either a machine tool or a control unit is exported separately from the system, the exported component is classified on the license application without regard to the other parts of a possible system.

(ii) When preparing the Shipper's Export Declaration (SED), a system being shipped complete (i.e., machine and control unit), should be reported under the Schedule B number for each machine. When either a control unit or a machine is shipped separately, it should be reported under the Schedule B number appropriate for the individual item being exported.

(f) *Interpretation 6: Parts, accessories, and equipment exported as scrap.* Parts, accessories, or equipment that are being shipped as scrap should be described on the SED in sufficient detail to be identified under the proper ECCN. When commodities declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment.

(g) *Interpretation 7: Scrap arms, ammunition, and implements of war.*

Arms, ammunition, and implements of war, as defined in the U.S. Munitions List, and are under the jurisdiction of the U.S. Department of State (22 CFR parts 120 through 130), except for the following, which are under the jurisdiction of the Department of Commerce:

(1) Cartridge and shell cases that have been rendered useless beyond the possibility of restoration to their original identity by means of excessive heating,

flame treatment, mangling, crushing, cutting, or by any other method are ''scrap''.

(2) Cartridge and shell cases that have been sold by the armed services as ''scrap'', whether or not they have been heated, flame-treated, mangled, crushed, cut, or reduced to scrap by any other method.

(3) Other commodities that may have been on the U.S. Munitions List are ''scrap'', and therefore under the jurisdiction of the Department of Commerce, if they have been rendered useless beyond the possibility of restoration to their original identity only by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Office of Defense Trade Controls, U.S. Department of State, Washington, D.C. 20520, or the Exporter Counseling Division, Office of Exporter Services, Room 1099A, U.S. Department of Commerce, Washington, D.C. 20230, before reporting a shipment as metal scrap.

(h) *Interpretation 8: Military automotive vehicles and parts for such vehicles*—(1) *Military automotive vehicles.* (i) For purposes of U.S. export controls, military automotive vehicles ''possessing or built to current military specifications differing materially from normal commercial specifications'' may include, but are not limited to, the following characteristics:

(A) Special fittings for mounting ordnance or military equipment;

(B) Bullet-proof glass;

(C) Armor plate;

(D) Fungus preventive treatment;

(E) Twenty-four volt electrical systems;

(F) Shielded electrical system (electronic emission suppression); or

(G) Puncture-proof or run-flat tires.

(ii) *Automotive vehicles fall into two categories.*

(A) *Military automotive vehicles on the Munitions List, new and used.* Automotive vehicles in this category are primarily combat (fighting) vehicles, with or without armor and/or armament, ''designed for specific fighting function.'' These automotive vehicles are licensed for export by the U.S. Department of State (22 CFR parts 120 through 130).

(B) *Military automotive vehicles not on the U.S. Munitions List, new and used.* Automotive vehicles in this category are primarily transport vehicles designed for non-combat military purposes (transporting cargo, personnel and/or equipment, and/or for to wing other vehicles and equipment over land and roads in close support of fighting vehicles and troops). These automotive vehicles are licensed for export by the U.S. Department of Commerce.

(iii) *Parts for military automotive vehicles.* Functional parts are defined as those parts making up the power train of the vehicles, including the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers. Parts specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State (22 CFR parts 120 through 130).

(iv) *General instructions.* Manufacturers of non-Munitions List automotive vehicles and/or parts will know whether their products meet the conditions described in this paragraph (h). Merchant exporters and other parties who are not sure whether their products (automotive vehicles and/or parts) meet these conditions should check with their suppliers for the required information before making a shipment under general exception or submitting an application to BXA for a license.

(i) *Interpretation 9: Aircraft, parts, accessories and components.* Aircraft, parts, accessories, and components defined in Categories VIII and IX of the Munitions List are under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). All other aircraft, and parts, accessories and components therefor, are under the export licensing authority of the U.S. Department of Commerce. The following aircraft, parts, accessories and components are under the licensing authority of the U.S. Department of Commerce:

(1) Any aircraft (except an aircraft that has been demilitarized, but including aircraft specified in paragraph (i)(2) of this section) that conforms to a Federal Aviation Agency type certificate in the normal, utility, acrobatic, transport, or restricted category, provided such aircraft has not been equipped with or modified to include military equipment, such as gun mounts, turrets, rocket launchers, or similar equipment designed for military combat or military training purposes.

(2) Only the following military aircraft, demilitarized (aircraft not specifically equipped, reequipped, or modified for military operations):

(i) Cargo, bearing designations ''C–45 through C–118 inclusive,'' and ''C–121'';

(ii) Trainers, bearing a ''T'' designation and using piston engines;

(iii) Utility, bearing a ''U'' designation and using piston engines;

(iv) Liaison, bearing an ''L'' designation; and

(v) Observation, bearing an ''O'' designation and using piston engines.

(3) All reciprocating engines.

(4) Other aircraft engines not specifically designed or modified for military aircraft.

(5) Parts, accessories, and components (including propellers), designed exclusively for aircraft and engines described in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this section.

(6) General purpose parts, accessories, and components usable interchangeably on either military or civil aircraft.

(j) *Interpretation 10: Civil aircraft inertial navigation equipment.*

(1) The Department of Commerce has licensing jurisdiction over exports and reexports to all destinations of inertial navigation systems, inertial navigation equipment, and specially designed components therefor for ''civil aircraft''.

(2) The Department of State, retains jurisdiction over all software and technology for inertial navigation systems and navigation equipment, and specially designed components therefor, for shipborne use, underwater use, ground vehicle use, spaceborne use or use other than ''civil aircraft''.

(k) *Interpretation 11: Precursor chemicals.* The following chemicals are controlled by ECCN 1C60C. The appropriate Chemical Abstract Service Registry (C.A.S.) number and synonyms, (i.e., alternative names) are included to help you determine whether your chemicals are controlled by this entry. These chemicals require a license to all countries except Argentina, Australia, Austria, Belgium, Canada, Denmark, Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

(1) (C.A.S. #1341–49–7) Ammonium hydrogen bifluoride

Acid ammonium fluoride
Ammonium bifluoride
Ammonium difluoride
Ammonium hydrofluoride
Ammonium hydrogen fibluoride
Ammonium hydrogen difluoride
Ammonium monohydrogen difluoride

(2) (C.A.S. #7784–34–1) Arsenic trichloride

Arsenic (III) chloride
Arsenous chloride
Fuming liquid arsenic
Trichloroarsine

(3) (C.A.S. #76–93–7) Benzilic acid

.alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid
Diphenylgloycolic acid
.alpha.,.alpha.-Diphenylglycolic acid
Diphenylhydroxyacetic acid
.alpha.-Hydroxy-2,2-diphenylacetic acid
2–Hydroxy-2,2-diphenylacetic acid
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid
Hydroxydiphenylacetic acid

(4) (C.A.S. #107–07–3) 2–Chloroethanol

2–Chloro-1-ethanol
Chloroethanol
2–Chloroethyl alcohol
Ethene chlorohydrin
Ethylchlorohydrin
Ethylene chlorhydrin
Ethylene chlorohydrin
Glycol chlorohydrin
Glycol monochlorohydrin
2–Hydroxyethyl chloride

(5) (C.A.S. #78–38–6) Diethyl ethylphosphonate

Ethylphosphonic acid diethyl ester

(6) (C.A.S. #15715–41–0) Diethyl methylphosphonite

Diethoxymethylphosphine
Diethyl methanephosphonite
O,O–Diethyl methylphosphonite
Methyldiethoxyphosphine
Methylphosphonous acid diethyl ester

(7) (C.A.S. #2404–03–7) Diethyl-N, N-dimethylphosphoro- amidate

N,N-Dimethyl-O,O'-diethyl phosphoramidate
Diethyl dimethylphosphoramidate
Dimethylphosphoramidic acid diethyl ester

(8) (C.A.S. #762–04–9) Diethyl phosphite

Diethoxyphosphine oxide
Diethyl acid phosphite
Diethyl hydrogen phosphite
Diethyo phosphonate
Hydrogen diethyl phosphite

(9) (C.A.S. #100–37–8) N, N-Diethylethanolamine

N,N-Diethyl-2-aminoethanol
Diethyl (2-hydroxyethyl) amine
N,N-DIethyl-N-(.beta.-hydroxyethyl) amine
N,N-Diethyl-2-hydroxyethylamine
Diethylaminoethanol
2-(Diethylamino) ethanol
2-(Diethylamino)ethyl alcohol
N,N-Diethylmonoethanolamine
(2–Hydroxyethyl) diethylamine
2–Hydroxytriethylamine

(10) (C.A.S. #5842–07–9) N,N-Diisopropyl-.beta.-aminoethane thiol

2-(Diisopropylamino) ethanethiol
Diisopropylaminoethanethiol
.beta.-Diisopropylaminoethanethiol
2-(bis(1–Methylethyl)amino) ethanethiol

(11) (C.A.S. #4261–68–1) N, N-Diisopropyl-.2-aminoethyl chloride hydrochloride

(12) (C.A.S. #96–80–0) N,N-Diisopropyl-.beta.-aminoethanol

N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine

(13) (C.A.S. #96–79–7) N,N-Diisopropyl-.beta.-aminoethyl chloride

2-Chloro-N,N-diisoproplethanamine
1-Chloro-N,N-diisopropylaminoethane
2-Chloro-N,N-diisopropylethylamine
N-(2-chloroethyl)-N-(1-methylethyl)-2-propanamine
N-(2–Chloroethyl) diisopropylamine
N,N-Diisopropyl-2-chloroethylamine
1-(Diisopropylamino)-2-cholorethane
2-(Diisopropylamino)ethyl chloride
Diisopropylaminoethyl chloride
.beta.-Diisopropylaminoethyl chloride

(14) (C.A.S. #108–18–9) Diisopropylamine

N,N-Diisopropylamine
N-(1-Methylethyl)-2-propanamine

(15) (C.A.S. #6163–75–3) Dimethyl ethylphosphonate

Dimethyl ethanephosphonate
Ethylphosphonic acid dimethyl ester

(16) (C.A.S. #756–79–6) Dimethyl methylphosphonate

Dimethoxymethyl phosphine oxide
Dimethyl methanephosphonate
Methanephosphonic acid dimethyl ester
Methylphosphonic acid dimethyl ester

(17) (C.A.S. #868–85–9) Dimethyl phosphite

Dimethoxyphosphine oxide
Dimethyl acid phosphite
Dimethyl hydrogen phosphite
Dimethyl phosphonate
Hydrogen dimethyl phosphite
Methyl phosphate

(18) (C.A.S. #124–40–3) Dimethylamine

N-Methyl methanamine

(19) (C.A.S. #506–59–2) Dimethylamine hydrochloride

Dimethylammonium chloride
N-Methyl methanamine hydrochloride

(20) (C.A.S. #57856–11–8) O-Ethyl-2-diisoprophylaminoethyl methylphosphonite (QL)

Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester

(21) (C.A.S. #1498–40–4) Ethylphosphonous dichloride

Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine

(22) (C.A.S. #430–78–4) Ethylphosphonus difluoride

Ethyldifluorophosphine

(23) (C.A.S. #1066–50–8) Ethylphosphonyl dichloride

Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride

(24) (C.A.S. #753–98–0) Ethylphosphonyl difluoride

Ethyl difluorophosphite
Ethyldifluorophosphine oxide
Ethylphosphonic difluoride

(25) (C.A.S. #7664–39–3) Hydrogen fluoride

Anhydrous hydrofluoric acid
Fluorhydric acid
Fluorine monohydride
Hydrofluoric acid gas

(26) (C.A.S. #3554–74–3) 3–Hydroxyl-1-methylpiperidine

3-Hydroxy-N-methylpiperidine
1-Methyl-3-hydroxypiperidine
N-Methyl-3-hydroxypiperidine
1-Methyl-3-piperidinol
N-Methyl-3-piperidonol

(27) (C.A.S. #76–89–1) Methyl benzilate

Benzilic acid methyl ester
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
Methyl .alpha.-phenylmandelate
Methyl diphenylglycolate

(28) (C.A.S. #676–83–5) Methylphosphonous dichloride

Dichloromethylphosphine
Methyldichlorophosphine
Methylphosphorus dichloride

(29) (C.A.S. #753–59–3) Methylphosphonous diflouride

Difluoromethylphosphine
Methyldifluorophosphine

(30) (C.A.S. #676–97–1) Methylphosphonyl dichloride

Dichloromethylphosphine oxide
Methanephosphonodichloridic acid
Methanephosphonyl chloride
Methylphosphonic acid dichloride
Methylphosphonic dichloride
Methylphosphonodichloridic acid
Methylphosphonyl chloride

(31) (C.A.S. #676–99–3) Methylphosphonyl difluoride

Difluoromethylphosphine oxide
Methyl difluorophosphite
Methylphosphonic difluoride

(32) (C.A.S. #10025–87–3) Phosphorus oxychloride

Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
Phosphorus chloride oxide
Phosphorus monoxide trichloride
Phosphorus oxide trichloride
Phosphorus oxytrichloride
Phosphorus trichloride oxide
Phosphoryl trichloride
Trichlorophosphine oxide
Trichlorophosphorus oxide

(33) (C.A.S. #10026–13–8) Phosphorus pentachloride

Pentachlorophosphorane
entachlorophosphorus
Phosphoric chloride
Phosphorus (V) chloride
Phosphorus perchloride

(34) (C.A.S. #1314–80–3) Phosphorus pentasulfide

Diphosphorus pentasulfide
Phosphoric sulfide
Phosphorus persulfide
Phosphorus sulfide

(35) (C.A.S. #7719–12–2) Phosphorus trichloride

Phosphorus chloride
Trichlorophosphine

(36) C.A.S. #75–97–8) Pinacolone

tert-Butyl methyl ketone
2,2-Dimethyl-3-butanone
3,3-Dimethyl-2-butanone
2,2-Dimethylbutanone
3,3-Dimethylbutanone
1,1-Dimethylethyl methyl ketone
Methyl tert-butyl ketone
Pinacolin
Pinacoline
1,1,1-Trimethylacetone

(37) (C.A.S. #464–07–3) Pinacolyl alcohol

tert-Butyl methyl carbinol
2,2-Dimethyl-3-butanol
3,3-Dimethyl-2-butanol
1-Methyl-2,2-dimethylpropanol

(38) (C.A.S. #151–50–8) Potassium cyanide

(39) (C.A.S. #7789–23–3) Potassium fluoride

Potassium monofluoride

(40) (C.A.S. #7789–29–9) Potassium hydrogen fluoride

Hydrogen potassium difluoride
Hydrogen potassium fluoride
Potassium acid fluoride
Potassium bifluoride
Potassium hydrogen difluoride
Potassium monohydrogen difluoride

(41) (C.A.S. #1619–34–7) 3–Quinuclidinol

1-Azabicyclo(2.2.2)octan-3-ol
3-Hydroxyquinuclidine

(42) (C.A.S. #3731–38–2) 3–Quinuclidinone

1-Azabicyclo(2.2.2)octan-3-one
3-Oxyquinuclidine
Quinuclidone

(43) (C.A.S. #1333–83–1) Sodium bifluoride

Sodium hydrogen difluoride
Sodium hydrogen fluoride

(44) (C.A.S. #143–33–9) Sodium cyanide

(45) (C.A.S. #7681–49–4) Sodium fluoride

Sodium monofluoride

(46) (C.A.S. #1313–82–2) Sodium sulfide

Disodium monosulfide
Disodium sulfide
Sodium monosulfide
Sodium sulphide

(47) (C.A.S. #10025–67–9) Sulfur Monochloride

(48) (C.A.S. #10545–99–0) Sulfur dicholoride

(49) (C.A.S. #111–48–8) Thiodiglycol

Bis(2-hydroxyethyl) sulfide
Bis(2-hydroxyethyl) thioether
Di(2-hydroxyethyl) sulfide
Diethanol sulfide
2,2′-Dithiobis-(ethanol)
3-Thiapentane-1,5-diol
2,2′-Thiobisethanol
2,2′-Thiodiethanol
Thiodiethylene glycol
2,2′-Thiodiglycol

(50) C.A.S. #7719–09–7) Thionyl chloride

Sulfinyl chloride
Sulfinyl dichloride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride

(51) (C.A.S. #102–71–6) Triethanolamine

Alkanolamine 244
Nitrilotriethanol
2,2′,2″-Nitrilotriethanol
2,2′,2″-Nitrilotris(ethanol)
TEA
TEA(amino alcohol)
Tri(2-hydroxyethyl)amine
Triethanolamin
Tris(.beta.-hydroxyethyl)amine
Tris(2-hydroxyethyl)amine
Trolamine

(52) (C.A.S. #637–39–8) Triethanolamine hydrochloride

(53) (C.A.S. #122–52–1) Triethyl phosphite

Phosphorous acid triethyl ester
Triethoxyphosphine
Tris(ethoxy)phosphine

(54) (C.A.S. #121–45–9) Trimethyl phosphite

Phosphorus acid trimethyl ester
Trimethoxyphosphine

§ 770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

(a) *Introduction.* This section is intended to provide you additional guidance on how to determine whether your technology or software would be eligible for a License Exception, or require a license, for export to Country Group D:1.

(b) *Scope of licenses.* The export of technology and software under a license is authorized only to the extent specifically indicated on the face of the license. The only technology and software related to equipment exports that may be exported without a license is technology described in § 732.7 of this subchapter, and installation, operation, maintenance, and repair technology and software eligible for License Exception 14 described in § 740.16 of this subchapter.

(c) *Commingled technology and software.* (1) U.S.-origin technology does not lose its U.S.-origin when it is redrawn, used, consulted, or otherwise commingled abroad in any respect with other technology of any other origin. Therefore, any subsequent or similar technical data prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or utilizes any U.S.-origin technology, is subject to the EAR is the same manner as the original U.S.-origin technology, including license requirements, unless the commingled technology is not subject to the EAR by reason of the de minimis exclusions described at § 732.4 of this subchapter.

(2) U.S.-origin software that is incorporated into or commingled with foreign-origin software does not lose its U.S.-origin. Such commingled software is subject to the EAR is the same manner as the original U.S.-origin software, including license requirements, unless the commingled software is not subject to the EAR by reason of the de minimis exclusions described at § 732.4 of this subchapter.

(d) *Certain License Exception.* The following questions and answers are

intended to further clarify the scope of technology and software eligible for a License Exception.

(1)(i) *Question 1.*

(A) Our engineers, in installing or repairing equipment, use techniques (experience as well as proprietary knowledge of the internal componentry or specifications of the equipment) that exceed what is provided in the standard manuals or instructions (including training) given to the customer. In some cases, it is also a condition of the license that such information provided to the customer be constrained to the minimum necessary for normal installation, maintenance and operation situations.

(B) Can we send an engineer (with knowledge and experience) to the customer site to perform the installation or repair, under the provisions of License Exception 14 (OTS) described in § 740.16 of this subchapter, if it is understood that he is restricted by our normal business practices to performing the work without imparting the knowledge or technology to the customer personnel?

(ii) *Answer 1.* Export of technology includes release of U.S.-origin data in a foreign country, and ''release'' includes ''application to situations abroad of personal knowledge or technical experience acquired in the United States.'' As the release of technology in the circumstances described here would exceed that permitted under License Exception 14 (OTS) for operating technology and software, a license would be required even though the technician could apply the data without disclosing it to the customer.

(2)(i) *Question 2.* We plan, according to our normal business practices, to train customer engineers to maintain equipment that we have exported under a license or License Exception. The training is contractual in nature, provided for a fee, and is scheduled to take place in part in the customer's facility and in part in the U.S. Can we now proceed with this training at both locations under a License Exception?

(ii) *Answer 2.* (A) Provided that this is your normal training, and involves technology contained in your manuals and standard instructions for the exported equipment, and meets the other requirements of License Exception 14 (OTS) for operating technology and software, the training may be provided within the limits of that License Exception. The location of the training is not significant, as the export occurs at the time and place of the actual transfer or imparting of the technology to the customer's engineers.

(B) Any training beyond that covered under the provisions of License Exception 14 (OTS), but specifically represented in your license application as required for this customer installation, and in fact authorized on the face of the license or a separate technology license, may not be undertaken while the license is suspended or revoked.

PART 772—DEFINITIONS OF TERMS

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

The following are definitions of terms as used in the Export Administration Regulations:

Advisory Committee on Export Policy (ACEP). The ACEP voting members include the Assistant Secretary of Commerce for Export Administration, and the Assistant Secretary-level representatives from the Departments of State, Defense, Energy, and the Arms Control and Disarmament Agency. The Director of the Joint Chiefs of Staff for International Negotiation and the Director of the Nonproliferation Center of the Central Intelligence Agency are non-voting members. The Assistant Secretary of Commerce for Export Administration is the Chair. No alternate ACEP members may be designated, but the appropriate acting assistant head of any agency or department may serve in lieu of the assistant head of the concerned agency or department. The ACEP may invite the assistant heads of other United States Government agencies or departments (other than those identified above) to participate in the activities of the ACEP when matters of interest to such agencies or departments are under consideration. Decisions are made by majority vote.

Airline. Any person or firm engaged primarily in the transport of persons or property by aircraft for compensation or hire, pursuant to authorization by the U.S. Government or a foreign government.

Applicant. That person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the sending of the item out of the country and is thus, in reality, the exporter. (For additional information see § 748.4(b)(1) of this subchapter.)

Australia Group. The members belonging to this group have agreed to adopt controls on dual-use chemicals, i.e., weapons precursors, and equipment, and biological microorganisms and related equipment in order to prevent the proliferation of chemical and biological weapons.

Bill of lading. The contract of carriage and receipt for items, issued by the carrier. It includes an air waybill, but does not include an inland bill of lading or a domestic air waybill covering movement to port only.

CCL Group. The Commerce Control List is divided into 10 categories. Each category is subdivided into the same five groups, designated by letters A through E. See § 738.2(b) of this subchapter for a listing of these groups.

CTP. See Composite Theoretical Performance.

Canadian airline. Any citizen of Canada who is authorized by the Canadian Government to engage in business as an airline. For purposes of this definition, a Canadian citizen is:

(1) A natural person who is a citizen of Canada; or

(2) A partnership of which each member is such an individual; or

(3) A Canadian firm incorporated or otherwise organized under the laws of Canada or any Canadian province, having a total foreign stock interest not greater than 40 percent and having the Chairman or Acting Chairman and at least two-thirds of the Directors thereof Canadian citizens.

Category. The Commerce Control List is divided into 10 categories. A list of these categories can be found in § 738.2(a) of this subchapter.

COCOM (Coordinating Committee on Multilateral Export Controls). A multilateral organization that cooperated in restricting strategic exports to controlled countries. COCOM was officially disbanded on March 31, 1994. A successor regime is currently in the process of being created. COCOM members included the NATO countries, except Iceland, plus Japan and Australia.

Commerce Control List (CCL). A list of items under the export control jurisdiction of the Bureau of Export Administration, U.S. Department of Commerce. Note that certain additional items described in part 732 of this subchapter are also subject to the EAR.

Commodity. Any article, material, or supply except technology and software.

Composite Theoretical Performance (CTP). A measure of computational performance given in millions of theoretical operations per second (MTOPS). The formula to calculate the CTP is contained in a technical note titled ''Information on How to Calculate ''Composite Theoretical Performance'' at the end of Category 4 of the CCL.

Controlled country. Country Group D:1. (See Supplement No. 1 to part 740 of this subchapter.)

Cooperating country. A country that cooperated with the former COCOM member countries in restricting strategic exports in accordance with COCOM standards. The ''Cooperating Countries'' are: Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Sweden, and Switzerland.

Countries supporting international terrorism. In accordance with section 6(j) of the Export Administration Act of 1979, as amended (EAA), the Secretary of State has determined that the following countries have repeatedly provided support for acts of international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Country Chart. A chart, found in Supplement No. 1 to part 738 of this subchapter, that contains certain licensing requirements based on destination and Reason for Control. In combination with the CCL, the Country Chart indicates when a license is required for any item on the CCL to any country in the world under General Prohibition One (Exports and Reexports in the Form Received), General Prohibition Two (Parts and Components Reexports), and General Prohibition Three (Foreign Produced Direct Product Reexports).

Country Groups. For export control purposes, foreign countries are separated into five country groups designated by the symbols A, B, C, D, and E. (See Supplement No. 1 to part 740 of this subchapter for a list of countries in each Country Group.)

Customs officer. The Customs officers in the U.S. Customs Service and postmasters unless the context indicates otherwise.

Defense Trade Control (DTC). The office at the Department of State, formerly known as the Office of Munitions Control, responsible for reviewing applications to export and reexport items on the U.S. Munitions List. (See 22 CFR parts 120 through 130.)

Denied Persons List. A list, referenced in Supplement No. 2 to part 764 of this subchapter, of specific persons or firms that have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in full in the **Federal Register**.

Dual use. Items that have both military and commercial applications and items with purely commercial uses.

Export Administration Review Board (EARB). The EARB was established by Executive Order No. 11533 of June 4, 1970. EARB voting members are the Secretary of Commerce, the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of the Arms Control and Disarmament Agency. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence are non-voting members. The Secretary of Commerce is the Chair of the EARB. No alternate EARB members may be designated, but the acting head or deputy head of any agency or department may serve in lieu of the head of the concerned agency or department. The EARB may invite the heads of other United States Government agencies or departments (other than those identified above) to participate in the activities of the EARB when matters of interest to such agencies or departments are under consideration. Decisions are made by majority vote.

Export. The term export means an actual shipment, transfer, or transmission of items out of the United States; a transfer of items in the United States to an embassy or affiliate of a controlled country; or a transfer to any person of items either within the United States or outside the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted to an unauthorized recipient. (See § 732.3(e) of this subchapter.)

Export Administration Act (EAA). Export Administration Act of 1979, as amended, effective October 1, 1979.

Export Administration Regulations (EAR). Regulations set forth in parts 730–774, inclusive, of Title 15 of the Code of Federal Regulations.

Export Control Classification Number (ECCN). The numbers used in part 774 of this subchapter and throughout the EAR. The Export Control Classification Number consists of a set of digits and a letter. Reference § 738.2(c) of this subchapter for a complete description of each ECCN's composition.

Export control document. A license; application for license; any and all documents submitted in accordance with the requirements of the EAR in support of, or in relation to, a license application; application for International Import Certificate; International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Shipper's Export Declaration (SED) presented in connection with shipments to any country; a Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the EAR and any and all documents prepared and submitted by exporters and agents pursuant to the export clearance requirements of part 758 of this subchapter; a U.S. exporter's report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the United States, submitted to the U.S. Department of Commerce in accordance with the provisions of part 760 of this subchapter; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T.& E.) or Immediate Exportation (I.E.); and any other document issued by a U.S. Government agency as evidence of the existence of a license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States or any reexport of any item requiring a license.

Export of satellites. The term export, as applied to satellites controlled by the Department of Commerce, includes the physical movement of a satellite from the United States to another country for any purpose, or the transfer of registration of a satellite or operational control over a satellite from a person resident in the United States to a person resident in another country. Under the Commercial Space Launch Act, a launch of a launch vehicle and payload is not an export for purposes of controlling export.

Exporting carrier. Any instrumentality of water, land, or air transportation by which an export is effected, including any domestic air carrier on which any cargo for export is laden or carried.

Firm. A corporation, partnership, limited partnership, association, company, trust, or any other kind of organization or body corporate, situated, residing, or doing business in the United States or any foreign country, including any government or agency thereof.

Foreign policy control. A control imposed under the EAR for any and all of the following reasons: chemical and biological weapons, nuclear non-proliferation, missile technology, regional stability, crime control, anti-terrorism, United Nations sanctions, and any other reason for control implemented under section 6 of the EAA or other similar authority.

Forwarding agent. The person authorized by an exporter to perform for that exporter actual services which facilitate the export of items. The forwarding agent need not be a person regularly engaged in the freight forwarding business. The forwarding agent must be designated by the exporter in writing in the power-of-

attorney set forth on the Shippers' Export Declaration or in a general power-of-attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee of the exporter.

General prohibitions. The 10 prohibitions found in part 734 of this subchapter that prohibit certain exports, reexports, and other conduct, subject to the EAR.

Hold Without Action (HWA). License applications may be held without action only in the limited circumstances described in § 750.4(c) of this subchapter.

Intent to Deny (ITD) letter. A letter informing: 1) the applicant of the reason for BXA's decision to deny a license application; and 2) that the application will be denied 45 days from the date of the ITD letter, unless the applicant provides, and BXA accepts, a reason why the application should not be denied for the stated reason.

Intermediate consignee. The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the items to the ultimate consignee.

Item. Any commodity, technology, or software.

Law or regulation relating to export control. Any statute, proclamation, executive order, regulation, rule, license, or order applicable to any conduct involving an export transaction shall be deemed to be a ''law or regulation relating to export control.''

License. Authority issued by the Bureau of Export Administration authorizing an export, reexport, or other regulated activity. The term ''license'' does not include authority represented by a ''License Exception.''

License alternatives. A license alternative is either the Special Comprehensive License described in part 752 of this subchapter, or a License Exception described in part 740 of this subchapter.

License application; application for license. License application and similar wording mean an application to BXA requesting the issuance of a license to the applicant.

License Exception. An authorization described in part 740 of this subchapter that allows you to export or reexport, under stated conditions, items subject to the EAR that otherwise would require a license. Unless otherwise indicated, these License Exceptions are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

Licensee. The person to whom a license has been issued by BXA. See § 750.7(c) of this subchapter for a complete definition and identification of a licensee's responsibilities.

MTCR. See Missile Technology Control Regime.

MTEC. See Missile Technology Export Control Group.

Missile Technology Control Regime (MTCR). The United States along with other nations in this multilateral control regime have agreed to guidelines for restricting the export and reexport of dual-use items that may contribute to the development of missiles. The MTCR Annex lists missile-related equipment and technology controlled either by the Department of Commerce or by the Department of State's Office of Defense Trade Controls (22 CFR parts 120 through 130).

Missile Technology Export Control Group (MTEC). Chaired by the Department of State, the MTEC primarily reviews applications involving items controlled for Missile Technology reasons. The MTEC also reviews applications involving items not controlled for Missile Technology reasons, but destined for a country and/or end use/end user of concern.

''N.E.S.''. N.E.S or n.e.s is an abbreviation meaning ''not elsewhere specified''.

NLR. NLR (''no license required'') is a symbol entered on the Shipper's Export Declaration, certifying that the items exported are listed on the CCL and that no license is required.

NOL. NOL (''not on list'') is a symbol entered on the Shipper's Export Declaration, certifying that items exported are not listed on the CCL, but still subject to the EAR, and that no license is required.

NSG. See Nuclear Suppliers Group.

NATO (North Atlantic Treaty Organization). A strategic defensive organization that consists of the following member nations: Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

Net value. The actual selling price, less shipping charges or current market price, whichever is the larger, to the same type of purchaser in the United States.

Nuclear Suppliers Group (NSG). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export or reexport of dual-use items with nuclear applications.

Office of Foreign Assets Control (FAC) or (OFAC). The agency at the Department of the Treasury responsible for blocking assets of sanctioned foreign entities, controlling participation by U.S. persons, including foreign subsidiaries, in transactions with specific countries or nationals of such countries, and administering embargoes on certain countries or areas of countries. (31 CFR parts 500 through 590.)

Operating Committee (OC). The OC voting members include representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy and the Arms Control and Disarmament Agency for Nonproliferation Policy. The Director of the Joint Chiefs of Staff for International Negotiations and the Director of the Nonproliferation Center of the Central Intelligence Agency are non-voting members. The Department of Commerce representative, appointed by the Secretary, is the Chair of the OC and serves as the Executive Secretary of the Advisory Committee on Export Policy. The OC may invite representatives of other United States Government agencies or departments (other than those identified above) to participate in the activities of the OC when matters of interest to such agencies or departments are under consideration.

Person. A natural person, including a citizen or national of the United States or of any foreign country, or any firm.

Port of export. The port where the cargo to be shipped abroad is laden aboard the exporting carrier. It includes, in the case of an export by mail, the place of mailing.

Production facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, production facility means any nuclear reactor or plant specially designed or used to produce special nuclear material through the irradiation of source material or special nuclear material, the separation of isotopes or the chemical reprocessing or irradiated source or special nuclear material.

Publicly available information. Information that is generally accessible to the interested public in any form and, therefore, not subject to the EAR (See part 732 of this subchapter).

Purchaser. The person abroad who has entered into a transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not a purchaser.

RWA. See Return without Action.

Reasons for Control. There are 10 possible reasons why an item may be controlled. Items controlled within a particular ECCN may be controlled for

more than one reason. Reasons for Control are: Anti-Terrorism (AT), Chemical & Biological Weapons (CB), Crime Control (CC), Missile Technology (MT), National Security (NS), Nuclear Nonproliferation (NP), Regional Stability (RS), Supercomputers (SC), Short Supply (SS), and United Nations sanctions (UN).

Reexport. The term ''reexport'' includes the transfer, transshipment, or diversion of items from one foreign country to another foreign country. In addition, for purposes of satellites controlled by the Department of Commerce, the term ''reexport'' also includes the transfer of registration of a satellite or operational control over a satellite from a party resident in one country to a party resident in another country.

Replacement. An authorization by the Bureau of Export Administration revising the information, conditions, or riders stated on a license issued by BXA.

Return Without Action (RWA). An application may be RWA'd for one of the following reasons: (1) the applicant has requested the application be returned, (2) if a License Exception applies, (3) the items are not under Department of Commerce jurisdiction, (4) required documentation has not been submitted with the application, or (5) the applicant can not be reached after several attempts to request additional information necessary for processing of the application.

SNEC. See Subgroup on Nuclear Export Coordination.

Schedule B numbers. The commodity numbers appearing in the current edition of the Bureau of the Census publication, Schedule B Statistical Classification of Domestic and Foreign Commodities Exported from the United States. (See part 758 of this subchapter for information on use of Schedule B numbers.)

Shield. Chaired by the Department of State, the Shield primarily reviews applications involving items controlled for Chemical and Biological Weapons reasons. The Shield also reviews applications involving items not controlled for Chemical and Biological Weapons reasons, but destined for a country and/or end use/end-user of concern.

Single shipment. All items moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier, even if these items will be forwarded to one or more ultimate consignees. Items being transported in this manner shall be treated as a single shipment even if the items represent more than one order or are in separate containers.

Specially Designated National (SDN). Any person who is determined by the Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control (see 31 CFR parts 500 through 590).

Specially Designated Terrorist (STN). Any person who is determined by the Secretary of the Treasury to be a specially designated terrorist under notices or regulations issued by the Office of Foreign Assets Control (see 31 CFR chapter V).

Subgroup on Nuclear Export Coordination (SNEC). Chaired by the Department of State, the SNEC primarily reviews applications involving items controlled for Nuclear Non-proliferation reasons. The SNEC also reviews applications involving items not controlled for Nuclear Non-proliferation reasons, but destined for a country and/or end use/end-user of concern.

Subject to the EAR. A term used in the EAR to describe those commodities, technology, software and activities over which the Bureau of Export Administration (BXA) exercises regulatory jurisdiction under the EAR (See § 732.2(a) of this subchapter for a complete definition).

Supercomputer. A ''supercomputer'' is any computer with a Composite Theoretical Performance (CTP) equal to or exceeding 1,500 Mtops (million theoretical operations per second). The formula to calculate the CTP is contained in a technical note titled ''Information on How to Calculate ''Composite Theoretical Performance'' at the end of Category 4 of the CCL.

U.S. exporter. That person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States.

Ultimate consignee. The person located abroad who is the true party in interest in actually receiving the export or reexport for the designated end-use. (See § 748.4(b)(5) of this subchapter.)

United States. Unless otherwise stated, the 50 States, including offshore areas within their jurisdiction pursuant to section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, Puerto Rico, and all territories, dependencies, and possessions of the United States, including foreign trade zones established pursuant to 19 U.S.C. 81A–81U, and also including the outer continental shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

United States airline. Any citizen of the United States who is authorized by the U.S. Government to engage in business as an airline. For purposes of this definition, a U.S. citizen is:

(1) An individual who is a citizen of the United States or one of its possessions; or

(2) A partnership of which each member is such an individual; or

(3) A corporation or association created or organized under the laws of the United States, or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers thereof are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

Utilization facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, utilization facility means a nuclear reactor, other than one that is a production facility, any of the following major components of a nuclear reactor: Pressure vessels designed to contain the core of a nuclear reactor, other than one that is a production facility, and the following major components of a nuclear reactor: (1) Primary coolant pumps; (2) Fuel charging or discharging machines; and (3) Control rods. Utilization facility does not include the steam turbine generator portion of a nuclear power plant.

You. Any person, including a natural person or a firm.

PARTS 771, 773, 775–779, 785–791—[REMOVED AND RESERVED]

5. Parts 771, 773, 775 through 779 and 785 through 791 are removed and reserved.

PART 799—[REDESIGNATED AS PART 774]

6. Part 799 is redesignated as part 774.

7. The authority citation for newly designated part 774 is revised to read as follows:

Authority: 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

8. Newly designated § 774.1 is revised to read as follows:

§ 774.1 Introduction.

The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), that includes all items (commodities, software, and technology) subject to the licensing authority of

BXA. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. In instances where other agencies administer controls over related items, entries in the CCL will contain a reference to these controls. The CCL is contained in Supplement No. 1 to part 774. Supplement No. 2 contains the General Technology and Software Notes relevant to entries contained in the CCL, and Supplement No. 3 contains definitions to terms used in the CCL.

9. Supplement No. 1 to newly designated part 774 is amended by revising the Requirements section of each applicable Export Control Classification Number (ECCN) to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

Category 1—Materials

A. Equipment, Assemblies and Components

1A01 Components made from fluorinated compounds.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A02 Composite structures or laminates.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to composite structures that are specially designed for missile applications (including specially designed subsystems and components)—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: Yes, except MT
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A03 Manufactures of non-fluorinated polymeric substancescontrolled by 1C08.a in film, sheet, tape or ribbon form.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $200
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A22 Other composite structures of laminates usable in missile systems.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A27 Maraging steels (steels generally characterized by high nickel, very low carbon contect and the use of substitutional elements or precipitates to produce age-hardening), other than those controlled by ECCN 1A47, below, having an Ultimate Tensil Strength of 1.5×10^9 N/m^2 (Pa) or greater measured at 20°C, in the form of sheet, plate, or tubing with a wall or plate thickness equal to or less than 5.0mm(0.2 inch).

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A44 Crucibles made of materials resistant to liquid actinide metals.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A45 Specialized packings for use in separating heavy water from ordinary water that are made of phosphor bronze mesh or copper (both chemically treated to improve wettability) and are designed for use in vacuum distillation towers.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A46 Aluminum and titanium alloys in the form of tubes or solid forms (including forgings) with an outside diameter of more than 75 mm (3 inches).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A47 Maraging steel capable of an ultimate tensile strength of 2050 MPa (2.050 x 10^9 N/m^2) (300,000 lbs./in^2) or more at 293 K (20 °C), except forms in which no linear dimension exceeds 75 mm (3 inches).

License Requirements

Reason for Control: NP, MT, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

MT applies to maraging steels controlled by this entry that also meet the specifications of 1A27—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes, except MT
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A48 Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A50 Parts made of tungsten, tungsten carbide, or tungsten alloys (greater than 90% tungsten) having a mass greater than 20 kilograms and a hollow cylindrical symmetry (including cylinder segments) with an inside diameter greater than 10 cm (4 in), but less than 30 cm (12 in), except parts specially designed for use as weights or gamma-ray collimators.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A84 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1A88 Bulletproof and bullet resistant vests.

License Requirements

Reason for Control: UN

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

1B01 Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry EXCEPT 1B01.d.4—MT Column 1

NP applies to filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 75mm (3 in) and 400 mm (16 in) and lengths of 600 mm (24 in) or greater; AND coordinating and programming controls and precision mandrels for these filament winding machines—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A for 1B01.a; $5000 for all other items

CSR: Yes, except MT and NP

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B02 Systems and components therefor specially designed for producing metal alloys, metal alloy powder or alloyed materials controlled by 1C02.a.2, 1C02.b, or 1C02.c.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B03 Tools, dies, molds or fixtures, for superplastic forming or diffusion bonding titanium or aluminum or their alloys, specially designed for the manufacture of the following:

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B16 Plants for the production of uranium hexafluoride (UF_6) and specially designed or prepared equipment (including UF_6 purification equipment), and specially designed parts and accessories therefor.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to items that appear on International Atomic Energy List—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, except Bulgaria, Romania, or Russia for NP only

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

1B17 Electrolytic cells for the production of fluorine with a production capacity greater than 250 grams of fluorine per hour, and specially designed parts and accessories therefor.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to items that appear on the International Atomic Energy List—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, except Bulgaria, Romania, or Russia for NP only

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B18 Commodities on the International Munitions List

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to equipment for the production of rocket propellants—MT Column 1

RS applies to 1B18.a—RS Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000 for 1B18.a for Australia, Japan, New Zealand, and NATO only; $5000 for 1B18.b

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B21 Other equipment for the production of fibers, prepregs, preforms or composites.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B28 Other equipment for the production of propellants.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B30 Pyrolytic deposition and densification equipment.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B41 Filament winding machines not controlled by 1B01, controls, and mandrels.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B42 Electromagnetic isotope separators designed for, or equipped with, single or multiple ion sources capable of providing a total ion beam current of 50 mA or greater.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B50 Vacuum and controlled environment furnaces.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B51 Instruments designed for vacuum service that are capable of measuring absolute or differential pressures to an accuracy of plus or minus 1 torr in the pressure range of 0 to 100 torr absolute where all whetted surfaces, including pressure sensing elements, are constructed of or protected by corrosion-resistant materials such as nickel, nickel alloys, phosphor bronze, stainless steel, aluminum, or aluminum alloys and specially designed or modified component parts therefor.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B52 Water-hydrogen sulfide exchange tray columns constructed from fine carbon steel (such as ASTM A516) with a diameter of 1.8 m (6 ft) or greater and made to operate at a nominal pressure of 2 MPa (300 psi) or greater.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B53 Hydrogen-cryogenic distillation columns.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B54 Ammonia synthesis converters.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry AT—Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B58 Facilities or plants, and related equipment, for the production, recovery, extraction, concentration, or handling of tritium.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B59 Pumps for circulating solutions of diluted or concentrated potassium amide catalyst in liquid ammonia (KNH_2/NH_3).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B70 Equipment that can be used in the production of chemical weapons precursors and chemical warfare agents.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 3
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1B71 Equipment that can be used in the production of biological weapons.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 3
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

1C01 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C02 Metal alloys, metal alloy powder or alloyed materials.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C03 Magnetic metals of all types and of whatever form, having the following characteristics:

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C04 Uranium titanium alloys or tungsten alloys with a matrix based on iron, nickel or copper, with all of the following characteristics:

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C05 Superconductive composite conductors in lengths exceeding 100 m or with a mass exceeding 100 g.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C06 Fluids and lubricating materials.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C07 Ceramic base materials, non-composite ceramic materials, ceramic matrix composite materials and precursor materials.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to items described in 1C07.d (dielectric constant less than 6 at frequencies from 100Hz to 10,000 Mhz) for use in missile radomes—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000, except N/A for 1C07.e
CSR: Yes, except 1C07.d
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C08 Non-fluorinated polymeric substances.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $200
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C09 Unprocessed fluorinated compounds.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C10 Fibrous and filamentary materials that may be used in organic matrix, metallic matrix or carbon matrix composite structures or laminates.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to 1C10.a (all aramid fibrous and filamentary materials [FFM]), 1C10.b (all carbon FFM), and 1C10.c (all glass FFM)—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500, except N/A for NP items
CSR: N/A
GBS: N/A
NSG: Yes, except to Bulgaria, Romania, or Russia for NP only
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C18 Items on the International Munitions List.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: Yes for items listed in Advisory Note to 1C18
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C19 Items on the International Atomic Energy List (e.g., zirconium metal, nickel powder and porous nickel metal, lithium, beryllium metal, wet-proofed platinized catalysts, and hafnium).

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry except zirconium in the form of foil or strip having a thickness not exceeding 0.10 mm (0.004 in) in shipments of 200 kg or less—NS Column 1
NP applies to zirconium metal, alloys, or compounds in shipments of 5 kg or less—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes, except to Bulgaria, Romania, or Russia for NP only
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C21 Other materials for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures (i.e., stealth technology), for applications usable for missile systems and subsystems.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C22 Tungsten, molybdenum, and alloys of these metals in the form of uniform spherical or atomized particles of 500 micrometer diameter or less with a purity of 97 percent or higher for fabrication of rocket motor components; i.e., heat shields, nozzle substrates, nozzle throats, and thrust vector control surfaces.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C27 Other ceramic or graphite materials usable in missile systems.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C31 Propellants, constituent chemicals, and polymeric substances for propellants.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C49 Platinized catalysts not controlled by 1C19.e that are specially designed or prepared for promoting the hydrogen isotope exchange reaction between hydrogen and water for the recovery of tritium from heavy water or for heavy water production.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C50 Fibrous and filamentary materials not controlled by 1C10.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C51 High purity (99.99% or greater) bismuth with very low silver content (less than 10 parts per million).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C52 High purity calcium containing both less than 1,000 parts per million by weight of metallic impurities other than magnesium and less than 10 parts per million of boron.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C53 High purity magnesium containing both less than 200 parts per million by weight of metallic impurities other than calcium and less than 10 parts per million of boron.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C54 Alpha-emitting radionuclides having an alpha half-life of 10 days or greater, but less than 200 years, including compounds and mixtures containing these radionuclides with a total alpha activity of 1 curie (37 GBq) per kilogram or greater, and equipment containing these radionuclides.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C55 Helium isotopically enriched in the helium-3 isotope, in any form, whether or not mixed with other materials, or contained in any equipment or device, except products or devices containing less than 1 g of helium-3.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C56 Chlorine trifluoride (ClF_3).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C57 Boron and boron compounds, mixtures, and loaded materials in which the boron-10 isotope is more than 20% by weight of the total boron content.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C58 Radium-226.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C60 Precursor and intermediate chemicals used in the production of chemical warfare agents.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C61 Microorganisms and toxins.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C80 Inorganic chemicals listed in Supplement No. 1 to part 754 of the EAR.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

1C81 Crude petroleum including reconstituted crude petroleum, tar sands & crude shale oil listed in Supplement No. 1 to part 754 of the EAR.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

1C82 Other petroleum products listed in Supplement No. 1 to part 754 of the EAR.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

1C83 Natural gas liquids and other natural gas derivatives listed in Supplement No. 1 to part 754 of the EAR.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of this subchapter. The

Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

1C84 Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Dept. of Energy) listed in Supplement No. 1 to part 754 of the EAR.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

1C88 Western red cedar (thuja picata), logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to part 754 of the EAR.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

1C92 Oil well perforators.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C93 Fibrous and filamentary materials, not controlled by 1C10 or 1C50, for use in composite structures and with a specific modulus of 3.18×10^6 m or greater and a specific tensile strength of 7.62×10^4 m or greater.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1C94 Fluorocarbon electronic cooling fluids.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

D. Software

1D01 Software specially designed or modified for the development, production, or use of equipment controlled by 1B01, 1B02, 1B03, 1B16, 1B17, or 1B18.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software for the development, production, or use of equipment controlled by 1B01 and 1B18.a for MT reasons—MT Column 1

NP applies to software for the development, production or use of equipment controlled by 1B01 for NP reasons—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only
CIV: Yes, except MT and NP
TSR: Yes, except MT and NP

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D02 Software for the development of organic matrix, metal matrix or carbon matrix laminates or composites.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified for the development of composites controlled by 1A, 1B or 1C entries for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes, except MT
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D23 Other software specially designed for the ''development'', ''production'', or ''use'' of items controlled by 1A, 1B, and 1C for missile technology reasons.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D41 Software, not controlled by 1D01, specially designed or modified for the ''development'', ''production'', or ''use'' of filament winding machines controlled by 1B41.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D50 Specially designed software for computer control and monitoring systems specially configured for vacuum and controlled atmosphere metallurgical melting and casting furnaces controlled by 1B50.b.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D60 Software for process control that is specifically configured to control or initiate production of chemical precursors controlled by ECCN 1C60.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D93 Software specially designed for the ''development'', ''production'', or ''use'' of fibrous and filamentary materials controlled by 1C50.b or 1C93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1D94 Software specially designed for the ''development'' or ''production'' of fluorocarbon electronic cooling fluids controlled by 1C94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

1E01 Technology according to the General Technology Note for the development or production of equipment or materials controlled by 1A01.b, 1A01.c, 1A02, 1A03, 1B01, 1B02, 1B03, 1B18, 1C01, 1C02, 1C03, 1C04, 1C05, 1C06, 1C07, 1C08, 1C09, 1C10, or 1C18.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for items controlled by 1A02 or 1B01 for MT reasons—MT Column 1

NP applies to technology for the development or production of items controlled by 1B01 and materials controlled by 1C10 for NP reasons—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: N/A

TSR: Yes, except MT and NP, and except Iran and Syria

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E02 Other technology.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes, except Iran and Syria

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E19 Technology according to the General Technology Note for the ''development'', ''production'', or ''use'' of equipment or materials controlled by 1B16, 1B17, or 1C19.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to technology for the development, production or use of plants controlled by 1B16, equipment controlled by 1B17, or materials controlled by 1C19—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia for NP only

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E23 Other technology according to the General Technology Note for the ''development'', ''production'', or ''use'' of items controlled by 1A22, 1A27, 1B28, 1B30, 1C21, 1C22, 1C27, or 1C31.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E24 Technology (including processing conditions) and procedures for the regulation of temperature, pressure or atmosphere in autoclaves or hydroclaves when used for the production of composites or partially processed composites.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E25 Technology for producing pyrolytically derived materials formed on a mold, mandrel, or other substrate from precursor gases that decompose at 1,300°C to 2,900°C temperature range at pressures of 130 Pa (1 mm Hg) to 20 kPa (150 mm Hg), including technology for the composition of precursor gases, flow-rates, and process control schedules and parameters.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E40 Technology for the use of filament winding machines controlled by 1B01.a that are capable of winding cylindrical rotors having a diameter between 3 inches and 16 inches and a length of 24 inches or greater.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E41 Technology for the ''development'', ''production'', or ''use'' of items controlled by 1A44, 1A45, 1A46, 1A47, 1A48, 1A50, 1B41, 1B42, 1B50, 1B51, 1B52, 1B53, 1B54, 1B58, 1B59, 1C49, 1C50, 1C51, 1C52, 1C53, 1C54, 1C55, 1C56, 1C57, or 1C58 or for the ''use'' of items controlled by 1C10.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E60 Technology for the production and/or disposal of chemical precursors described in ECCN 1C60, and technology as described in the list below for facilities designed or intended to produce chemicals described in ECCN 1C60.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E61 Technology for the production and/or disposal of microbiological items described in ECCN 1C61.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E70 Technology for production of commodities described in ECCNs 1B70 and 1B71 (equipment that can be used in production of chemical warfare agents or their precursors, or biological agents).

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 3

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

1E94 Technology for the development, production, or use of fibrous and filamentary materials controlled by 1C93 or fluorocarbon electronic cooling fluids controlled by 1C94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 2—Materials Processing

A. Equipment, Assemblies and Components

Note to Category 2A: Category 2A does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

2A01 Ball bearings or solid roller bearings, except tapered roller bearings, having tolerances specified by the manufacturer in accordance with ABEC 7, ABEC 7P, or ABEC 7T or ISO Standard Class 4 or better (or national equivalents).

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A02 Other ball bearings or solid roller bearings, except tapered roller bearings, having tolerances specified by the manufacturer in accordance with ABEC 9, ABEC 9P or ISO Standard Class 2 or better (or national equivalents).

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A03 Solid tapered roller bearings, having tolerances specified by the manufacturer in accordance with ANSI/AFBMA Class 00 (inch) or Class A (metric) or better (or national equivalents) and having either of the following characteristics.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A04 Gas-lubricated foil bearing manufactured for use at operating temperatures of 561 K (288° C) or higher and a unit load capacity exceeding 1 MPa.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A05 Active magnetic bearing systems.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A06 Fabric-lined self-aligning or fabric-lined journal sliding bearings manufactured for use at operating temperatures below 219 K (−54° C) or above 423 K (150°C).

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A19 Commodities on the International Atomic Energy List (e.g., power generating and/or propulsion equipment, neutron generator systems, and valves for gaseous diffusion separation process).

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to 2A19.b & c—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes for 2A19.b and c, except to Bulgaria, Romania, or Russia
CIV: Yes, except NP (see Advisory Note to 2A19)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A44 Specialized instruments for hydrodynamic experiments.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A48 Valves not controlled by 2A19.c that are 5 mm (0.2 in.) or greater in diameter, with a bellows seal, wholly made of or lined with aluminum, aluminum alloy, nickel, or alloy containing 60% or more nickel, either manually or automatically operated, and specially designed parts and accessories therefor.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A49 Generators and other equipment specially designed, prepared, or intended for use with nuclear plants.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 2
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A50 Equipment related to nuclear material handling and processing and to nuclear reactors.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A51 Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A52 Vacuum pumps with an input throat size of 38 cm (15 in.) or greater with a pumping speed of 15,000 liters/second or greater and capable of producing an ultimate vacuum better than 10^{-4} Torr (0.76 x 10^{-4} mbar).

License Requirements

Reason for Control: NP, AT

Control(s) amd Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A53 Pumps designed to move molten metals by electromagnetic forces.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2A94 Portable electric generators and specially designed parts.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

2B01 Numerical control units, motion control boards, specially designed for numerical control applications on machine tools, machine tools, and specially designed components therefor.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes, *except* Bulgaria, Romania, or Russia
CIV: Yes, except NP (for items described in Advisory Note 2)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B02 Non-numerically controlled machine tools for generating optical quality surfaces.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B03 Numerically controlled or manual machine tools specially designed for cutting, finishing, grinding or honing either of the following classes of bevel or parallel axis hardened (R_c = 40 or more) gears, and specially designed components, controls and accessories therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes for 2B03.a

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B04 Hot isostatic presses, as follows, and specially designed dies, molds, components, accessories and controls therefor.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B05 Equipment specially designed for deposition, processing and in-process control of inorganic overlays, coatings and surface modification, as follows, for non-electronic substrates by processes shown in the Table and associated Notes following 2E03.d and specially designed automated handling, positioning, manipulation and control components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B06 Dimensional inspection or measuring systems or equipment.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to 2B06.a, b or c—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: Yes for 2B06.d

GBS: N/A

NSG: Yes for 2B06.a, b, and c, except to Bulgaria, Romania, or Russia

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B07 Robots, and specially designed controllers and end-effectors therefor.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to robots and NP Column 1 end-effectors that are controlled by 2B07.b OR that are specially designed or rated as radiation hardened to withstand greater than 5×10^4 grays (Si) (5×10^6 rad (Si)) without operational degradation, and to specially designed controllers therefor—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000, except N/A for NP

CSR: Yes, except NP

GBS: N/A

NSG: Yes, *except* Bulgaria, Romania, or Russia, for NP only

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B08 Assemblies, units or inserts specially designed for machine tools, or for equipment controlled by 2B06 or 2B07.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry NS Column 1

NP applies to entire entry NP Column 1

AT applies to entire entry AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, *except* Bulgaria, Romania, or Russia

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B09 Specially designed printed circuit boards with mounted components and software therefor, or compound rotary tables or tilting spindles, capable of upgrading, according to the manufacturer's specifications, numerical control units, machine tools or feed-back devices to or above the levels specified in ECCNs 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, or 2B08.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, *except* Bulgaria, Romania, or Russia

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B18 Commodities on the International Munitions List.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment—MT Column 1

RS applies to entire entry—RS Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B24 Isostatic presses not controlled by 2B04 and specially designed dies and moulds, and controls therefor.

License Requirements

Reason for Control: MT, NP, AT

Control(s) and Country Chart

MT applies to entire entry—NS Column 1

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B41 Numerically controlled machine tools for vertical and/or boring not controlled by ECCN 2B01.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B44 Isostatic presses, not controlled by 2B04 or 2B24, capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater and having a chamber cavity with an inside diameter in excess of 152 mm (6 inches) and specially designed dies and moulds, and controls therefor.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B50 Spin-forming and flow-forming machines and precision rotor-forming mandrels, and specially designed components therefor.

License Requirements

Reason for Control: NP, MT, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

MT applies to 2B50.a except those that are not usable in the production of propulsion components and equipment (e.g., motor cases) for missile systems—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B51 Centrifuge rotor fabrication assembly, and straightening equipment and bellows-forming mandrels and dies.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B53 Centrifugal balancing machines, fixed or portable, horizontal or vertical.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B85 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

License Requirements

Reason for Control: UN

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B91 Numerical control units for machine tools and numerically controlled machine tools, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B92 Manual dimensional inspection machines with two or more axes, and measurement uncertainty equal to or less (better) than (3 + L/300) micrometer in any axes (L measured length in mm).

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B93 Gearmaking and/or finishing machinery not controlled by 2B03 capable of producing gears to a quality level of better than AGMA 11.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2B94 Robots not controlled by 2B07 that are capable of employing feedback information in real-time processing from one or more sensors to generate or modify programs or to generate or modify numerical program data.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials—[Reserved]

D. Software

2D01 Software specially designed or modified for the development, production or use of equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, or 2B09.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified for the development, production or use of items controlled by 2B04—MT Column 1

NP applies to software described in this entry for the development, production or use of equipment controlled by 2B01, 2B04, and 2B06.a, .b and .c (including software for the simultaneous measurements of wall thickness and contour), 2B07, and 2B09 for NP reasons—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes for software for 2B01, 2B06.a, .b, .c, 2B07, and 2B09 except to Bulgaria, Romania, or Russia. Software (including documentation) for numerical control units must be: in machine executable form only; and limited to the minimum necessary for the use (i.e., installation, operation, and maintenance) of the units.
CIV: N/A
TSR: Yes, except MT and NP

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D02 Specific software.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D18 Software for the development, production or use of equipment controlled by 2B18.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software for the development, production or use of items controlled by 2B18 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes, except MT and Iran and Syria

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D19 Software for the development, production or use of equipment controlled by 2A19.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to software for the development, production or use of items controlled by 2A19.b and .c—NP Column 1

AT applies to entire entry AT Column 1

License Alternatives

License Exceptions

NSG: Yes, *except* Bulgaria, Romania, or Russia for NP only

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D24 Software for the development, production or use of commodities controlled by 2B24.

License Requirements

Reason for Control: MT, NP, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D41 Software specially designed or modified for the development, production or use of numerically controlled machine tools controlled by ECCN 2B41.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry NP Column 1

AT applies to entire entry AT Column 1

License Alternatives

License Exceptions

NSG: Yes, provided that software (including documentation) for ''numerical control'' units is: exported in machine executable form only; and limited to the minimum necessary for the use (i.e., installation, operation, and maintenance) of the units.

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D44 Software for the development, production or use of commodities controlled by 2B44.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D49 Software specially designed or modified for the development, production or use of equipment controlled by 2A49.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D50 Software specially designed or modified for the development, production or use of equipment controlled by 2A50 or 2B50.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D53 Software specially designed or modified for the development, production or use of centrifugal balancing machines controlled by 2B53.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D92 Software specially designed for the development or production of portable electric generators controlled by 2A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D93 Software specially designed for the development or production of manual dimensional inspection machines controlled by 2B92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2D94 Software specially designed for the development, production, or use of numerical control units and numerically controlled machine tools controlled by 2B91, gear making and/or finishing machinery controlled by 2B93, or robots controlled by 2B94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

2E01 Technology according to the General Technology Note for the development of equipment or software controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, 2B09, 2D01 or 2D02.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to technology for the development of items controlled by 2B04—MT Column 1
NP applies to technology for the development of items controlled by 2B04—NP Column 1
NP applies to technology for the development of items controlled for NP reasons by 2B01, 2B06.a .b and .c, 2B07, 2B08, and 2B09, and software controlled by 2D01 for NP reasons—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes for NP, *except* techology for 2B04, and *except* Bulgaria, Romania, or Russia
CIV: N/A
TSR: Yes, except MT and NP

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E02 Technology according to the General Technology Note for the production of equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08 or 2B09.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to technology for the production of items controlled by 2B04—MT Column 1
NP applies to technology for the production of items controlled by 2B04—NP Column 1
NP applies to technology for the production of items controlled by 2B01, 2B06.a, .b, and .c, 2B07, 2B08, and 2B09 for NP reasons—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, *except* technology for 2B04 and except Bulgaria, Romania, or Russia, for NP only
CIV: N/A
TSR: Yes, except MT and NP

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E03 Other Technology.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to technology controlled by 2E03.a.1 or a.3—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, *except* Bulgaria, Romania, or Russia, for 2E03.a.1 and a.3 only
CIV: N/A
TSR: Yes, *except* 2E03.a.1, a.3, b, and d

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E18 Technology for the development, production or use of equipment controlled by 2B18.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to technology for the development, production or use of items controlled by 2B18 for MT reasons—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes, except MT and Iran and Syria

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E19 Technology for the development, production, or use of equipment controlled by 2A19.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to technology for the development, production or use of items controlled by 2A19.b and .c—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, *except* Bulgaria, Romania, or Russia for NP only
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E20 Technology for the use of commodities controlled by 2B04.

License Requirement

Reason for Control: MT, NP, AT

Control (s) and Country Chart

MT applies to entire entry—MT Column 1
NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E24 Technology for the development, production, or use of commodities controlled by 2B24.

License Requirement

Reason for Control: MT, NP, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E40 Technology for the use of hot isostatic presses controlled by 2B04, and systems or equipment controlled by 2B06.a, .b, or c, 2B07, 2B08 or 2B09.

License Requirement

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to technology NP Column 1 for the use of items controlled by 2B04, 2B06.a, .b or .c, 2B07, 2B08, and 2B09 for NP reasons.
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E41 Technology for the development, production or use of numerically controlled machine tools controlled by 2B41 or for the use of equipment controlled by 2B01.

License Requirement

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E44 Technology for the development, production or use of specialized instruments for hydrodynamic experiments controlled by 2A44 or isostatic presses controlled by 2B44.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E48 Technology for the development, production or use of valves controlled by 2A48.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E49 Technology for the development, production or use of equipment controlled by 2A49.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 2
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E50 Technology for the development, production or use of equipment controlled by 2A50 or 2B50.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E51 Technology for the development, production or use of equipment controlled by 2A51 or 2B51.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E52 Technology for the development, production or use of equipment controlled by 2A52.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E53 Technology for the development, production or use of equipment controlled by 2A53 or 2B53.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E93 Technology for the development, production, or use of portable electric generators controlled by 2A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

2E94 Technology for the development, production, or use of numerical control units and numerically controlled machine tools controlled by 2B91, manual dimensional inspection machines controlled by 2B92, gear making and/or finishing machinery controlled by 2B93, or robots controlled by 2B94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 3—Electronics Design, Development and Production

A. Equipment, Assemblies and Components

3A01 Electronic devices and components.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to 3A01.a.1.a—MT Column 1
NP applies to 3A01.e.5—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500: 3A01.c; $3000: 3A01.b.1 to b.3, 3A01.d to 3A01.f; $5000: 3A01.a, 3A01.b.4 to b.7
CSR: Yes, except 3A01.a.1.a and 3A01.e.5
GBS: Yes, except 3A01.a.1.a, b.1, b.3 to b.7, c to f
NSG: Yes, *except* Bulgaria, Romania, or Russia, for 3A01.e.5
CIV: Yes for 3A01.a.4.a and a.4.b (see Advisory Note 3 to Category 3—Electronics Design, Development and Production)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A02 General purpose electronic equipment.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000: 3A02.a, 3A02.e to g;

$5000: 3A02.b to d, 3A02.h
CSR: Yes
GBS: Yes for 3A02.a.1
NSG: N/A
CIV: Yes for 3A02.h

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A22 Accelerators capable of delivering electromagnetic radiation produced by ''bremsstrahlung'' from accelerated electrons of 2 Me V or greater and systems containing the accelerators, excluding that equipment specially designed for medical purposes.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A41 Capacitors not controlled by 3A01.e.2.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A42: Superconducting solenoidal electromagnets other than those described in 3A01.e.3.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A43 Switching devices.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A44 High-speed pulse generators with output voltages greater than 6 volts into a less than 55-ohm resistive load, and with pulse transition times less than 500 picoseconds (defined as the time interval between 10% and 90% voltage amplitude).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A46 Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A49).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A48 Multistage light gas gun or other high-velocity gun systems (coil, electromagnetic, electrothermal, or other advanced systems) capable of accelerating projectiles to 2 kilometers per second or greater and specialized components therefor.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A49 Detonators and multipoint initiation systems (exploding bridge wire, slapper, etc.).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A50 Inverters, converters, frequency changers, and generators.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A51 Mass spectrometers.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A52 Oscilloscopes, transient recorders, and specially designed components therefor.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A53 High-voltage direct current power supplies capable of continuously producing, over a time period of 8 hours, 20,000 V or greater with a current output of 1 amp or greater and with a current or voltage regulation better than 0.1 percent.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A54 Direct current high-power supplies capable of continuously producing, over a time period of 8 hours, 100 V or greater with a current output of 500 amps or greater and with a current or voltage regulation better than 0.1 percent.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A55 Flash X-ray generators and electron accelerators not controlled by 3A01.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A80 Voice print identification and analysis equipment and parts, n.e.s.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A81 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A92 Electronic devices and components not controlled by 3A01.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A93 Electronic test equipment in Category 3A n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1000 for Syria only
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3A94 General purpose electronic equipment not controlled by 3A02.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

3B01 Equipment for manufacture or testing of semiconductor devices or materials, as follows, and specially designed components and accessories therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $500
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3B91 Equipment not controlled by 3B01 for the manufacture or testing of electronic components and materials, and specially designed components and accessories therefor.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

3C01 Hetero-epitaxial materials consisting of a ''substrate'' with stacked epitaxially grown multiple layers.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3C02 Resist materials, and ''substrates'' coated with controlled resists.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3C03 Organo-inorganic compounds as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3,000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3C04 Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999%, even diluted in inert gases or hydrogen.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

D. Software

3D01 Software specially designed for the development or production of equipment controlled by 3A01.b to 3A01.f, 3A02, or 3B01.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to software for the development or production of items controlled for NP reasons by 3A01.e.5.—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, *except* Bulgaria, Romania, or Russia, for ''software'' for 3A01.e.5
CIV: N/A
TSR: Yes, except 3A01.e.5

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3D02 Software specially designed for the use of stored program controlled equipment controlled by 3B01.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3D03 Computer-aided-design (CAD) ''software'' for semiconductor device or integrated circuits.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3D21 Software specially designed for the development or production of items controlled by 3A01.a.1.a.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3D22 Software for the development, production, or use of radiographic equipment (linear accelerators) controlled by 3A22.

License Requirements

Reason for Control: MT, AT

Control(s) Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3D80 Software specially designed for the development, production, or use of items controlled by 3A80 and 3A81.

License Requirements:

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire—entry CC Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3D94 Software specially designed for the development, production, or use of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

3E01 Technology according to the General Technology Note for the development or production of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03 or 3C04.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to technology specially designed for the development or production of items controlled for MT reasons by 3A01.a.1.a—MT Column 1
NP applies to technology specially designed for the development or production of items controlled for NP reasons by 3A01.e.5 —NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes, except 3A01.a.1.a and e.5

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3E02 Other technology for the development or production of equipment and components described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3E22 Technology for the development, production, or use of radiographic equipment (linear accelerators) controlled by 3A22.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3E40 Technology for the development, production, or use of items controlled by 3A41, 3A42, 3A43, 3A44, 3A46, 3A48, 3A49, 3A50, 3A51, 3A52, 3A53, 3A54, or 3A55.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3E41 Technology for the use of flash discharge type x-ray systems, including tubes, controlled by 3A01.e.5.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3E80 Technology specially designed for the development, production, or use of items controlled by 3A80 and 3A81.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

3E94 Technology for the development, production, or use of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 4—Computers

Note 1: Computers, related equipment or ''software'' performing telecommunications or ''local area network'' functions must also be evaluated against the performance characteristics of the telecommunications entries in Category 5.

N.B. 1: Control units that directly interconnect the buses or channels of central processing units, ''main storage'' or disk controllers, are not regarded as telecommunications equipment described in the telecommunications entries in Category 5.

N.B. 2: For the control status of ''software'' that provides routing or switching of ''datagram'' or ''fast select'' packets (i.e., packet by packet route selection) or for ''software'' specifically designed for packet switching, see the telecommunications entries in Category 5.

Note 2: Computers, related equipment or ''software'' performing cryptographic, cryptanalytic, certifiable multi-level security or certifiable user isolation functions, or that limit electronmagnetic compatibility (EMC), must also be evaluated against the performance characteristics of the ''information security'' entries in Category 5.

A. Equipment, Assemblies and Components

4A01 Electronic computers and related equipment, as follows, and assemblies and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, NP, SC, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to 4A01.a—MT Column 1

AT applies to entire entry—AT Column 1

NP applies to computers with a CTP exceeding 500 Mtops destined for a country listed in Country Group D:2. This reason for control does not relate directly to a licensing requirement, but rather an additional review conducted on all applications by the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements.

SC (Supercomputer) controls apply to all destinations except Japan for computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration.

Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

LVS: $5000 for 4A01.a; N/A for 4A01.b

CSR: Yes, except MT and except supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4A02 Hybrid computers, as follows, and assemblies and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to hybrid computers combined with specially designed software, for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

NP applies to computers with a CTP exceeding 500 Mtops destined for a country listed in Country Group D:2. This reason for control does not relate directly to a licensing requirement, but rather an additional review conducted on all applications by the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements.

SC (Supercomputer) controls apply to all destinations except Japan for computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

LVS: $5000

CSR: Yes, *except* MT and except supercomputers as defined in § 742.12 (no supercomputer restrictions for Japan)

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4A03 Digital computers, assemblies, and related equipment therefor, as described in this entry, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06—MT Column 1

CC applies to computers for computerized fingerprint equipment—CC Column 1

AT applies to entire entry (refer to 4A94 for controls on computers with CTPs greater than 260 Mtops., but less than or equal to 6 Mtops)—AT Column 1

NP applies to computers with a CTP exceeding 500 Mtops destined for a country listed in Country Group D:2. This reason for control does not relate directly to a licensing requirement, but rather an additional review conducted on all applications by the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements.

SC (Supercomputer) controls apply to all destinations except Japan for computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

LVS: $5000

CSR: Yes, *except* MT and CC, and except supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

GBS: Yes, except MT and CC for computers with a CTP not exceeding 1,000 Mtops (500 Mtops for eligible countries in Country Group D:2 and specially designed components therefor, exported separately or as part of a system; and related equipment therefor when export with these computers as part of a system. (GBS is not available for the export of commodities that the exporter knows will be used to: enhance the performance capability (i.e., CTP) of a computer to the supercomputer level or enhance the performance capability of a supercomputer (See § 742.12 for a definition of supercomputer))

NSG: N/A

CIV: Yes, except MT and CC for 4A03.d (having a 3–D vector rate less that 3M vectors/sec) f, (see Advisory Notes 2, 3 and 8 to Category 4–Computers)

Special Comprehensive License—(To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4A04 Computers, as follows, and specially designed related equipment, assemblies and components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4A21 Analog computers, digital computers, or digital differential analyzers designed or modified for use in missiles not controlled by 4A01 and having either of the following characteristics: rated for continuous operation at temperatures from below −45°C to above +55°C; or designed as ruggedized or radiation hardened.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4A80 Computers for fingerprint equipment, n.e.s.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4A94 Computers, assemblies, and related equipment not controlled by 4A01, 4A02, or 4A03, and specially designed components therefor.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

4B94 Equipment for the development and production of magnetic and optical storage equipment, as described in this entry.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

4C94 Materials specially formulated for and required for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

D. Software

Note to Category 4D: The control status of software for the development, production, or use of equipment described in other Categories is dealt with in the appropriate Catergory. The control status of software for equipment described in the Category 4 is dealt with herein.

4D01 Software specially designed or modified for the development, production or use of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or software controlled by 4D01, 4D02, or 4D03.

License Requirements

Reason for Control: NS, MT, CC, AT, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified for the development, production or use of equipment controlled for MT reasons by 4A01, 4A02, and 4A03—MT Column 1

CC applies to software specially designed or modified for the development, production or use of computers for computerized fingerprint equipment—CC Column 1

AT applies to entire entry—AT Column 1

SC (Supercomputer) controls apply to all destinations except Japan for software specially designed or modified for the development, production, or use of computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

NSG: N/A

CIV: Yes, except MT and CC (see Advisory Notes 2 and 3 to Category 4–Computers)

TSR: Yes, except MT and CC and except software for supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4D02 Software specially designed or modified to support technology controlled by 4E01 or 4E02.

License Requirements

Reason for Control: NS, MT, AT, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified to support technology for the development, production or use of equipment controlled for MT reasons by 4A01, 4A02, and 4A03—MT Column 1

AT applies to entire entry—AT Column 1

SC (Supercomputer) controls apply to all destinations except Japan for software specially designed or modified to support technology for the development, production, or use of computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes, except MT and CC and except software specifically designed or modified to support technology for supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4D03 Specific software, as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes, except D03.c

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4D21 Software specially designed or modified for the development, production, or use of items controlled by 4A21, or for supporting technology controlled by 4E21 for the development, production, or use of items controlled by 4A21.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4D80 Software specially designed for the development, production, or use of items controlled by 4A80.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4D92 Software specially designed or modified for the development, production, or use of equipment controlled by 4B94 and materials controlled by 4C94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4D93 Program proof and validation software, software allowing the automatic generation of source codes, and operating systems not controlled by 4D03 that are specially designed for real time processing equipment.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled:

* * * * *

4D94 Software specially designed for the development, production, or use of digital computers, assemblies, and related equipment therefor controlled by 4A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

4E01 Technology according to the General Technology Note, for the development, production or use of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or software controlled by 4D01, 4D02, or 4D03.

License Requirements

Reason for Control: NS, MT, CC, AT, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the development, production or use of equipment or software controlled for MT reasons by 4A01, 4A02, 4A03, 4D01 or 4D02—MT Column 1

CC applies to technology for the development, production or use of computers controlled by by 4A03 for CC reasons—CC Column 1

AT applies to entire entry—AT Column 1

SC (Supercomputer) controls apply to all destinations except Japan for technology for the development, production, or use of computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes, except MT and CC and except technology for supercomputers as defined in 742.12 (no supercomputer restriction for Japan)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4E02 Other technology.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4E21 Technology for the development, production, or use of items controlled by 4A21.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4E80 Technology for the development, production, or use of items controlled by 4A80.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4E92 Technology for the development, production, or use of equipment controlled by 4B94, materials controlled by 4C94, or software controlled by 4D92, 4D93, or 4D94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4E93 Technology for the development or production of graphics accelerators or equipment designed for multi-data-stream processing and technology required for the development or production of magnetic hard disk drives.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

4E94 Technology for the development, production, or use of digital computers, assemblies and related equipment therefor controlled by 4A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

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Category 5—Telecommunications and Information Security

Notice: Category 5 entries are divided into three sections. (I) Telecommunication entries; (II) Information Security entries; and (III) Other Equipment, Materials and Software and Technology entries.

I. Telecommunications

A. Equipment, Assemblies and Components

5A01 Any type of telecommunications equipment having any of the following characteristics, functions or features.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A02 Telecommunication transmission equipment or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry— AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes, except 5A02.h and i
NSG: N/A
CIV: Yes, except 5A02.h and i

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A03 Stored program controlled switching equipment and related signalling systems having any of the characteristics, functions or features described in this entry, and specially designed components and accessories therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A04 Centralized network controls having the characteristics described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A05 Optical fiber communication cables and optical fibers.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A06 Phased array antennas, operating above 10.5GHz containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting ICAO standards (microwave landing systems (MLS)).

License Requirements

Reason For Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

5B01 Equipment, and Specially designed components and accessories therefor, Specially designed for the development, production, or use of equipment, materials, or functions controlled by the entries in the telecommunications sections of Category 5 for national security reasons.

License Requirements

Reason For Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5B02 Other equipment.

License Requirements

Reason For Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

5C01 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A05.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: Yes
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

D. Software

5D01 Software specially designed or modified for the development, production or use of equipment or materials controlled by the telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D02 Software specially designed or modified to support technology controlled by telecommunications entries 5E01 and 5E02.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D03 Specific Software as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

5E01 Technology according to the General Technology Note for the development, production or use (excluding operation) of equipment, systems, materials or software controlled by the telecommunications entries in 5A, 5B, 5C, or 5D.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E02 Specific technologies as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry— NS Column 1

AT applies to entire entry— AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes, *except* Iran and Syria

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

II. Information Security

A. Equipment, Assemblies and Components

5A11 Systems, equipment, application specific ''assemblies'', modules or integrated circuits for ''information security'' as listed, and specially designed components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: Yes for Advisory Note 4 to Category 5—Information Security
NSG: N/A
CIV: Yes for Advisory Notes 4 and 5 to Category 5—Information Security

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

5B11 Equipment specially designed for the development of equipment or functions controlled by the information security entries in this category, including measuring or test equipment.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5B12 Equipment designed for the production of equipment or functions controlled by the information security entries in this category, including measuring, test, repair or production equipment.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5B13 Measuring equipment specially designed to evaluate and validate the information security functions controlled by the information security entries in 5A or 5D.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

[Reserved]

D. Software

5D11: Software specially designed or modified for the development, production or use of equipment controlled by Information Security entries 5A11, 5B11, 5B12 or 5B13 or software controlled by Information Security entries 5D11, 5D12, or 5D13.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: Yes for Advisory Note 5 to Category 5—Information Security

TSR: Yes for Advisory Note 5 to Category 5—Information Security

Special Comprehensive License: (To Be determined in final rule)

List of Items Controlled

* * * * *

5D12 Software specially designed or modified to support technology controlled by the information security entry 5E11.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D13 Specific software as follows:

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes for software described in Advisory Note 5—Information Security, provided that the software is not controlled by the Office of Defense Trade Controls, Department of State

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

5E11 Technology according to the General Technology Note for the development, production or use of equipment controlled by information security entries 5A11, 5B11, 5B12, or 5B13 or software controlled by information security entries 5D11, 5D12, or 5D13.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

III. Other Equipment, Materials, ''Software'', and Technology

A. Equipment, Assemblies and Components

5A20 Telemetering and telecontrol equipment usable as launch support equipment for unmanned air vehicles or rocket system.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A80 Communications intercepting devices; and parts and accessories therefor.

License Requirements

Reason for Control

Controls on equipment described in this entry are maintained in accordance with the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–351). A license is required for ALL destinations, regardless of end use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart.

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A90 Any type of telecommunications equipment, not controlled by 5A01, specially desinged to operate outside the temperature range from 219D (−54°C) to 397K (124°C).

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A91 Transmission equipment, not controlled by 5A02, containing:

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A92 Mobile communications equipment, n.e.s., and assemblies and components therefor.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A93 Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A94 Data (message) switching equipment or systems designed for packet-mode operation and assemblies and components therefor, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5A95 Information security equipment, n.e.s.; (e.g., cryptographic, cryptoanalytic, and cryptologic equipment, n.e.s.), and components therefor.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

5B94 Telecommunications test equipment, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1,000 for Syria; N/A to Iran
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

[Reserved]

D. Software

5D20 Software designed or modified for the development, production or use of items controlled by 5A20.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D90 Software specially designed or modified for the development, production, or use of equipment controlled by 5A90 and 5A91.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D91 Software specially designed or modified for the development, production, or use of telecommunications test equipment controlled by 5B94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D92 Software specially designed or modified for the development, production or use of mobile communications equipment controlled by 5A92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D93 Software specially designed or modified for the development, production or use of radio relay communication equipment controlled by 5A93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D94 Software specially designed or modified for the development, production or use of data (message) switching equipment controlled by 5A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5D95 Software, n.e.s., specially designed or modified for the development, production, or use of information security or cryptologic equipment (e.g., equipment controlled by 5A95).

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

5E20 Technology for the development, production or use of equipment or software controlled by 5A20 or 5D20.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E90 Technology for the development, production or use of equipment controlled by 5A90 or 5A91 or software controlled by 5D90.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E91 Technology for the development, production, or use of telecommunications test equipment controlled by 5B94, or software controlled by 5D91.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E92 Technology for the development, production, or use of mobile communications equipment controlled by 5A92 or software controlled by 5D92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E93 Technology for the development, production, or use of radio relay communication equipment controlled by 5A93, or software controlled by 5D93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E94 Technology for the development, production or use of data (message) switching equipment controlled by 5A94, or software controlled by 5D94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

5E95 Technology, n.e.s., for the development, production, or use of information security or cryptologic equipment (e.g., equipment controlled by 5A95), or software controlled by 5D95.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 6—Sensors

A. Equipment, Assemblies and Components

6A01 Acoustics.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: Yes for 6A01.a.1.b.4 (see Advisory Note 1.2 to Category 6—Sensors)
NSG: N/A
CIV: Yes for 6A01.b

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A02 Optical Sensors.

License Requirements

Reason for Control: NS, MT, CC, RS, AT, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to optical detectors in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including ''lasers'') and ionized-particle radiation resistant—MT Column 1
RS applies to 6A02.a.1, a.2, a.3 and .c—RS Column 1
CC applies to police-model infrared viewers in 6A02.c—CC Column 1
AT applies to entire entry—AT Column 1
UN applies to 6A02.a.1, a.2, a.3 and c—UN Column 1

License Alternatives

License Exceptions

LVS: $3000, *except* N/A for 6A02.a.1, a.2, a.3, and c
CSR: Yes, except MT, RS, and CC
GBS: N/A
NSG: N/A

CIV: Yes, except MT, RS and CC for 6A02a.4 and items in Advisory Notes 2.2 and 2.3 to Category 6—Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A03 Cameras.

License Requirements

Reason for Control NS, NP, RS, AT, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to items controlled in paragraphs 6A03.a.2, a.3, a.4, a.5 and b.1—NP Column 1
RS applies to items controlled in 6A03.b.3 and b.4—RS Column 1
AT applies to entire entry—AT Column 1
UN applies to items controlled in 6A03.b.3 and b.4—UN Column 1

License Alternatives

License Exceptions

LVS: $1500, except N/A for 6A03.a.2 through a.5, b.1, b.3 and b.4
CSR: Yes, except NP and RS
GBS: N/A
NSG: Yes, *except* Bulgaria, Romania, or Russia, for NP only
CIV: Yes for 6A03a.1 and items in Advisory Note 3.2 to Category 6—Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A04 Optics.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: Yes for 6A04a.1, a.2, a.4, b, d.1.a, e.2 and e.4 (see Advisory Note 4.2 to Category 6—Sensors)
NSG: N/A
CIV: Yes for 6A04.f and items in Advisory Note 4.2 to Category 6—Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A05 Lasers, components and optical equipment, as follows.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
NP applies to 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, and d.2.c—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A for NP items; $3000 for all other items
CSR: Yes, except NP
GBS: Yes, except NP, for items in Advisory Notes 5.3 and .4 to Category 6—Sensors
NSG: Yes, *except* Bulgaria, Romania, or Russia, for NP only
CIV: Yes, except NP for 6A05.c.2.a, d, e and for items in Advisory Notes [5.2], 5.3 and 5.4 to Category 6—Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A06 Magnetometers, magnetic gradiometers, intrinsic magnetic gradiometers and compensation systems and specially designed components.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A07 Gravity meters (gravimeters) and gravity gradiometers.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to 6A07.b and c when the characteristics of 6A07.b are exceeded—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes, except MT
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A08 Radar systems, equipment and assemblies having any of the following characteristics, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to items that are designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes, except MT
GBS: N/A
NSG: N/A
CIV: Yes, except MT for 6A08.b, c, and l.1

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A18 Magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes and controls and components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A22 Photosensitive components not controlled by ECCN 6A02

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A28 Radar and laser radar systems (including altimeters), and specially designed components for airborne applications.

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A29 Precision tracking systems.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A30 Integrated electronic systems specially designed for radar cross section measurement.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A43 Cameras and components not controlled by ECCN 6A03.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions:

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A44 Photomultiplier tubes.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A50 Lasers, laser amplifiers, and oscillators.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A90 Airborne radar equipment, n.e.s., and specially designed components therefor.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A92 Gravity meters (gravimeters) not controlled by 6A07.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A93 ''Magnetometers'' having a ''noise level'' (sensitivity) lower (better) than 1.0 nT rms per square root Hz, but no lower than 0.05 nT rms per square root Hz.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6A94 Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

6B04 Optics.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5,000
CSR: Yes
GBS: Yes for Advisory Note 4.3 to Category 6–Sensors
NSG: N/A
CIV: Yes for Advisory Note 4.3 to Category 6–Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6B05 Lasers.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5,000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6B07 Gravimeters.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6B08: Radar.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions:

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

6C02 Optical sensors.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: Yes for 6C02.c

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6C04 Optics.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: Yes
GBS: Yes for Advisory Note 4.2 to Category 6–Sensors
NSG: N/A
CIV: Yes for 6C04.h and Advisory Note 4.2 to Category 6—Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

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6C05 Lasers.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

D. Software

6D01 Software specially designed for the development or production of equipment controlled by 6A04, 6A05, 6A08, or 6B08.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and County Chart

NS applies to entire entry—NS Column 1
MT applies to software for the development or production of equipment controlled by 6A08 that is designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions:

NSG: N/A
CIV: N/A
TSR: Yes, except MT

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D02 Software specially designed for the use of equipment controlled by 6A02.b, 6A08, or 6B08.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and County Chart

NS applies to entire entry—NS Column 1
MT applies to software forthe use of equipment controlled by 6A08 that is designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions:

NSG: N/A
CIV: N/A
TSR: Yes, except MT

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D03 Other software, as follows.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes for 6D03.d.1 and Advisory Note 8.2 to Category 6—Sensors
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D21 Software specially designed for the development or production of equipment controlled by 6A02.a.1, a.2, a.3, a.4, c, 6A03.b.3, b.4, 6A22, 6A07.b and .c, 6A28 or 6A30.

License Requirements

Reason for Control: MT, RS, AT, UN

Control(s) and Country Chart

MT applies to software for the development or production of equipment controlled by 6A02.a.1, a.3, and a.4, 6A07.b and c, 6A22, 6A28, or 6A30—MT Column 1
RS applies to software for the development or production of equipment controlled by 6A02.a.1, a.2, a.3, c, 6A03.b.3 and b.4—RS Column 1
AT applies to entire entry—AT Column 1
UN applies to software for the development or production of equipment controlled by 6A02.a.1, a.2, a.3, c, 6A03.b.3 and b.4—UN Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D22 Software specially designed for the use of equipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and .c, 6A28, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D29 Software for the development, production, or use of commodities described in 6A29, including software that processes post-flight recorded data enabling determination of vehicle position throughout its flight path.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D90 Software specially designed for the development, production, or use of airborne radar equipment controlled by 6A90.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Atlernatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

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6D92 Software specially designed for the development, production, or use of gravity meters (gravimeters) controlled by 6A92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D93 Software specially designed for the development, production, or use of magnetometers controlled by 6A93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6D94 Software specially designed for the development, production, or use of marine or terrestrial acoustic equipment controlled by 6A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

6E01 Technology according to the General Technology Note for the development of equipment, materials or software controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03.

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the development of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or .c, or 6A08 (only when the equipment is designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1

NP applies to technology for the development of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1, or 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.—NP Column 1

RS applies to technology for the development of items controlled by 6A02.a.1, a.2, a.3, or .c, and 6A03.b.3 and b.4—RS Column 1

AT applies to entire entry—AT Column 1

CC applies to technology for the development of police-model infrared viewers controlled by 6A02.c—CC Column 1

UN applies to technology for the development of items controlled by 6A02.a.1, a.2, a.3, or .c, and 6A03.b.3 and b.4—UN Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: N/A

TSR: Yes, except MT, NP, RS, AT, CC, UN

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E02 Technology according to the General Technology Note for the production of equipment or materials controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05.

License Requirements

Reason for Control: NS, MT, NP, RS, AT, CC, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the production of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or .c, or 6A08 when the equipment is designed for airborne applications that are usable in systems controlled for MT reasons—MT Column 1

NP applies to technology for the production of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1, or 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.—NP Column 1

RS applies to technology for the production of items controlled by 6A02.a.1, a.2, a.3, or .c—RS Column 1

AT applies to entire entry—AT Column 1

CC applies to technology for the production of police-model infrared viewers controlled by 6A02.c—CC Column 1

UN applies to technology for the development of items controlled by 6A02.a.1, a.2, a.3, or c and 6A03.b.3 or b.4—UN Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: N/A

TSR: Yes, except MT, NP, RS, AT, CC, UN

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E03 Other technology.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E21 Technology for the development of equipment controlled by 6A22, 6A28, 6A29, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E22 Technology for the production of equipment controlled by 6A22, 6A28, 6A29, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E23 Technology for the use of equipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and .c, 6A08, 6A28, 6A29, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to technology for use of items controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and .c, 6A28, 6A29, 6A30, or items controlled by 6A08 when the equipment is designed for airborne applications that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E40 Technology for the use of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E41 Technology for the development, production, or use of equipment controlled by 6A43, 6A44, or 6A50.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E90 Technology for the development, production, or use of airborne radar equipment controlled by 6A90.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E92 Technology for the development, production, or use of gravity meters (gravimeters) controlled by 6A92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

6E93 Technology for the development, production, or use of magnetometers controlled by 6A93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: To Be Determined in Final Rule)

List of Items Controlled

* * * * *

6E94 Technology for the development, production, or use of marine or terrestrial acoustic equipment controlled by 6A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 7—Navigation and Avionics

A. Equipment, Assemblies, and Components

7A01 Accelerometers designed for use in inertial navigation or guidance systems and having any of the following characteristics, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry except accelerometers that are specially designed and developed as Measurement While Drilling (MWD) Sensors for use in downhole well service applications—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A02 Gyros having any of the following characteristics, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A03 Inertial navigation systems and inertial equipment for aircraft and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A04 Gyro-astro compasses, and other devices that derive position or orientation by means of automatically tracking celestial bodies or satellites, with an azimuth accuracy of equal to or less (better) than 5 seconds of arc; and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A06 Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive and specially designed components therefor, having either of the following characteristics.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A21 Accelerometers, designed for use in inertial navigation systems or in guidance systems of all types, having the characteristics of either 7A21.a or 7A21.b; and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry except accelerometers that are specially designed and developed as Measurement While Drilling (MWD) Sensors for use in downhole well service applications—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A22: Gyros of all types, with a rated drift rate stability of less than 0.5° (1 sigma or rms) per hour in a 1 g environment; and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A23 Inertial or other equipment using accelerometers or gyros described in 7A21 or 7A22, and systems incorporating such equipment; and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A24 Other gyro-astro compasses and other devices, and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A26 Avionics equipment and components usable in missile systems.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A27 Airborne passive sensors for determining bearing to specific electromagnetic sources (direction finding equipment) or terrain characteristics.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7A94 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

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B. Test, Inspection and Production Equipment

7B01 Test, calibration or alignment equipment specially designed for equipment controlled by 7A, for national security reasons except equipment for Maintenance Level I or Maintenance Level II.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7B02 Equipment, as follows, specially designed to characterize mirrors for ring laser gyros.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7B03 Equipment specially designed for the production of equipment controlled by 7A for national security reasons, and specially designed components therefor, including:

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7B22 Reflectometers and specially designed test, calibration, and alignment equipment and production equipment and specially designed components therefor, for the production of items controlled by 7A or 7B for national security or missile technology reasons and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7B94 Other equipment for the test, inspection, or production of navigation and avionics equipment.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

[Reserved]

D. Software

7D01 Software specially designed or modified for the development or production of equipment controlled by 7A or 7B for national security reasons.

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1
RS applies to software for the development or production of inertial navigation systems inertial equipment, and specially designed components therefor, for civil aircraft—RS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7D02 Source code for the use of any inertial navigation equipment or Attitude Heading Reference Systems (AHRS) (except gimballed AHRS) including inertial equipment not controlled by 7A03 or 7A04.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7D03 Other software, as follows.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7D24 Software specially designed for the development, production, or use of commodities controlled by 7A21, 7A22, 7A23, 7A24, 7A25, 7A26, and 7A27, 7B01, 7B02, 7B03, and 7B22 for missile technology reasons.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7D94 Software, n.e.s., for the development, production, or use of navigation, airborne communication and other avionics.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

7E01 Technology according to the General Technology Note for the development of equipment or software controlled by 7A, 7B, or 7D for national security reasons.

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
RS applies to technology for the development of inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft—RS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7E02 Technology according to the General Technology Note GTN for the production of equipment controlled by 7A or 7B for national security reasons.

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
MT applies to entire entry—MT Column 1
RS applies to technology for the production of inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft—RS Column 1.
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled:

* * * * *

7E03 Technology according to the General Technology Note (GTN) for the repair, refurbishing or overhaul of equipment controlled by 7A01 to 7A04, except for maintenance technology directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units (LRU) and shop replaceable units (SRA) of a civil aircraft as described in Maintenance Level I or Maintenance Level II.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7E04 Other technology.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7E21 Other technology for the development, production or use of equipment or software controlled by 7A, 7B, or 7D controlled for national security or missile technology reasons.

License Requirements

Reason for Control: MT, RS, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

RS applies to development—RS Column 1 or production of inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft—RS Column 1.

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7E22 Design technology for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

7E94 Technology, n.e.s., for the development, production, or use of navigation, airborne communication, and other avionics equipment.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 8—Marine Technology

A. Equipment, Assemblies and Components

8A01 Submersible vehicles or surface vessels.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8A02 Systems or equipment.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes for 8A02.i.2 (see Advisory Note 2 to Category 8—Marine Technology)
NSG: N/A
CIV: Yes for 8A02.e.2 and Advisory Note 2 to Category 8—Marine Technology

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8A18 Commodities on the International Munitions List.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8A92 Other underwater camera equipment, n.e.s., other submersible systems, n.e.s.; and specially designed parts therefor.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8A93 Self-contained underwater breathing apparatus (scuba gear) and related equipment.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8A94 Boats, n.e.s., including inflatable boats, marine engines (both inboard and outboard) and submarine engines, n.e.s; and specially designed parts therefor, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

8B01 Water tunnels, having a background noise of less than 100 dB (reference 1 microPascal, 1 Hz) in the frequency range from 0 to 500 Hz, designed for measuring acoustic fields generated by a hydro-flow around propulsion system models.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

8C01 Syntactic foam for underwater use.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

D. Software

8D01: Software specially designed or modified for the development, production or use of equipment or materials controlled by 8A01, 8A02, 8A18, 8B01, or 8C01.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8D02 Specific software specially designed or modified for the development, production, repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8D92 Software specially designed or modified for the development, production or use of commodities controlled by 8A92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8D93 Software specially designed or modified for the development, production or use of commodities controlled by 8A93 and 8A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

8E01 Technology according to the General Technology Note for the development or production of equipment or materials controlled by 8A01, 8A02, 8A18, 8B01, or 8C01.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8E02 Other technology

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8E92 Technology for the development, production or use of commodities controlled by 8A92.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

8E93 Technology for the development, production or use of commodities controlled by 8A93 and 8A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 9—Propulsion Systems and Transportation Equipment

A. Equipment, Assemblies and Components

9A01 Aero gas turbine engines incorporating any of the technologies controlled by 9E03.a and described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A02 Marine gas turbine engines with an ISO standard continuous power rating of 24,245 kW or more and a specific fuel consumption of less than 0.219 kg/kW-hr at any point in the power range from 35 to 100 percent, and specially designed assemblies and components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: Yes for Advisory Note 2 to Category 9—Propulsion Systems and Transportation Equipment
NSG: N/A
CIV: Yes for Advisory Note 2 to Category 9—Propulsion Systems and Transportation Equipment

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A03 Specially designed assemblies and components, incorporating any of the technologies controlled by 9E03.a for gas turbine engine propulsion systems.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A04 Spacecraft (not including their payloads) and specially designed components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A18 Commodities on the International Munitions List.

License Requirements

Reason for Control: NS, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
RS applies to 9A18.a and b—RS Column 2
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1500
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A21 Gas turbine aero engines not controlled by 9A01, uncertified or certified, having both a maximum thrust value greater than 1000N (achieved un-installed), excluding civil certified engines with a maximum thrust value greater than 8,890N (achieved un-installed), and specific fuel consumption of 0.13kg/N/hr or less (at sea level static and standard conditions).

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A22 Vehicles designed or modified for transport or handling of missile systems.

License Requirements

Reason for Control: MT, UN, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
UN applies to entire entry—UN Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A23 Liquid or slurry propellant control systems, pumps and servo valves therefor, and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $1000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A24 Non-military unmanned air vehicle systems (UAVs) and remotely piloted vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A80 Nonmilitary mobile crime science laboratories; and parts and accessories, n.e.s.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A90 Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25°); pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A91 Other aircraft and certain gas turbine engines.

License Requirements

Reason for Control: AT, UN

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

UN applies to 9A91.a—UN Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A92 Off highway wheel tractors of carriage capacity at (10 tons) or more; and parts and accessories, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A93 On-Highway tractors, with single or tandem rear axles rated for 9t (20,000 lbs.) or greater and specially designed parts.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9A94 Aircraft parts and components, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

9B01 Specially designed equipment, tooling or fixtures, as follows, for manufacturing or measuring gas turbine blades, vanes or tip shroud castings.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to equipment for test, inspection and production of small lightweight turbine engines described in 9A21—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes, except MT
GBS: N/A
NSG: N/A
CIV: Yes, except MT for 9B01.a, b, f and h

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B02 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for the development of gas turbine engines, assemblies or components incorporating technologies controlled by 9E03.a.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B03 Equipment specially designed for the production or test of gas turbine brush seals designed to operate at tip speeds exceeding 335 m/s, and specially designed parts or accessories.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B04 Tools, dies or fixtures for the solid state joining of gas turbine superalloy or titanium components.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B05 On-line (real-time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for use with wind tunnels or devices.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B06 Specially designed acoustic vibration test equipment capable of producing sound pressure levels of 160 dB or more, (reference to 20 micropascals) with a rated output of 4 kW or more at a test cell temperature exceeding 1273 K (1000°C), and specially designed transducers, strain gauges, accelerometers, thermocouples or quartz heaters therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to vibration test equipment only—MT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: Yes, except MT
GBS: N/A
NSG: N/A
CIV: Yes, except MT

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B07 Equipment specially designed for inspecting the integrity of rocket motors using non-destructive test (NDT) techniques other than planar X-ray or basic physical or chemical analysis.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B08 Transducers specially designed for the direct measurement of the wall skin friction of the test flow with a stagnation temperature exceeding 833k (560 °C)

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B09 Tooling specially designed for producing turbine engine powder metallurgy rotor components capable of operating at stress levels of 60% of ultimate tensile strength (UTS) or more and metal temperatures of 873 k (600 °C) or more.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B21 Specially designed production facilities and production equipment for the systems, sub-systems, and components in ''missile'' systems.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B25 Wind tunnels for speeds of Mach 0.9 or more related control systems, instrumentation (including sensors) or automated data acquisition and processing equipment.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B26 Other vibration test equipment, as follows.

License Requirements

Reason for Control: MT, NP, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to 9B26.a—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $3000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B27 Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9B94 Vibration test equipment and specially designed parts and components, n.e.s.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

C. Materials

[Reserved]

D. Software

9D01 Software required for the development of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09, or technology controlled by 9E03.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software required for the development of items controlled by 9B02, 9B03, 9B04, 9B06, 9B07, and equipment for test, inspection and production of items controlled by 9A21 for for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D02 Software required for the production of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08 or 9B09.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software required for the production of items controlled by 9B02, 9B03, 9B04, 9B06, 9B07, and equipment for test, inspection and production of items controlled by 9A21 for for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D03 Software required for the use of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A01, 9A02 or 9A03, or equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08 or 9B09.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software required for the use of FADEC for gas turbine aero engines controlled by 9B21—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D04 Other software.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D18 Software for the development, production, or use of equipment controlled by 9A18.

License Requirements

Reason for Control: NS, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to 9A18.a and b—RS Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes for Australia, Japan, New Zealand, and NATO only

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D24 Software specially designed or modified for the development, production, or use of propulsion systems and equipment controlled by 9A21, 9A22, 9A23, 9A24, 9B21, 9B25, 9B26, or 9B27, and software, n.e.s., specially designed or modified for use of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

License Requirements

Reason for Control: MT, NP, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to software for the development, production or use of vibration test equipment and feedback or closed loop test equipment controlled by 9B26.a—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D90 Software, n.e.s., for the development or production of diesel engines and pressurized aircraft breathing equipment controlled by 9A90.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D91 Software, n.e.s., for the development or production of aircraft and aero gas turbine engines controlled by 9A91 or aircraft parts and components controlled by 9A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D93 Software for the production or development of off-highway wheel tractors controlled by 9A92 or on-highway tractors controlled by 9A93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9D94 Software for the development, production, or use of equipment controlled by 9B94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

E. Technology

9E01 Technology according to the General Technology Note for the development of equipment controlled by 9A01.c, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09 or software controlled by 9D01, 9D02, 9D03, or 9D04.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology according to the General Technology Note for the development of equipment controlled by 9B02, 9B03, 9B04, 9B06, and 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E02 Technology according to the General Technology Note for the production of equipment controlled by 9A01.c or 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology according to the General Technology Note for the development of equipment controlled by 9B02, 9B03, 9B04, 9B06, and 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E03 Other technology, as follows:

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E18 Technology for the development, production, or use of equipment controlled by 9A18.

License Requirements

Reason for Control: NS, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to 9A18.a and b—RS Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO only

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E21 Technology for the development, production or use of equipment controlled by 9A21, 9A22, 9A23, 9A24, 9B21, 9B25, 9B26, or 9B27, or software controlled by 9D24, and technology for the use of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

License Requirements

Reason for Control: MT, NP, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to technology for the development, production, or use of vibration test equipment and feedback or closed loop test equipment controlled by 9B26.a.—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E90 Technology, n.e.s., for the development, production, or use of diesel engines and pressurized aircraft breathing equipment controlled by 9A90.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E91 Technology, n.e.s., for the development, production, or use of aircraft and aero gas turbine engines controlled by 9A91 or aircraft parts and components controlled by 9A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E93 Technology for the development, production, or use of off-highway wheel tractors controlled by 9A92 or on-highway tractors controlled by 9A93.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

9E94 Technology for development, production, or use of vibration test equipment controlled by 9B94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Category 0—Miscellaneous

A. Equipment, Assemblies and Components

0A18 Items on the International Munitions List.

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1
RS applies to 0A18.c—RS Column 2
UN applies to entire entry—UN Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: $5000 for 0A18.a and b; $3000 for 0A18.c; $1500 for 0A18.d through f
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

0A80 Horses by sea.

License Requirements

Reason for Control: SS

Control(s)

SS applies to entire entry. For licensing requirements, please turn to part 754 of this subchapter. The country chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

* * * * *

0A82 Saps; thumbcuffs, thumbscrews, leg irons, shackles, and handcuffs; specially designed implements of torture; straight jackets, plastic handcuffs, police helmets and shields; and parts and accessories, n.e.s.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

0A84 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; and discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s., including optical sighting devices for firearms.

License Requirements

Reason for Control: CC, UN

Control(s) and Country Chart

CC applies to shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end user—CC Column 1
CC applies to shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user—CC Column 2
CC applies to shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement—CC Column 3
UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

0A86 Shotgun shells, except buckshot shotgun shells, and parts.

License Requirements

Reason for Control: UN

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determinted in Final Rule)

List of Items Controlled

* * * * *

0A88 Conventional military steel helmets as described by 0A18.f.1; and machetes.

License Requirements

Reason for Control: UN

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determinted in Final Rule)

List of Items Controlled

* * * * *

B. Test, Inspection and Production Equipment

[Reserved]

C. Materials

[Reserved]

D. Software

[Reserved]

E. Technology

0E18 Technology for the development, production, or use of items controlled by 0A18.b through 0A18.e.

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to technology for the development, production or use of items controlled by 0A18.c for RS reasons—RS Column 2

UN applies to entire entry—UN Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

0E84 Technology for the development or production of shotguns controlled by 0A84 and shotgun shells.

License Requirements

Reason for Control: CC, UN

Control(s) and Country Chart

CC applies to technology for the development or production of shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end user—CC Column 1

CC applies to technology for the development or production of shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user—CC Column 2

CC applies to technology for the development or production of shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement—CC Column 3

UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

* * * * *

Supplement No. 2 to Part 774—General Technology and Software Notes (To Be Included With Publication of Final Rule)

Supplement No. 3 to Part 774—Definitions to the Commerce Control List (To Be Included With Publication of Final Rule)

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BILLING CODE 3510–DT–P

Federal Register

Thursday
May 11, 1995

Part III

Department of Commerce

Bureau of Export Administration

15 CFR Part 799

Export Control Classification Numbers; Renumbering; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 950407095–5095–01]

RIN: 0694–AB27

Renumbering of Export Control Classification Numbers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Advanced notice of proposed rulemaking; revision of export control classification numbers to conform with the European Union numbering system.

SUMMARY: The Bureau of Export Administration (BXA) is considering renumbering the Export Control Classification Numbers (ECCN) found in the Commerce Control List of the Export Administration Regulations. These revisions would conform the numbering of the ECCNs with the numbering system used by the European Union.

This advance notice and request for comments is being issued to solicit public comments from industry and the interested public to determine whether and how BXA should undertake such action.

DATES: Comments should be received by July 10, 1995.

ADDRESSES: Written comments (six copies) should be sent to Nancy Crowe, Regulatory Policy Division, Room 1087, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Office of Exporter Services, Bureau of Export Administration, telephone: (202)482–2440.

SUPPLEMENTARY INFORMATION: The Bureau of Export Administration (BXA) is considering conforming the numbering system used to identify items controlled by the Export Administration Regulations, or Export Control Classification Numbers (ECCNs), with the numbering system used by the European Union to identify such items.

The United States as well as the European Union (E.U.) currently identify dual-use items controlled for export purposes with a five-digit alpha-numerical number. BXA identifies these items through the use of ECCNs found in the Commerce Control List (CCL). However, ECCNs do not directly correspond with the E.U. numbering system, and this causes confusion and expense for firms that track their products under both numbering systems.

This notice provides an explanation of the U.S. and E.U. numbering systems for items controlled for export, including two charts that compare current ECCNs with the E.U. numbering system. Further, this notice contains a possible new numbering system for commodities controlled by the CCL, should BXA determine it appriproate to harmonize the two system.

Description of ECCN and EU Numbers

As stated earlier, both the United States and the European Union use a five-digit numbering system to identify the items controlled for export.

The first numerical digit in the E.U. numbering system identifies one of the following ten categories:

0 Nuclear materials, Facilities, and Equipment
1 Materials
2 Materials processing
3 Electronics
4 Computers
5 Telecommunications and Information Security
6 Sensors
7 Avionics and Navigation
8 Marine Technology
9 Propulsion Systems and Transportation Equipment

Categories 1 through 9 correspond to existing CCL categories 1 through 9. However, the CCL uses category 0 for Miscellaneous items, and places it after category 9. E.U. category 0 is used for items identified on the COCOM International Atomic Energy List (IAEL) that are not also on the Nuclear Supplier's Group (NSG) list. Thus, the few non-NSG IAEL items that are now in CCL categories 1 and 2, for example 1B16, 1C19.b, 2A19.c, and parts of 1D01, 2D19, 1E19, and 2E19, are listed under category 0, where they join miscellaneous items now in CCL category 0.

The E.U. system divides Category 5 into two parts—Telecommunications and Information Security. Each of these include items from the COCOM International Industrial List. This differs from the existing CCL, which divides Category 5 into the following three parts: COCOM Telecommunications, COCOM Information Security, and non-COCOM Telecommunications and Information Security.

The second alpha character in both the E.U. number and the ECCN identifies the five product groups found under each of the ten categories numbered 0–9.

A Equipment, Assemblies, and Components
B Test, Inspection, and Production Equipment
C Materials
D Software
E Technology

The third numeric digit in the E.U. numbering system identifies one of four multilateral forums that control the item.

0 COCOM International Atomic Energy List (IAEL) and Industrial List (IL)
1 Missile Technology Control Regime (MTCR)
2 Nuclear Suppliers Group (NSG)
3 Australia Group (AG)

To identify the items on the existing CCL that do not appear on the E.U. list, the charts found in this notice use the following third numeric digits:

4 International Munitions List (IML)
5 [Reserved]
6 Unilateral, except short supply or total embargo
7 Short supply
8 [Reserved]
9 Total embargo

Those Nuclear Referral List items identified as unilateral in the **Federal Register** of March 9, 1994, which are not controlled by the COCOM IL or IAEL, are assigned 6 as a third digit. For example:

1A48 becomes 1A660;
2A49 becomes 2B625;
2A51 becomes 2A626; and
2A53 becomes 2B631;

The fourth and fifth E.U. digits for IAEL items are 01 to 09. They do not correspond with any multilateral numbers.

The fourth and fifth E.U. digits for IL items are 01 to 11. They correspond with existing International Industrial List numbers and with most existing CCL numbers with third and fourth digits 01 to 09.

The fourth and fifth digits in the proposed new numbers for items controlled by the MTCR or NSG, or unilaterally by the United States are the same as for a related IL commodity. Examples include:

—composite structures 1A002 and 9A010 (IL), 1A102 and 9A110 (MTCR), and 1A202 (NSG);
—fiber production 1B001 (IL), 1B101 (MTCR), 1B201 (NSG); and
—aluminum and titanium 1C002 (IL), 1C202 (NSG);

If there is no related IL number for an item, the fourth and fifth digits used in the charts are as follows:

15–24 for MTCR;
25–49 for NSG;
50–59 for AG; and
60 or higher for unilateral items,

except that:

NSG or unilateral commodity items use related MTCR numbers and unilateral commodity items use related NSG or IML numbers. Items controlled on the IML use the related IML number as the fourth and fifth digits. Examples of NSG or unilateral commodity items related to a MTCR item, and therefore numbers using fourth and fifth digits 15 or 16, include:

—propellants 1C115 (MTCR), 1C615 (unilateral);
—maraging steel 1C116 (MTCR), 1C216 (NSG);
—spin-forming machines 2B115 (MTCR), 2B215 (NSG).

Examples of unilateral commodity items related to NSG items, and therefore numbers using fourth and fifth digits from 25 to 31, include:

—valves 2A226 (NSG) and 2A626 (U.S. unilateral);
—equipment related to nuclear reactors 2B225 (NSG) and 2B625 (unilateral); and
—pumps 2B231 (NSG) and 2B631 (unilateral).

Examples of unilateral commodity items using related IML numbers as fourth and fifth digits include:

—bulletproof vests 1A613 (IML 13 protective equipment);
—equipment for manufacturing shotgun shells 2B618 (IML 18 munitions production);
—scuba gear 8A617 (IML 17.a underwater swimming apparatus); and
—aircraft 9A610 (IML 10 aircraft).

Following are two charts. The first chart provides the existing ECCN and the corresponding possible new number based upon the E.U. numbering system. The second chart provides the possible new number, the corresponding current ECCN, and the corresponding current E.U. number. ''Not listed'' under the Current ECCN column on the first chart means that the item is not included on the CCL. However, these items may be controlled by the Department of State on the USML or by the Nuclear Regulatory Commission. ''Not listed'' under the Current E.U. Number column on the first chart means that the item is not included on the E.U. control list. In such instances, the possible new number was created by BXA to identify the unilaterally controlled items.

Under certain software and technical data entries (second digit is a ''D'' or ''E'',) ''related to'' refers to the equipment that the software and technical data refer to. The charts do not differentiate between development, production, or use software or technical data. If BXA revises the ECCNs in the future to correspond with the E.U. numbering systems, it will make such distinctions at that time.

It is important to note that the items controlled by the United States under certain ECCNs are not identical to the items that are controlled under the corresponding E.U. number. BXA is continuing to work on ways to reconcile the differences or give notice to the public of these differences if the decision is made to harmonize the BXA and E.U. numbering systems. However, BXA includes the charts in this notice to provide you with a comprehensive illustration of the conversion of the existing numbering system to a new system. If the United States were to adopt such a numbering system, there is a reasonable expectation that the countries of the world that support the export control policies of the United States would follow this lead and adopt a uniform numbering system.

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS

Current ECCN	Proposed new No.
1A01	1A001
1A02	1A002
1A03	1A003
1A22.a	9A110
1A22.b	1A102
1A27	1C116
1A44	2A225
1A45	1A226
1A46.a	1C202.a
1A46.b	1C202.b
1A47	1C216
1A48	0C001
1A50	1C226
1A84:	
Fingerprint	1C660
Other	1C615
1A88	1A613
1A96	1A996
1B01	1B001
1B02	1B002
1B03	1B003
1B16	0B003
1B17	1B225
1B18	2B418
1B21	1B101
1B28	1B115
1B30.a	1B116
1B30.b	2B104
1B41	1B201
1B42	1B226
1B50.a	2B226
1B50.b	2B227
1B51	2B230
1B52	1B229
1B53	1B228
1B54	1B227
1B58	1B231
1B59	1B230
1B70.a-d	2B350
1B70.e	2B351

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
1B71	2B352
1B96	1B996
1C01	1C001
1C02	1C002
1C03	1C003
1C04	1C004
1C05	1C005
1C06	1C006
1C07	1C007
1C08	1C008
1C09	1C009
1C10	1C010
1C18	1C408
1C19.a	1C234
1C19.b	0C006
1C19.c	1C233
1C19.d	1C230
1C19.e	1A225
1C19.f	1C231
1C21	1C101
1C22	1C117
1C27	1C107
1C31	1C115
1C49	1A225
1C50.a, b	1C210
1C50.c	1A202
1C51	1C229
1C52	1C227
1C53	1C228
1C54	1C236
1C55	1C232
1C56	1C238
1C57	1C225
1C58	1C237
1C60	1C350
1C61:.	
a.1–3, 9, 10, 12, 13,	1C352
a.21–23, 25–27, 31	1C352
a.4–8, 11, 14–20, 24,	1C351
a.28–30, 32–34	1C351
b.	1C351
c.1–7, 9, 10, 12–14, 18;.	1C351
c.8, 11	1C352
c.15, 16, 17	1C354
d.1–10	1C354
e.	1C353
f.	1C351
1C80	1C760
1C81	1C761
1C82	1C762
1C83	1C763
1C84	1C764
1C88	1C765
1C92	1C615
1C93	1C610
1C94	1C606
1C96	1C996
1D01 related to:	
1B01–3	1D001
1B16	0D001
1B17	1D201
1B18	2D418
1D02	1D002
1D23 related to:	
1B21	1D101
1B21	1D101
1B30.b	2D101
1A22.a	9D102

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
1A22.b	1D101
1A27	1D101
1B28	1D101
1B30.a	1D101
1C21	1D101
1C22	1D101
1C27	1D101
1C31	1D101
1D41	1D201
1D50	2D201
1D60	1D301
1D93	1D601
1D94	1D601
1D96	1D996
1E01 related to:	
1A01.b, 1A01.c, 1A02, 1A03, 1B01–1B03, 1C01–1C10.	1E001
1B18	2E418
1C18	1E408
1E02	1E002
1E19 related to:	
1B16	0E001
1B17	1E201
1C19.b	0E001
1C19.a, c–f	1E201
1E23 related to:	
1A22.a	9E101
1A22.a	9E102
1A22.b	1E101
1A27	1E101
1B21	1E101
1B21	1E101
1B28	1E101
1B28	1E101
1B30.a	1E101
1B30.a	1E101
1B30.b	2E101
1B30.b	2E101
1C21	1E101
1C22	1E101
1C27	1E101
1C31	1E101
1E24	1E103
1E25	1E104
1E40	1E101
1E41 related to:	
1A44	2E201
1A45	1E201
1A46	1E201
1A47	1E201
1A48	1E601
1A50	1E201
1B41	1E201
1B42	1E201
1B50	2E201
1B51	2E201
1B52	1E201
1B53	1E201
1B54	1E201
1B58	1E201
1B59	1E201
1C49	1E202
1C49	1E201
1C50	1E201
1C51	1E201
1C52	1E201
1C53	1E201
1C54	1E201

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
1C54	1E201
1C55	1E201
1C56	1E201
1C57	1E201
1C58	1E201
1C10	1E201
1D60	1C301
1E60	2E301
1E61	2E301
1E70	2E301
1E94 related to:	
1C93, 1C94	1E601
1E96	1E996
2A01	2A001
2A02	2A002
2A03	2A003
2A04	2A004
2A05	2A005
2A06	2A006
2A19.a	2A560
2A19.b	3A231
2A19.c	0B001
2A44.a	6A225
2A44.b	6A226.a
2A44.c	6A226.b
2A48	2A226
2A49	2A625
2A50.a, b, c, d, f	2A626
2A50.e	2B225
2A51	2A626
2A52	2B231
2A53	2B631
2A94	2A660
2A96	2A996
2B01	2B001
2B02	2B002
2B03	2B003
2B04	2B004
2B05	2B005
2B06	2B006
2B07	2B007
2B08	2B008
2B09	2B009
2B18	2B418
2B24	2B104
2B41	2B201
2B44	2B204
2B50.a	2B115
2B50.b	2B215
2B51	2B228
2B53	2B229
2B85	2B618
2B91	2B601
2B92	2B606
2B93	2B603
2B94	2B607
2B96	2B996
2D01	2D001
2D02	2D002
2D18	2D418
2D19 related to:	
2A19.a	0D001
2A19.b	3D201
2A19.c	0D001
2D24	2D101
2D41	2D201
2D44	2D201
2D49	2D602

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
2D50 related to:	
2A50.a, b, d, f	2D602
2A50.c	1D201
2A50.e	2D201
2B50.a	2D201
2B50.b	2D201
2D53	2D201
2D92	2D601
2D93	2D601
2D94	2D601
2D96	2D996
2E01	2E001
2E02	2E002
2E03	2E003
2E18	2E401
2E19:.	
2A19.a	0E001
2A19.b	3E201
2A19.b	3E201
2A19.c	0E001
2E20	2E101
2E24	2E101
2E40 related to:	
2B04	2E101
2B06.a, b, c	2E201
2B07.b	2E201
2B08	2E201
2B09	2E201
2E41	2E201
2E44 related to:	
2A44	6E201
2A44	6E201
2B44	2E201
2B44	2E201
2E48	2E201
2E49	2E602
2E50:	
2A50.a, b, d, f	2E602
2A50.c	1E201
2A50.e	2E201
2B50.a	2E101, 2E201
2B50.b	2E201
2E51 related to:	
2A51	2E602
2B51	2E201
2B51	2E201
2E52	2E201
2E53 related to:	
2A53	2E602
2B53	2E201
2B53	2E201
2E93	2E601
2E94	2E601
2E96	2E996
3A01	3A001
3A02	3A002
3A22	3A101.b
3A41	3A201.a
3A42	3A201.b
3A43	3A228
3A44	3A230
3A46	3A229
3A48	2B232
3A49	3A232
3A50	3A225
3A51	3A233
3A52	3A202
3A53	3A227
3A54	3A226

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
3A55	3A201.c
3A80	3A602.a
3A81	3A602.b
3A92	3A601
3A93	3A602.e
3A94.a, b	3A602.c, d
3A96	3A996
3B01	3B001–3B008
3B91	3B601–3B609
3B96	3B996
3C01	3C001
3C02	3C002
3C03	3C003
3C04	3C004
3C96	3C996
3D01	3D001
3D02	3D002
3D03	3D003
3D21 related to:	
3A01.a.1.a	3D101
3D22	3D101
3D80	3D601
3D94	3D601
3D96	3D996
3E01	3E001
3E02	3E002
3E22	3E101
3E40 related to:	
3A41–44, 46	3E201
3A48	2E201
3A49–55	2E201
3E41 related to:	
3A01.e.5	3E201
3E80 related to:	
3A80, 3A81	3E601
3E94	3E601
3E96	3E996
4A01	4A001
4A02	4A002
4A03	4A003
4A04	4A004
4A21	4A101
4A80	4A603.i
4A94.a	4A601
4A94.b–i	4A603.a–h
4A96	4A996
4B94	4B601
4B96	4B996
4C94	4C601
4C96	4C996
4D01	4D001
4D02	4D002
4D03	4D003
4D21	4D101
4D80	4D601
4D92	4D601
4D93	4D602
4D94	4D601
4D96	4D996
4E01	4E001
4E02	4E002
4E21	4E101
4E80	4E601
4E92	4E601
4E93	4E602
4E94	4E601
4E96	4E996
5A01–6	5A001.a–f
5B01, 2	5B001.a, b

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
5C01	5C001
5D01	5D001.a
5D02	5D001.b
5D03	5D001.c
5E01	5E001.a
5E02	5E001.b
5A11	5A002
5B11–13	5B002.a–c
5D11–13	5D002.a–c
5E11	5E002
5A20	5A101
5A80	5A602.b
5A90	5A601
5A91	5A601
5A92	5A601
5A93	5A601
5A94	5A601
5A95	5A602.a
5A96	5A996
5B94	5B601
5B96	5B996, 5B997
5C96	5C996, 5C997
5D20	5D101
5D90	5D601
5D91	5D601
5D92	5D601
5D93	5D601
5D94	5D601
5D95	5D602
5D96	5D996
5E20	5E101
5E90	5E601
5D91	5E601
5D92	5E601
5D93	5E601
5D94	5E601
5E91	5E601
5E92	5E602
5E93	5E602
5E94	5E602
5E95	5E602
5E96	5E996
6A01	6A001
6A02	6A002
6A03	6A003
6A04	6A004
6A05	6A005
6A06	6A006
6A07	6A007, 6A107
6A08	6A008
6A18	6A409
6A22	6A002, 6A002
6A28:	6A108.a, 6A008
6A29	6A108.b
6A30	6B108
6A43	6A203
6A44	6A202
6A50.a	6A205.a
6A50.b	6A205
6A50.c	6A205.c
6A50.d	6A005.c.1
6A50.e	6A205.d
6A50.f	6A205.e
6A90	6A608
6A92	6A607
6A93	6A606
6A94	6A601
6A96	6A996
6B04	6B004

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
6B05	6B005
6B07	6B007
6B08	6B008
6B96	6B996
6C02	6C002
6C04	6C004
6C05	6C005
6C96	6C996
6D01	6D001
6D02	6D002
6D03	6D003
6D21 related to:	
6A02.a.1–4, c	6D102
6A03.b.3, b.4	6D102
6A07.b, c	6D102
6A22	6D102
6A28	6D104
6A30	6D102
6D22 related to:	
6A02.a.1, a.3, a.4	6D102
6A22	6D102
6A07.b, c	6D102
6A28	6D102, 7D101
6A30	6D102
6D29	6D102, 6D103
6D90	6D601
6D92	6D601
6D93	6D601
6D94	6D601
6D96	6D996
6E01	6E001
6E02	6E002
6E03	6E003
6E21 related to:	
6A22	6E101
6A28	6E102
6A29	6E101
6A30	6E101
6E22 related to:	
6A22	6E101
6A28	6E103
6A29	6E101
6A30	6E101
6E23 related to:	
6A02.a.1, a.3, a.4	6E101
6A22	6E101
6A07.b,c	6E101
6A08	6E101
6A28	6E101, 7E101
6A29	6E101
6A30	6E101
6E40	6E201
6E41	6E201
6E90	6E601
6E92	6E601
6E93	6E601
6E94	6E601
6E96	6E996
7A01	7A001
7A02	7A002
7A03	7A003
7A04	7A004
7A06	7A006
7A21	7A101
7A22	7A102
7A23	7A103
7A24	7A104
7A26	7A106
7A27	7A115

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
7A94	7A601
7B01	7B001
7B02	7B002
7B03	7B003
7B22.a	7B102
7B94	7B601
7D01	7D001
7D02	7D002
7D03	7D003
7D24	7D101
7D94	7D601
7E01	7E001
7E02	7E002
7E03	7E003
7E04	7E004
7E21	7E101
7E22	7E101
7E94	7E601
8A01	8A001
8A02	8A002
8A18.a	8A417
8A18.b.1–3,5,6	8A409
8A18.b.4	8A409
8A92	8A602
8A93	8A617
8A94 (boats)	8A601
8A94 (engines)	9A602
8A96	8A996
8B01	8B001
8B96	8B996
8C01	8C001
8C96	8C996
8D01 related to:	
8A01, 8A02	8D001
8A18	8D401
8B01, 8C01	8D001
8D02	8D002
8D92	8D601
8D93	8D601, 9D601
8D96	8D996
8E01 related to:	
8A01, 8A02	8E001
8A18	8E401
8B01, 8C01	8E001
8E02	8E002
8E92	8E601
8E93	8E601, 9E601
8E96	8E996
9A01	9A001
9A02	9A002
9A03	9A003
9A04	9A004
9A18.a,c–e	9A410
9A18.b	9A406
9A18.f	9A414
9A21	9A101
9A22	9A115
9A23	9A106
9A24	9A104
9A80	9A663
9A90	9A660
9A91.a,b	9A610
9A91.c	9A601
9A92	9A661
9A93	9A662
9A94	9A610
9A96	9A996
9B01	9B001
9B02	9B002

CHART I.—CROSS-REFERENCE EXISTING ECCNS TO PROPOSED NEW NUMBERS—Continued

Current ECCN	Proposed new No.
9B03	9B003
9B04	9B004
9B05	9B005
9B06	9B006
9B07	9B007
9B08	9B008
9B09	9B009
9B21	9B115, 9B116
9B25	9B105
9B26	9B106
9B27	9B117
9B94	9B606
9B96	9B996
9D01	9D001
9D02	9D002
9D03	9D003
9D04	9D004
9D18	9D401
9D24 related to:	
9A21–24	9D101
9B21, 9B25	9D101
9B21, 9B25	9D101
9B26.a	9D101
9B26.b, 9B27	9D101
9B01–7	9D101
9D90	9D601
9D91	9D601
9D93	9D601
9D94	9D601
9D96	9D996
9E01	9E001
9E02	9E002
9E03	9E003
9E18	9E401
9E21 related to:	
9A21–24	9E101
9A21–24	9E102
9B21, 25	9E101
9B21, 25	9E102
9B26.a	2E102
9B26.b	9E102
9B27	9E101
9B27	9E102
9D24	See 9D24
9B01–7	9E102
9E90	9E601
9E91	9E601
9E93	9E601
9E94	9E601
9E96	9E996
0A18.a	0A417
0A18.b	0A417
0A18.c	0A403
0A18.d, e	0A401
0A18.f	0A413
0A80	0A760
0A82	0A660
0A84	0A661
0A86	0A662
0A88	0A663
0A95	0A995
0A96	0A996
0A98	0A998
0E18	0E401
0E84	0E601
0E96	0E996

CHART II.—PROPOSED NEW NUMBERS

Proposed new No.	Current ECCN	Current E.U. No.
0A001	Not listed	0A001.
0A002	Not listed	0A002.
0A401	0A18.d ,e	Not listed.
0A403	0A18.c	Not listed.
0A413	0A18.f	Not listed.
0A417	0A18.b	Not listed.
0A417	0A18.a	Not listed.
0A660	0A82	Not listed.
0A661	0A84	Not listed.
0A662	0A86	Not listed.
0A663	0A88	Not listed.
0A760	0A80	Not listed.
0A995	0A95	Not listed.
0A996	0A96	Not listed.
0A998	0A98	Not listed.
0B001.		0B001.
a	Not listed.	
b.1	2A19.c ,2A48.	
b.2–5	Not listed.	
c.1–11	Not listed.	
c.12,13	Not listed.	
d.1–5	Not listed.	
d.6,7	Not listed.	
e.1,3	Not listed.	
e.2,4–6	Not listed.	
f	Not listed.	
g.1–3	Not listed.	
g.4,5	Not listed.	
h.1–4	Not listed.	
h.5,6	Not listed.	
i.1,2	Not listed.	
i.3–6	Not listed.	
k	Not listed.	
0B002.a, b, c	Not listed	0B002.
0B002.d	Not listed	0B002.
0B002.e	Not listed	0B002.
0B002.f	Not listed	0B002.
0B002.g	3A51	0B002.
0B003	1B16	0B003.
0B004	Not listed	0B004.
0B005	Not listed	0B005.
0B006	Not listed	0B006.
0B007	Not listed	0B007.
0B008	Not listed	0B008.
0B009	Not listed	0B009.
0C001	Not listed	0C001.
0C002	Not listed	0C002.
0C003	Not listed	0C003.
0C004	Not listed	0C004.
0C005	Not listed	0C005.
0C006	1C19.b.	
0C201	Not listed	0C201.
0D001 related to.		0D001.
0B001.		
a, b.2–5, c–k	Not listed.	
b.1	2D19.	
0B002	Not listed.	
0B003	1D01.	
0B004–9	Not listed.	
0C001–4	Not listed.	
0C005	Not listed.	
0E001 related to.		0E001.
0A001	Not listed.	
0B001:		
a, b.2–5, c–k.	Not listed.	
b.1	2E19.	
0B002	Not listed.	

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
0B003	1E19.	
0B004–9	Not listed.	
0C001–4	Not listed.	
0C005	1E19.	
0E401	0E18	Not listed.
0E601	0E84	Not listed
0A661	0E84	Not listed
0E996	0E96	Not listed.
1A001	1A01	1A001.
1A002	1A02	1A002.
1A003	1A03	1A003.
1A102	1A22.b	1A102.
1A202	1C50.c	1A202.
1A225	1C19.e, 1C49.	1A225.
1A226	1A45	1A226.
1A227	2A50.c	1A227.
1A613	1A88	Not listed.
1A660	1A48	Not listed.
1A996	1A96	Not listed.
1B001	1B01	1B001.
1B002	1B02	1B002.
1B003	1B03	1B003.
1B101	1B21	1B101.
1B115	1B28	1B115.
1B116	1B30.a	1B116.
1B201	1B41	1B201.
1B225	1B17	1B225.
1B226	1B42	1B226.
1B227	1B54	1B227.
1B228	1B53	1B228.
1B229	1B52	1B229.
1B230	1B59	1B330.
1B231	1B58	1B231.
1B996	1B96	Not listed.
1C001	1C01	1C001.
1C002	1C02	1C002.
1C003	1C03	1C003.
1C004	1C04	1C004.
1C005	1C05	1C005.
1C006	1C06	1C006.
1C007	1C07	1C007.
1C008	1C08	1C008.
1C009	1C09	1C009.
1C010	1C10	1C010.
1C101	1C21	1C101.
1C107	1C27	1C107.
1C115	1C31	1C115.
1C116	1A27	1C116.
1C117	1C22	1C117.
1C202.a	1A46.a	1C202.a.
1C202.b	1A46.b	1C202.b.
1C210	1C50.a, b	1C210.
1C216	1A47	1C216.
1C225	1C57	1C225.
1C226	1A50	1C226.
1C227	1C52	1C227.
1C228	1C53	1C228.
1C229	1C51	1C229.
1C230	1C19.d	1C230.
1C231	1C19.f	1C231.
1C232	1C55	1C232.
1C233	1C19.c	1C233.
1C234	1C19.a	1C234.
1C235	Not listed	1C235.
1C236	1C54	1C236.
1C237	1C58	1C237.
1C238	1C56	1C238.
1C239	Not listed	1C239.
1C350	1C60	1C350.
1C351	1C61	1C351.
1C352		
a.1–7,9–15;b	1C61 (except Lyssa virus).	1C352.
1C352	1C61.d.1–3,5,7–10.	1C352.
1C353	1C61	1C353.
1C354.a, b.2, 5	1C61	1C354.
1C354		
b.1, 3, 4, 6	Not listed	1C354.
1C354	1C61.c.17	1C354.
1C408	1C18.a–j, n	1C408.
1C606	1C94	Not listed.
1C610	1C93	Not listed.
1C615	1C92, 1A84	Not listed.
1C660	1A84 (fingerprint equipment).	Not listed.
1C760	1C80	Not listed.
1C761	1C81	Not listed.
1C762	1C82	Not listed.
1C763	1C83	Not listed.
1C764	1C84	Not listed.
1C765	1C88	Not listed.
1C996	1C96	Not listed.
1D001	1D01	1D001.
1D002	1D02	1D002.
1D101	1D23	1D101.
1D103	Not listed	1D103.
1D201	1D01, 1D41, 2D50.	1D201.
1D301	1D60	1D301.
1D601 related to:.		Not listed.
1C210.b	1D93	
1C610	1D93	
1C606	1D94	
1D996	1D96	Not listed.
1E001	1E01	1E001.
1E002	1E02	1E002.
1E101 related to:.		1E101.
1A102	1E23	
1B001.a	1E40	
1B001.b–f	Not listed	
1B101	1E23	
1B115	1E23	
1B116	1E23	
1C001	Not listed	
1C101	1E23	
1C107	1E23	
1C115	1E23	
1C116	1E23	
1C117	1E23	
1D101	Not listed	
1D103		Not listed
1E101	1E23	
1E102	Not listed	1E102.
1E103	1E24	1E103.
1E104	1E25	1E104.
1E201 related to:.		1E201.
1A002	Not listed	
1A202	1E41	
1A225	1E19 and 1E41.	
1A226	1E41	
1A227	2E50	
1B201	1E41	
1B225	1E19	
1B226–31	1E41	
1C002.a.2.c	Not listed	
1C002.a.2.d	Not listed	
1C010.b	1E41	
1C202	1E41	
1C210	1E41	
1C216	1E41	
1C225–29	1E41	
1C230,31	1E19	
1C232	1E41	
1C233, 34	1E19	
1C235	Not listed	
1C236–38	1E41	
1C239	Not listed	
1D201	Not listed	
1E201	1E41, 2E50	1E201.
1E202	1E41, 2E50	1E202.
1E203	Not listed	1E203.
1E408	1E01	Not listed.
1E601	1E41, 1E94	Not listed.
1E996	1E96	Not listed.
2A001	2A01	2A001.
2A002	2A02	2A002.
2A003	2A03	2A003.
2A004	2A04	2A004.
2A005	2A05	2A005.
2A006	2A06	2A006.
2A225	1A44	2A225.
2A226	2A19.c, 2A48.	2A226.
2A560	2A19.a	Not listed.
2A626	2A51	Not listed.
2A660	2A94	Not listed.
2A996	2A96	Not listed.
2B001	2B01	2B001.
2B002	2B02	2B003.
2B003	2B03	2B003.
2B004	2B04	2B004.
2B005	2B05	2B005.
2B006	2B06	2B006.
2B007	2B07	2B007.
2B008	2B08	2B008.
2B009	2B09	2B009.
2B104	1B30.b, 2B24.	2B104.
2B115	2B50.a	2B115.
2B116	9B26.a	2B116.
2B201	2B41	2B201.
2B204	2B44	2B204.
2B207	Not listed	2B207.
2B215	2B50.b	2B215.
2B225	2A50.e	2B225.
2B226	1B50.a	2B226.
2B227	1B50.b	2B227.
2B228	2B51	2B228.
2B229	2B53	2B229.
2B230	1B51	2B230.
2B231	2A52	2B231.
2B232	3A48	2B232.
2B350	1B70 a.-d.	2B250.
2B351	1B70.e	2B351.
2B352	1B71	2B352.
2B418	1B18.a.1, a.4, b and 2B18.	2B418.
2B601	2B91	Not listed.
2B603	2B93	Not listed.

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
2B606	2B92	Not listed.
2B607	2B94	Not listed.
2B618	2B85	Not listed.
2B625	2A49, 2A50. a, b, d, f.	Not listed.
2B631	2A53	Not listed.
2B996	2B96	Not listed.
2D001	2D01	2D001.
2D002	2D02	2D002.
2D101	related to:	2D101.
2B104	1D23, 2D24.	
2B115	2D50.	
2B116	9D24.	
2D101	1D23, 2D24, 9D24.	2D101.
2D201 related to:.	2D101..	
2B204	2D41.	
2B207	Not listed.	
2B215	2D50.	
2B227	1D50.	
2B229	2D53.	
2D201	1D50, 2D19, 2D41, 2D44, 2D50, 2D53.	2D201.
2D418	1D01, 2D18	Not listed.
2D501	2D19	Not listed.
2D601 related to:.	Not listed..	
2A660	2D92.	
2B606	2D93.	
2B601	2D94.	
2B603	2D94.	
2B607	2D94.	
2D602	2D49	Not listed.
2D996	2D96	Not listed.
2E001	2E01	2E001.
2E002	2E02	2E002.
2E003	2E03	2E003.
2E101 related to:.	2E101..	
2B004	2E20, 2E40.	
2B104	1E23, 2E24.	
2B115	2E50.	
2B116	9E21.	
2D101	Not listed.	
2E101	1E23, 2E24, 2E50, 2E101 and 9E21.	
2E201 related to:.	2E201..	
2A225	1E41.	
2A226	2E19, 2E48.	
2B001	Not listed.	
2B006. a, b, c	2E40.	
2B006.d	Not listed.	
2B007.b	2E40.	
2B007.c	Not listed.	
2B008	2E40.	
2B009	2E40.	
2B204	2E44.	
2B207	Not listed.	
2E201 related to:		
2B215	2E50.	
2B225	2E50.	
2B226	1E41.	
2B227	1E41.	
2B228	2E51.	
2B229	2E53.	
2B230	1E41.	
2B231	2E52.	
2B232	3E40.	
2D201.		
2E301 related to:.	2E301..	
2B350–2	Not listed.	
2E301	1E60, 1E61, 1E70.	2E301.
2E401	2E18	Not listed.
2E418	1E01	Not listed.
2E501	2E19	Not listed.
2E601	2E93 and 2E94.	Not listed
2E602	2E49, 2E50, 2E51, and 2E53.	Not listed,
2E996	2E96	Not listed.
3A001	3A01	3A001.
3A002	3A02	3A002.
3A101	3A22	3A101.
3A201.a	3A41	3A201.
3A201.b	3A42	3A201.
3A201.c	3A55	3A201.
3A202	3A52	3A202.
3A202	3A52	3A202.
3A225	3A50	3A225.
3A226	3A54	3A226.
3A227	3A53	3A227.
3A228	3A43	3A228.
3A229	3A46	3A229.
3A230	3A44	3A230.
3A231	2A19	3A231.
3A232	3A49	3A232.
3A233	3A51	3A233.
3A601.a–i	3A92	Not listed.
3A601.j	3A94.c	Not listed.
3A602.a, b	3A80, 3A81	Not listed.
3A602.c, d	3A94.a, b	Not listed.
3A602.e	3A93	Not listed.
3A996	3A96	Not listed.
3B001	3B01.a	3B001.
3B002	3B01.b	3B002.
3B003	3B01.c	3B003.
3B004	3B01.d	3B004.
3B005	3B01.e	3B005.
3B006	3B01.f	3B006.
3B007	3B01.g	3B007.
3B008	3B01.h	3B008.
3B601	3B91.b.1.d, b.1.e.	Not listed.
3B602	3B91.b.1.g	Not listed.
3B603	3B91.b.1.h	Not listed.
3B604	3B91.b.1.i	Not listed.
3B605	3B91.b.1.k	Not listed.
3B606	3B91.b.2.d.2	Not listed.
3B607	3B91.b.2.a	Not listed.
3B608	3B91.b.3, 4, 6, 7, 9, 10, and 11.	Not listed.
3B609	3B91.a; b.1	Not listed.
	a, b, c, f, j, l, m; b.2.b, c, d.1, d.3, e–h; b.5; b.8.	
3B996	3B96	Not listed.
3C001	3C01	3C001.
3C002	3C02	3C002.
3C003	3C03	3C003.
3C004	3C04	3C004.
3C996	3C96	Not listed.
3D001	3D01	3D001.
3D002	3D02	3D002.
3D003	3D03	3D003.
3D101	3D21, 3D22	3D101.
3D201	2D19	3D201.
3D601 related to:.	Not listed..	
3A601	3D94.	
3A602.a, b	3D80.	
3A602.c-e	3D94.	
3B601–8	3D94.	
3D996	3D96	Not listed.
3E001	3E01	3E001.
3E002	3E02	3E002.
3E101 related to:.	3E101..	
3A001.a.1	Not listed.	
3A001.a.2	Not listed.	
3A101.a	Not listed.	
3A101.b	3E22.	
3D101	Not listed.	
3A101.a	Not listed.	
3A101.b	Not listed.	
3E102	Not listed	3E102.
3E201 related to:.	3E201..	
3A001.e.2	Not listed.	
3A001.e.3	Not listed.	
3A001.e.5	3E41.	
3A201	3E40.	
3A202	3E40.	
3A225	3E40.	
3A226	3E40.	
3A227	3E40.	
3A228	3E40.	
3A229	3E40.	
3A230	3E40.	
3A231	2E19.	
3A232	3E40.	
3A233	3E40.	
3E201	2E19, 3E40	3E201.
3E601 related to:.	Not listed..	
3A601	3E94.	
3A602.a, b	3E80.	
3A602.c-e	3E94.	
3B601–8	3E94.	
3E996	3E96	Not listed.
4A001	4A01	4A001.
4A002	4A02	4A002.
4A003	4A03	4A003.
4A004	4A04	4A004.
4A101	4A21	4A101.
4A102	Not listed	4A102.
4A601	4A94.a	Not listed.
4A603.a-h	4A94.b-i	Not listed.
4A603.i	4A80	Not listed.
4A996	4A96	Not listed.

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
4B601	4B94	Not listed.
4B996	4B96	Not listed.
4C601	4C94	Not listed.
4C996	4C96	Not listed.
4D001	4D01	4D001.
4D002	4D02	4D002.
4D003	4D03	4D003.
4D101	4D21	4D101.
4D601 related to:.	Not listed..	
4A601	4D94.	
4A603	4D80, 4D94.	
4B601	4D92.	
4C601	4D92.	
4D602	4D93	Not listed.
4D996	4D96	Not listed.
4E001	4E01	4E001.
4E002	4E02	4E002.
4E101	4E21	4E101.
4E601 related to:.	Not listed..	
4A601	4E94.	
4A603	4E80, 4E94.	
4B601	4E92.	
4C601	4E92.	
4D601	4E92	Not listed.
4D602	4E92	Not listed.
4E602	4E93	Not listed.
4E996	4E96	Not listed.
5A001.a	5A01	5A001.
5A001.b	5A02	5A001.
5A001.c	5A03	5A001.
5A001.d	5A04	5A001.
5A001.e	5A05	5A001.
5A001.f	5A06	5A001.
5A101	5A20	5A101.
5A601	5A90, 5A91, 5A92, 5A93, 5A94.	Not listed.
5A996	5A96	Not listed.
5B001.a	5B01	5B001.
5B001.b	5B02	5B002.
5B601	5B94	Not listed.
5B996	5B96	Not listed.
5C001	5C01	5C001.
5C996	5C96	Not listed.
5D001.a	5D01	5D001.
5D001.b	5D02	5D001.
5D001.c	5D03	5D001.
5D101	5D20	5D101.
5D601 related to:.	Not listed..	
5A601	5D90, 5D92, 5D93, 5D94.	
5B601	5D91.	
5D996	5D96	Not listed.
5E001	5E01, 5E02	5E001.
5E101	5E20	5E101.
5E601 related to:.	Not listed..	
5A601	5E90, 5E92, 5E93, 5E94.	
5B601	5E91.	
5C601	5E90–5E94.	
5E996	5E96	Not listed.
5A002	5A11	5A002.
5A602.a	5A95	Not listed.

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
5A602.b	5A80	Not listed.
5B002.a.1	5B11	5B002.
5B002.a.2	5B12	5B002
5B002.b	5B13	5B002
5B997	5B96	Not listed.
5C997	5C96	Not listed.
5D002.a	5D11	Not listed.
5D002.b	5D12	Not listed.
5D002.c	5D13	Not listed.
5D602	5D95	Not listed.
5E002	5E13	Not listed.
5E602 related to:.	Not listed..	
5A602.a	5E95.	
5D602	5E95.	
6A001	6A01	6A001.
6A002	6A02	6A002.
6A003	6A03	6A003.
6A004	6A04	6A004.
6A005	6A05	6A005.
6A006	6A06	6A006.
6A007	6A07	6A007.
6A008	6A08	6A008.
6A102	6A22	6A102.
6A107	Not listed	6A107.
6A108.a	6A28	6A108.
6A108.b	6A29..	
6A202	6A44	6A202.
6A203.a	6A43.a	6A203.
6A203.b	6A43.b	6A203.
6A203.c	6A43.c	6A203.
6A205.a	6A50.a	6A205.
6A205.b	Not listed	6A205.
6A205.c	6A50.c	6A205.
6A205.d	6A50.e	6A205.
6A205.e	6A50.f	6A205.
6A225	2A44.a	6A225.
6A226.a	2A44.b	6A226.
6A226.b	2A44.c	6A226.
6A409	6A18	Not listed.
6A601	6A94	Not listed.
6A606	6A93	Not listed.
6A607	6A92	Not listed.
6A608	6A90	Not listed.
6A996	6A96	Not listed.
6B004	6B04	6B004.
6B005	6B04	6B005.
6B007	6B07	6B007.
6B008	6B08	6B008.
6B108	6A30	6B108.
6B996	6B96	Not listed.
6C002	6C02	6C002.
6C004	6C04	6C004.
6C005	6C04	6C005.
6C996	6C96	Not listed.
6D001	6D01	6D001.
6D002	6D02	6D002.
6D003	6D03	6D003.
6D102 related to:		6D102
6A108.a	6D21.	
6D102	6D21, 6D22.	
6D103	6D29	6D103.
6D601 related to:	Not listed..	
6A608	6D90.	
6A607	6D92.	
6A606	6D93.	
6A601	6D94.	
6D996	6D96	Not listed.

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
6E001	6E01	6E001.
6E002	6E02	6E002.
6E003	6E03	6E003.
6E101 related to:	6E101..	
6A002		
a.1, 3, 4	6E23.	
a.2, b-d	Not listed.	
6A007.b, c	6E23.	
6A008	6E23.	
6A102	6E23.	
6A107	Not listed.	
6A108	6E23.	
6B108	6E23.	
6D102	Not listed.	
6D103	Not listed.	
6E101	6E21, 6E22..	
6E201.		
related to:	6E201..	
6A003:		
a.1, b.2–4	Not listed.	
1.25, b.1	6E40.	
6A005	6E40.	
6A202	6E41.	
6A203	6E41.	
6A205	6E41.	
6A225	2E44.	
6A226	2E44.	
6E201	2E44, 6E40, 6E41.	6E201.
6E601 related to:.	Not listed..	
6A608	6E90.	
6A607	6E92.	
6A606	6E93.	
6A601	6E94.	
6E996	6E96	Not listed
7A001	7A01	7A001.
7A002	7A02	7A002.
7A003	7A03	7A003.
7A004	7A04	7A004.
7A006	7A06	7A006.
7A101	7A21	7A101.
7A102	7A22	7A102.
7A103.a	7A23	7A103.
7A103.b	Not listed	7A103.
7A104	7A24	7A104.
7A105	Not listed	7A105.
7A106	6A28, 7A26	7A106.
7A115	7A27	7A115.
7A116	Not listed	7A116.
7A117	Not listed	7A117.
7A601	7A94	Not listed.
7B001	7B01	7B001.
7B002	7B02	7B002.
7B003	7B03	7B003.
7B102	7B22	7B102.
7B103	2B18	7B103.
7B601	7B94	Not listed.
7D001	7D01	7D001.
7D002	7D02	7D002.
7D003	7D03	7D003.
7D101 related to:.	7D101.	
7A001–4	Not listed.	
7A005	Not listed.	
7A006	Not listed.	
7A101–4	7D24.	
7A105	Not listed.	
7A106	7D24.	

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
7A115	7D24.	
7B002, 3	7D24.	
7B102	7D24.	
7B103	2D18.	
7D101	7D24	7D101.
7D102	Not listed	7D102.
7D103	Not listed	7D103.
7D601	7D94	Not listed.
7E001	7E01	7E001.
7E002	7E02	7E002.
7E003	7E03	7E003.
7E004	7E04	7E004.
7E101		7E101.
7A001–4	7E21.	
7A005	Not listed..	
7A006	7E21.	
7A101–4	7E21.	
7A105	Not listed.	
7A106	7E21.	
7A115	7E21.	
7A116, 7	Not listed.	
7B002, 3	7E21.	
7B102	7E21.	
7B103	2E18.	
7D101	7D101.	
7D103	Not listed.	
7E102	7E22	7E102.
7E104	Not listed	7E104.
7E601	7E94	Not listed.
8A001	8A01	8A001.
8A002	8A02	8A002.
8A409	8A18.b.1–3, 5, 6.	Not listed.
8A409	8A18.b.4	Not listed.
8A417	8A18.a	Not listed.
8A601	8A94	Not listed.
8A602	8A92	Not listed.
8A617	8A93	Not listed.
8A996	8A96	Not listed.
8B001	8B01	8B001.
8B996	8B96	Not listed.
8C001	8C01	8C001.
8C996	8C96	Not listed.
8D001	8D01	8D001.
8D002	8D02	8D002.
8D401	8D01	Not listed.
8D601 related to:.	Not listed..	
8A602	8D92.	
8A617	8D93.	
8A601	8D94.	
8D996	8D96	Not listed.
8E001	8E01	8E001.
8E002	8E02	8E002.
8E401	8E01	Not listed.
8E601 related to:.	Not listed..	
8A602	8E92.	
8A617	8E93.	
8A601	8E94.	
8E996	8E96	Not listed.
9A001	9A01	9A001.
9A002	9A02	9A002.
9A003	9A03	9A003.
9A004	9A04	9A004.
9A005	Not listed	9A005.
9A006	Not listed	9A006.
9A007	Not listed	9A007.
9A008	Not listed	9A008.
9A009	Not listed	9A009.

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
9A010	Not listed	9A010.
9A011	Not listed	9A011.
9A101.a	9A21	9A101.
9A101.b	Not listed	9A101.
9A104	9A24	9A104.
9A105	Not listed	9A105.
9A106.a	Not listed	9A106.
9A106.b	Not listed	9A106.
9A106.c	9A23	9A106.
9A107	Not listed	9A107.
9A108	Not listed	9A108.
9A107	Not listed	9A107.
9A110	1A22	9A110.
9A111	Not listed	9A111.
9A115.a	Not listed	9A115.
9A115.b	9A22	9A115.
9A116	Not listed	9A116.
9A117	Not listed	9A116.
9A118	Not listed	9A118.
9A119	Not listed	9A119.
9A406	9A18.b	Not listed.
9A410	9A18.a, c, d, e.	Not listed.
9A414	9A18.f	Not listed.
9A601	9A91.c	Not listed.
9A602	8A94	Not listed.
9A610	9A91.a, b and 9A94.	Not listed.
9A660	9A90	Not listed.
9A661	9A92	Not listed.
9A662	9A93	Not listed.
9A663	9A80	Not listed.
9A996	9A96	Not listed.
9B001	9B01	9B001.
9B002	9B02	9B002.
9B003	9B03	9B003.
9B004	9B04	9B004.
9B005	9B05	9B005.
9B006	9B06	9B006.
9B007	9B07	9B007.
9B008	9B08	9B008.
9B009	9B09	9B009.
9B105	9B25	9B105.
9B106	9B26.b	9B106.
9B115	9B21	9B115.
9B116	9B21	9B116.
9B117	9B27	9B117.
9B606	9B94	Not listed.
9B996	9B96	Not listed.
9D001 related to:.	9D001..	
9A001–3	9D01.	
9A004	Not listed.	
9A005–9	Not listed.	
9A010	Not listed.	
9A011	Not listed.	
9B001–9	9D01.	
9E003	9D01.	
9D002 related to:.	9D002..	
9A001–3	9D02.	
9A004	Not listed.	
9A005–9	Not listed.	
9A010	Not listed.	
9A011	Not listed..	
9B001–9	9D02..	
9D003	9D03	9D003.
9D004	9D04	9D004.
9D101	1D23, 9D24	9D101.
9D103	Not listed	9D103.

CHART II.—PROPOSED NEW NUMBERS—Continued

Proposed new No.	Current ECCN	Current E.U. No.
9D401	9D18	Not listed.
9D601 related to:.	Not listed..	
9A601	9D91.	
9A602	8D93.	
9A610	9D91.	
9A660	9D90.	
9A661	9D93.	
9A662	9D93.	
9B606	9D94.	
9D996	9D96	Not listed.
9E001 related to:.	9E001..	
9A001.c	9E01.	
9A004	Not listed.	
9A005–9	Not listed.	
9A010	Not listed.	
9A011	Not listed.	
9B001–9	9E01.	
9D001–4	9E01.	
9E002 related to:.	9E002..	
9A001.c	9E02.	
9A004	Not listed.	
9A005–9	Not listed.	
9A010	Not listed.	
9A011	Not listed.	
9A004–11	Not listed.	
9B001–9	9E02.	
9E003	9E03	9E003.
9E101 related to:.	9E101..	
9A101.a	9E21.	
9A101.b	Not listed.	
9A104	9E21.	
9E101 related to:.	9E101..	
9A105	Not listed.	
9A106.a, b	Not listed.	
9A106.c	9E21.	
9A107–9	Not listed.	
9A110	1E23.	
9A111	Not listed.	
9A115.a	Not listed.	
9A115.b	9E21.	
9A116–19	Not listed.	
9E102 related to:.	9E102..	
9A004:	Not listed.	
9A005–9	Not listed.	
9A010	Not listed.	
9A011	Not listed.	
9A101.a	9E21.	
9A101.b	Not listed.	
9B105, 6	9E21.	
9B115–17	9E21.	
9D101	see 9D24.	
9D103	Not listed.	
9E401	9E18	Not listed.
9E601 related to:.	Not listed..	
9A601	9E91.	
9A602	8E93.	
9A610	9E91.	
9A660	9E90.	
9A661	9E93.	
9A662	9E93.	
9B606	9E94.	
9E996	9E96	Not listed.

Request for Comments

BXA is specifically seeking comments on the following items:

(1) Should the U.S. harmonize the ECCNs with the E.U. numbers and encourage other countries to adopt a uniform numbering system?

(2) What are the specific implications if we change the ECCNs to conform with the E.U. numbering system? For example, if you currently have computer programs that aid in facilitating exports and reexports, what will be the programming implications for your firm if we make this change?

(2) What problems have you had in the past in tracking two or more numbering systems for identical items controlled by two or more countries?

(3) What are the specific ways in which a uniform numbering system would help your company?

(4) Are there numbering systems of other countries that you prefer to the E.U. system? If so, state which ones and exactly how you would reconcile any differences in scope.

BXA intends that all information obtained from the public in connection with this notice be a matter of public record. Comments received will be available for public inspection and copying. BXA will not accept submissions made on a confidential basis. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Dated: April 11, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–9218 Filed 5–10–95; 8:45 am]

BILLING CODE 3510–DT–P

Federal Register

Thursday
May 11, 1995

Part IV

Environmental Protection Agency

40 CFR Part 9, et al.

Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule

ENVIRONMENTAL PROTECTION

40 CFR Parts 9, 260, 261, 262, 264, 265, 266, 268, 270, and 273

[FRL–5201–3]

RIN 2050–AD19

Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 11, 1993, the Environmental Protection Agency proposed new streamlined hazardous waste management regulations governing the collection and management of certain widely generated wastes (batteries, pesticides and thermostats) known as universal wastes (58 FR 9346). Additional information was noticed for comment on June 20, 1994 (59 FR 31568). Today's final rule promulgates streamlined universal waste management regulations which are very similar to the February 11, 1993 proposal.

The new streamlined hazardous waste management regulations promulgated today govern the collection and management of certain widely generated wastes identified as universal wastes. This final rule will greatly facilitate the environmentally-sound collection and increase the proper recycling or treatment of hazardous waste nickel cadmium and other batteries, certain hazardous waste pesticides, and mercury-containing thermostats. The current RCRA regulations have been a major impediment to national collection and recycling campaigns for these wastes. This rule will greatly ease the regulatory burden on retail stores and others that wish to collect or generate these wastes. It should greatly facilitate programs developed to reduce the quantity of these wastes going to municipal solid waste landfills or combustors. It will, also, assure that the wastes subject to this system will go to appropriate treatment or recycling facilities pursuant to the full hazardous waste regulatory controls. It also will serve as a prototype system to which EPA may add other similar wastes in the future. A petition process is also included through which additional wastes could be added to the universal waste regulations in the future. These regulations are set forth in 40 CFR part 273.

EFFECTIVE DATE: This final rule is effective on May 11, 1995.

ADDRESSES: The official record for this rulemaking is identified as Docket Numbers F–93–SCSP–FFFFF and F–94–SCSA–FFFFF and is in the EPA RCRA Docket, located in Room M2616, U.S. EPA (5305), 401 M Street SW., Washington, DC. 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule contact the RCRA Hotline toll free at (800) 424–9346. In the Washington, DC. metropolitan area, call (703) 412–9810. For further information regarding specific aspects of this notice, contact the Office of Solid Waste (5304), U.S. EPA, 401 M Street SW., Washington, DC. 20460. Additional copies of this rule and supporting documentation (e.g., fact sheet and summary of requirements) are available by mail by calling the RCRA Hotline. A supporting document containing the Agencies response to comments is available for review in the Docket for this rule.

SUPPLEMENTARY INFORMATION:

Outline

I. Background

Under Subtitle C of the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) has promulgated regulations setting forth the framework of the nation's hazardous waste management program. These regulations are found in parts 260 through 279 of title 40 of the Code of Federal Regulations. These regulations first identify what wastes are considered hazardous and thus are subject to the hazardous waste regulations. Requirements are then set forth for hazardous waste generators, transporters, and owners and operators

of treatment, storage, and disposal facilities (TSDs).

On February 11, 1993, the Environmental Protection Agency proposed to add to the hazardous waste regulations a set of streamlined requirements for collecting certain widely-dispersed hazardous wastes (58 FR 8102), which were called ''universal wastes.'' These wastes share several characteristics:

—They are frequently generated in a wide variety of settings other than the industrial settings usually associated with hazardous wastes;

— They are generated by a vast community, the size of which poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program; and

— They may be present in significant volumes in non-hazardous waste management systems.

In the preamble to the proposal, known as the ''universal waste'' proposal, the Agency explained a number of reasons why it believed that a streamlined regulatory system was appropriate for these wastes. See 58 FR 8102 for a detailed discussion.

230 comments were received on the proposal from environmental groups, companies involved in universal waste management, state and local environmental and agricultural agencies, and trade associations. Comments received on the proposed rule were in general very supportive of the basic concepts behind the proposed regulations and of the proposed regulatory approach. Commenters did suggest numerous specific changes to the regulatory requirements that they believed would make them easier to comply with and to implement, more protective of the environment, and more successful at achieving the goals of the universal waste program.

Additional information on costs and benefits of the proposal was made available for public comment on June 20, 1994 (59 FR 31568). Eleven comments were received on this additional information and the Agency's responses to these comments are available in the docket for this rule (See Addresses section above). The Agency's responses to each of the comments are included here.

This rule finalizes the streamlined universal waste management system proposed on February 11, 1993 (58 FR 8102). In general, the final rule is very similar to the proposal. Although some of the details of the regulatory structure have changed, the basic approach adopted in the final rule and the majority of the particulars is the same as that proposed. A summary of the final rule is included in section III of this preamble. The following sections of the preamble discuss in detail the major comments received on each of the issues raised in the proposed rule, any differences between the proposal and the final rule, and the Agency's reasons for making the changes. The final regulatory text is set forth at the end of this notice. These regulatory changes will be codified into the printed version of Title 40 of the Code of Federal Regulations in its next update, which will be revised as of July 1, 1995.

II. Relationship to Other Agency Activities

II.A. Mercury-Containing Lamps

During development of the proposed universal waste rule it was suggested that spent fluorescent light bulbs (known as fluorescent lamps) might be appropriately managed under the universal waste regulations. Mercury is used in the production of fluorescent lamps, and as a result, a relatively high percentage of these lamps are hazardous waste when spent because they exhibit the toxicity characteristic for mercury. At the time of the proposal, the Agency decided that further investigation into the issue of mercury-containing lamps was necessary before proposing changes to the regulations governing management of these lamps. Thus, in the February 11, 1993 universal waste proposal the Agency explained that it was not proposing to include fluorescent lamps in the universal waste regulations but requested comment on several issues (58 FR 8110). First, EPA requested comment on the risks posed by these lamps in landfills or municipal waste combustors. Second, EPA requested information on the risks of current or developing mercury recovery technology.

A number of comments were received addressing the mercury-containing lamps issue. Many of the commenters argued that these lamps should be included in the universal waste final rule. Several commenters also suggested other regulatory alternatives for regulating management of these lamps. A number of comments also addressed the questions that the Agency asked in the proposal about the risks of various management methods.

On July 27, 1994, the Agency published a proposed rule specifically addressing the management of spent mercury-containing lamps (59 FR 38288). Information received in comments on the universal waste proposal was used in developing the proposal on lamp management.

Two options for changing the regulations governing mercury-containing lamps were included in the July 27, 1994 proposal. The Agency requested comment on a number of issues, including which of the two options should be implemented. One option was to conditionally exempt these lamps from regulation as hazardous waste. Under this option, mercury-containing lamps would not be considered hazardous waste provided they are disposed of in municipal solid waste landfills that meet certain requirements, or are recycled at mercury reclamation facilities that meet certain requirements. In addition, generators would be required to maintain documentation identifying the disposal or recycling facility to which the lamps were sent.

The second option proposed was to add mercury-containing lamps to the universal waste regulations. Under this option, mercury-containing lamps that fail the toxicity characteristic would continue to be regulated as hazardous waste, but would be subject to the streamlined universal waste regulations promulgated today instead of the full hazardous waste regulations. The July 27, 1994, proposed regulatory text for including mercury-containing lamps in the universal waste regulations was based on the February 11, 1993, proposed universal waste regulations. In the July 27, 1994, proposal the Agency explained that it expected to promulgate final universal waste regulations prior to promulgating a final rule on mercury-containing lamps. It was noted that if the Agency selected the universal waste option for management of mercury-containing lamps, the final regulations would be consistent with the final universal waste rule (59 FR 38295).

Thus, if in the future final rule on mercury-containing lamps the Agency decides to add them to the universal waste regulations, the requirements proposed on July 27, 1994, would be revised to be consistent with the universal waste regulations promulgated today. For example, instead of using the terminology for universal waste handlers from the proposed rule (generators and consolidation points), the terminology from today's final rule would be used (small and large quantity handlers of universal waste). The concepts governing management of mercury-containing lamps from the proposed universal waste option (e.g., waste management controls, quantity limits for notification), revised as appropriate in response to comments, would be incorporated into the

universal waste regulatory structure promulgated today.

All of the comments submitted on the universal waste proposal that addressed the issue of how mercury-containing lamps should be regulated and the questions concerning the risks of managing these wastes have been included in the docket for the July 27, 1994, proposal on mercury-containing lamps (docket number F–94–FLEP-FFFFF). The Agency will respond to those comments in the final rule on mercury-containing lamps together with comments submitted in response to the July 27, 1994, proposal.

II.B. Redefinition of Solid Waste

Over the past several years EPA has been exploring ways of clarifying the ''definition of solid waste'' regulations, which are the regulations that govern hazardous waste recycling. The goals of this effort are to eliminate disincentives for hazardous waste recycling, ensure that hazardous waste recycling is environmentally protective, address areas of underregulation, and simplify the definition of solid waste regulations to make them easier to comply with and to implement. In mid-1992 the Agency formed a Definition of Solid Waste Task Force which met over the course of a year with representatives of industry, environmental groups, states, and EPA regional offices to discuss possible options. The Task Force has published a final report recommending various regulatory changes that could be made to accomplish the goals of the project. The report is entitled ''Re-engineering RCRA for Recycling: The Definition of Solid Waste Task Force Report and Recommendations,'' EPA publication # EPA 530–R–94–016, and is available by calling the RCRA Hotline listed above in the For Further Information section of this notice. It is expected that the Agency will make decisions on how to act on the Task Force's recommendations within the next several months.

Today's universal waste rule arises out of some of the same past Agency efforts as does the redefinition of solid waste project, and has similar goals. The two projects are not concurrent, however, and each is now in a different stage of development. While this is the final rule setting up the structure of the universal waste regulations, the redefinition of solid waste is a longer term project that has not yet reached the point of regulatory revisions. Several issues raised by the universal waste rule and the redefinition project make it important that the reader understand the interaction between these two projects.

First, the Universal Waste Rule is designed to accomplish three general goals. These goals consist of encouraging resource conservation while ensuring adequate protection of human health and the environment, improving implementation of the current subtitle C hazardous waste regulatory program, and providing incentives for individuals and organizations to collect the unregulated portions of these universal waste streams and manage them using the same systems developed for the regulated portion, thereby removing these wastes from the municipal waste stream. As discussed earlier, the goals of the Redefinition of Solid Waste Force include eliminating disincentives for hazardous waste recycling, ensuring that hazardous waste recycling is environmentally protective, addressing areas of underregulation, and simplifying the definition of solid waste regulations to make them easier to comply with and to implement. In the universal waste proposal the Agency did not propose to make any changes to the regulations governing facilities recycling universal wastes (destination facilities), and has not done so in this final rule. Facilities recycling universal wastes are thus subject to the same regulations as any other hazardous waste recycler. A number of commenters suggested that the Agency should lessen the regulatory requirements for universal waste recyclers to encourage recycling. Although the Agency agrees that encouraging safe recycling of these wastes is an important objective, it would be premature to make any changes to the recycling regulations at this time.

As part of the redefinition of solid waste project, the Agency and other interested parties have expended a great deal of effort analyzing this issue and discussing the best ways to accomplish this goal. It would not make sense to make any changes to the recycling regulations now, since the final results of the project are not available. Any changes made now would not realize the benefit of the efforts put into the project. In addition, making changes now could be very disruptive, since it is likely that the recycling regulations will be revised again shortly after the universal waste regulations are in place (i.e., incorporated into state regulations).

The Agency's goals for universal waste recycling are the same as for all other hazardous waste recycling. Thus, when the Agency makes changes to the recycling regulations as part of the redefinition of solid waste project, these changes will also be applied to universal waste recycling.

Second, the Definition of Solid Waste Task Force recommendations discuss a category of recycling called ''product stewardship.'' Depending on the direction taken by the Agency in this area there may be some similarities to, or overlap with, the universal waste regulations. Any regulatory changes that are made in this area as part of the redefinition of solid waste will take into account the status of the universal waste regulations (e.g., what wastes have been added, how many states have implemented the regulations, and how well the system is working). The Agency will ensure that the product stewardship portion of the redefinition effort is coordinated with the universal waste regulations as necessary and will not disrupt existing programs.

II.C. Possible Revisions to the Hazardous Waste Characteristics

EPA believes the approach in this rulemaking is a useful new approach to easing the burden while encouraging the proper management of wastes that pose a hazard if mismanaged. There may be certain hazardous wastes, however, for which relief beyond that provided by the universal waste rule may be appropriate. One approach for doing so is through reexamination of the existing toxicity characteristic. EPA is going to expeditiously investigate what sort of effort would be involved in developing modifications to the characteristics, what sort of resources would be needed to do that, and consider the benefits of such an effort against the benefits of other regulatory improvements EPA is considering. A rulemaking to modify the characteristics might potentially affect a significant quantity of currently regulated and currently unregulated waste.

III. Summary of Final Universal Waste Regulations

The part 273 regulations for managing universal wastes promulgated today are substantively very similar to those proposed on February 11, 1993. Thus, the requirements that a person managing universal wastes must follow under this final rule are very similar to those that they would have been required to follow under the regulations as proposed. However, in response to comments from the public on the proposal, the Agency has made a number of changes to the regulations that the Agency believes will improve the environmental protectiveness of the rule, make it easier for the regulated community to comply with the requirements, and make it easier for

implementing agencies to implement the universal waste program.

III.A. Structure of the Final Rule

Although the final universal waste rule requirements are substantively very similar to those proposed, the final rule may at first appear to be quite different from the proposal because two major structural changes have been made to the universal waste regulations, 40 CFR part 273. First, the terms used to refer to some of the participants in the universal waste system have been changed in the final rule. To make the final regulation easier to use and less repetitive, the basic organization of the regulation has also been changed from the proposal.

The first major revision to the structure of the regulation is that the terms used to refer to some of the participants in the universal waste system have been changed. Specifically, in the proposal there were four types of regulated persons that manage universal waste: Generators, consolidation points, transporters, and destination facilities. In the final rule there are also four types of regulated persons. The transporter and destination facility categories are retained as they were proposed. However, the persons who would have been included in the proposed generator and consolidation point categories will now fit into either the category of small quantity handlers of universal waste (SQHUWs) or the category of large quantity handlers of universal waste (LQHUWs). Under the proposal, the categories of generator and consolidation point were distinguished by the way wastes came to be at the facility. Generators generated the waste themselves on-site, and consolidation points received the waste from off-site. Under the final rule, the categories of large and small handlers of universal waste are distinguished by the amount of waste accumulated on-site at any time. LQHUWs accumulate 5,000 kilograms or more total of universal wastes. SQHUWs accumulate less than 5,000 kilograms total.

The Agency decided to make this change for several reasons. First, numerous commenters suggested that there should be a third category of universal waste handler: front-line collectors of universal waste who collect small quantities of universal waste, largely from consumers and small businesses. These commenters pointed out that such collectors would frequently be retail-type operations (e.g., a department or specialty store that has a spent battery collection box) participating in national or regional collection programs. Such front-line collectors would likely accumulate only small quantities of universal waste because only a minor portion of their business is devoted to managing waste, and because they would ship wastes frequently using package shipping services or similar systems set up by the collection programs. Under the proposal, these front-line collectors would have been subject to the more stringent consolidation point requirements because they receive wastes from off-site generators.

These commenters argued that front-line collectors should be subject to less stringent requirements than the proposed consolidation point requirements for several reasons. One reason was that the universal waste they would have on-site would pose limited risk due to the small quantities involved. Another reason was that some of the requirements would inhibit the participation of many retail-type operations (such as the large retail chains), thereby greatly limiting the success of universal waste collection programs in removing these wastes from non-hazardous waste management systems.

The Agency agrees with the concept that the activities of persons such as front-line collectors managing small quantities of universal waste pose less risk and require less stringent standards than those managing larger quantities of universal waste. Instead of adding an additional category of front-line collectors with less stringent standards, however, the Agency decided to extend this concept to all persons both generating and collecting universal waste. Thus, under the final rule, persons accumulating large quantities of universal waste (5,000 kg or more total of universal waste accumulated on-site) are called large quantity handlers of universal waste, and are subject to more stringent requirements than small quantity handlers of universal wastes, who are persons accumulating less than 5,000 kg total of universal waste. A handler's designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

Another reason the Agency decided to restructure the categories of persons managing universal wastes was in response to comments received on the issue of recordkeeping for universal waste shipments. The Agency had proposed that a manifest be required for shipments from final consolidation points to destination facilities, based on the concept that such shipments would be larger shipments and thus require closer tracking. In addition to other issues, a number of commenters pointed out that it is not necessarily true that shipments from consolidation points to destination facilities will be larger shipments. For example, shipments between consolidation points or between generators and destination facilities may also be large shipments.

The Agency agrees that it does not necessarily make sense from a risk perspective to require recordkeeping for certain shipments based solely on the type of universal waste management activity conducted by the shipper and receiver (i.e., whether the shipper generates or collects universal waste or whether the receiver collects or disposes of universal waste) rather than on the quantity of universal waste handled. Thus, the Agency has decided to require recordkeeping of LQHUWs but not SQHUWs, and to define the categories by the quantities of waste managed.

The second major change to the structure of the rule is that it has been reorganized. Part 273 of the proposed rule included some general provisions in the first subpart, and then each subsequent subpart included the regulations applicable to persons managing each specific type of universal waste. For example, subpart B covered universal waste batteries, and included requirements for generators, transporters, consolidation points, and destination facilities. Subpart C covered universal waste pesticides, and also included requirements for generators, transporters, consolidation points, and destination facilities.

A number of commenters pointed out that this organization was unnecessarily repetitive, particularly since the majority of the requirements for each type of participant in the universal waste system was the same. In other words, the requirements for generators of batteries (or transporters, consolidation points, or destination facilities) were basically the same as the requirements for generators of pesticides (or transporters, consolidation points, or destination facilities). These commenters also noted that the rule would become even more repetitive if additional wastes were added in the future, since a new subpart would have to be added for each new universal waste. These commenters suggested that the rule would be easier to use if it were structured such that general requirements were presented together, followed by specific differences for persons managing particular universal wastes.

The Agency agrees with these commenters and has revised the final rule accordingly. Subpart A of the final rule includes general provisions such as

applicability and definitions. Subpart B includes requirements applicable to Small Quantity Handlers of Universal Waste. Subpart C includes requirements for Large Quantity Handlers of Universal Waste. Subpart D covers the requirements for transporters of universal waste. Subpart E sets forth standards for destination facilities. Subparts F and G, respectively, include standards for imports of universal waste and petitions to include other wastes under Part 273.

Subparts B through E of the final rule now include all of the requirements applicable to one type of universal waste manager, regardless of what type of universal waste is being managed. Thus, a universal waste manager who may be handling more than one type of universal waste need only read the one section applicable to his or her activities. Requirements that are different for particular waste types are noted within the regulatory text. For example, the waste management sections for small and large handlers each include a subsection setting forth the requirements applicable to management of a particular universal waste. Subsection (c) addresses batteries, subsection (d) pesticides, and (e) thermostats.

The Agency believes reorganization makes the final rule more user-friendly, and thus will encourage participation in universal waste collection programs. The Agency also believes that the regulatory sections within the subparts are laid out simply and clearly, making it easier to find any particular part of the regulation.

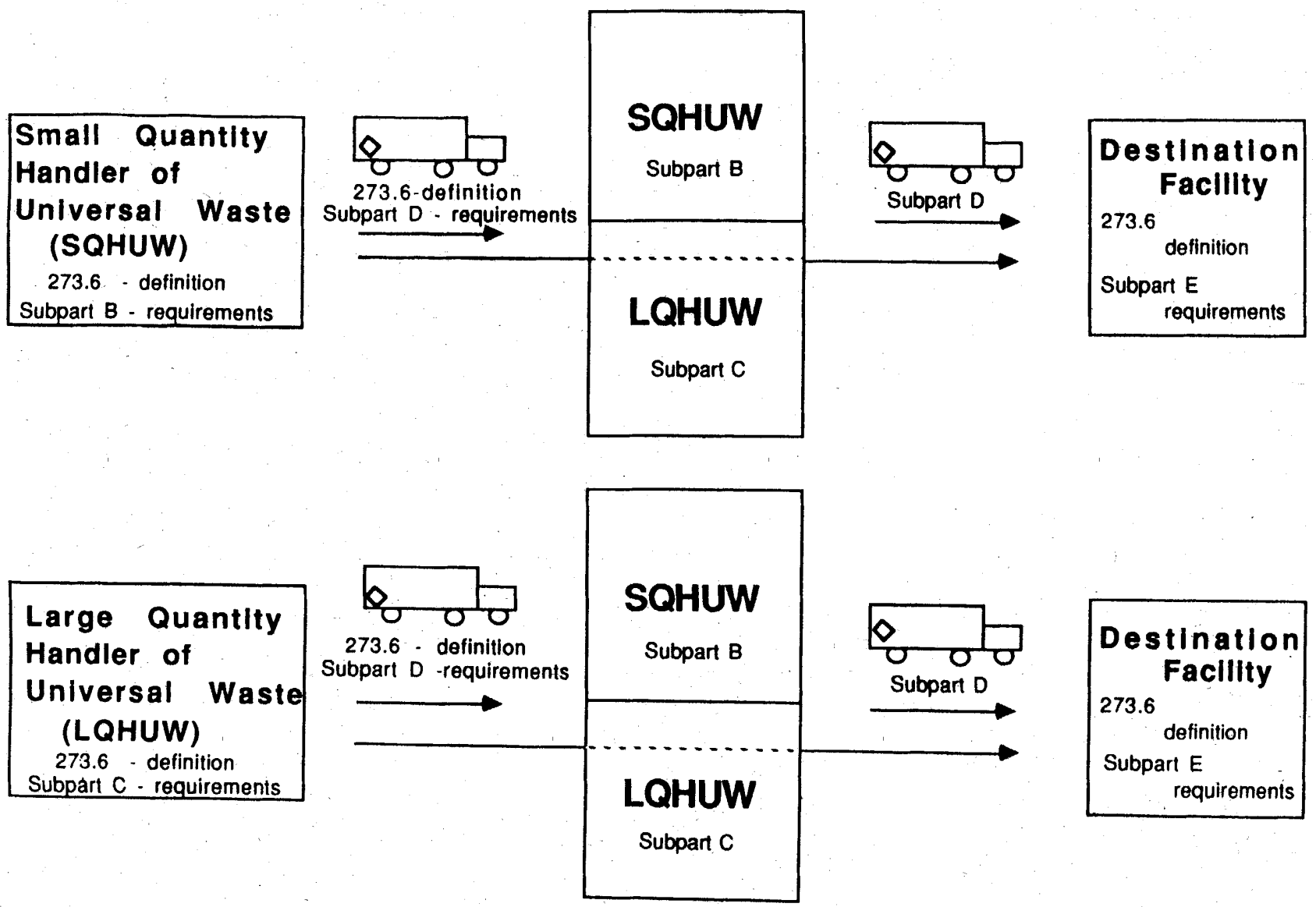
Although this reorganization does remove much of the redundancy of the regulation (and will avoid adding repetition in the future if new universal wastes are added to the regulations), readers may note that the small and large quantity handler subparts of the rule remain somewhat repetitive. This is because, although these two groups share many of the same requirements, in three sections, the requirements are different. These sections are notification, tracking, and employee training. One possibility would have been to have only one handler subpart, and specify the different requirements for small and large quantity handlers within each of these three sections. However, the Agency believes that the regulation will be easier for handlers to follow if they determine once whether they are small or large handlers, and then read only the regulations applicable to their category. Thus, the Agency has decided to retain two different subparts for small and large quantity handlers.

Figure 1 illustrates the structure of the final universal waste management system.

BILLING CODE 6560–50–P

BILLING CODE 6560-50-C

BASIC STRUCTURE OF THE UNIVERSAL WASTE SYSTEM



PLEASE NOTE: Shipments of universal waste may be rejected and returned to the originating handler of the universal waste, by the receiving facility.

Requirements related to off-site shipments of these "rejected loads" are found in Part 273.18, 273.38, 273.55, and 273.61

III.B. Summary of Universal Waste Requirements

This section provides a summary of the final universal waste regulations, 40 CFR part 273. Table 1 presents a simplified overview of the types of participants in the universal waste system and the requirements applicable to each type of participant. Each of the universal waste requirements is discussed in more detail in the later sections of this preamble.

BILLING CODE 6560–50–P

BILLING CODE 6560-50-C

TABLE 1: OVERVIEW OF UNIVERSAL WASTE REGULATIONS[1]

Participants in Universal Waste System Universal Waste Requirements	Small Quantity Handlers of Universal Waste	Large Quantity Handlers of Universal Waste	Universal Waste Transporters	Destination Facilities
Prohibitions	§273.11	§273.31	§273.51	Comply with RCRA TSDF requirements
Notification	§273.12 NO REQUIREMENTS	§273.32	Comply with DOT requirements	Comply with RCRA TSDF requirements
Waste Management Requirements	§273.13	§273.33	§273.52 Comply with DOT requirements	Comply with RCRA TSDF requirements
Labeling/Marking	§273.14	§273.34	Comply with DOT requirements	Comply with RCRA TSDF requirements
Storage Time Limits	§273.15 ONE YEAR LIMIT	§273.35 ONE YEAR LIMIT	§273.53 TEN DAY LIMIT	Comply with RCRA TSDF requirements
Employee Training	§273.16 DISTRIBUTE INFO	§273.36 ENSURE FAMILIARITY	Comply with DOT requirements	Comply with RCRA TSDF requirements
Response to Releases	§273.17	§273.37	§273.54	Comply with RCRA TSDF requirements
Off-Site Shipments	§273.18	§273.38	§273.55 Comply with DOT requirements	§273.61
Tracking	§273.19 NO REQUIREMENTS	§273.39	Comply with DOT requirements	§273.62
Export Requirements	§273.20	§273.40	§273.56	§273.63

[1] Gray shading indicates that there is a regulatory section in Part 273, the universal waste regulations.

III.B.1. Wastes Covered Under the Universal Waste System

Three types of wastes are covered under the universal waste regulations: hazardous waste batteries, hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs, and hazardous waste thermostats. Other wastes may be added to the universal waste regulations in the future, but at this time only these three wastes are included.

III.B.2. Requirements for Participants in the Universal Waste System

As illustrated in Table 1, there are four types of participants in the universal waste system: Small Quantity Handlers of Universal Waste, Large Quantity Handlers of Universal Waste, Universal Waste Transporters, and Destination Facilities. Each of these participants is described below.

Although there are ten basic universal waste management requirements, individual participants in the universal waste system are not subject to all ten requirements. Only those requirements that have been determined to be appropriate for a given type of participant are included in the regulations for that participant. Throughout the universal waste regulations, each of these ten basic requirements is addressed in regulatory sections using the same section headings. For example, the same requirements are addressed in the off-site shipments section for SQHUWs as are addressed in the off-site shipments sections for LQHUWs, transporters, and destination facilities. In some cases not all issues within a section were determined to be necessary for each type of participant, so some sections do not address every issue addressed in other sections with the same heading.

III.B.2.a. Small and Large Quantity Handlers of Universal Waste

There are two types of handlers of universal waste. The first type of handler is a person who generates, or creates, universal waste. This is a person who uses batteries, pesticides, or thermostats and who eventually decides that they are no longer usable and thus are waste. Contractors or repair people who decide that batteries or thermostats are no longer usable and remove them from service also generate universal waste, and thus are handlers of universal waste. The second type of handler is a person who receives universal waste from generators or other handlers, consolidates the waste, and then sends it on to other handlers, recyclers, or treatment/disposal facilities. Universal waste handlers accumulate universal waste, but do not treat, recycle, or dispose of the waste. Each separate location (e.g., generating location or collecting location) is considered a separate universal waste handler. Thus, if one company has several locations at which universal waste is generated or collected, each location is a separate handler.

There are two sets of regulations for handlers of universal waste. Subpart B of part 273 sets forth the requirements that small quantity handlers of universal waste must follow. SQHUWs do not accumulate 5,000 kilograms or more total (all universal waste categories combined) of universal waste at their location at any time. Subpart C of part 273 sets forth the requirements that large quantity handlers of universal waste must follow. LQHUWs accumulate 5,000 kilograms or more total (all universal waste categories combined) of universal waste at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated, at any one time. The Agency realizes that some handlers of universal waste who would generally qualify as a small quantity handler may have a one-time, or infrequent, occasion to accumulate 5,000 kg of universal waste, at any one time, on-site, thus requiring them to comply with the large quantity handler regulations in today's rule. The Agency did not intend to require these handlers to comply with the more stringent large quantity handler requirements during subsequent years in which they do not accumulate 5,000 kilograms or greater. The Agency clarifies in the definition of large quantity handler of universal waste, that this designation is retained by the handler for the remainder of the calendar year in which 5,000 kilograms or more of universal waste was accumulated. A handler may reevaluate his status as a large quantity handler of universal waste in the following calendar year.

Subparts B and C each include eleven sections (see Table 1; Note: the ''Applicability'' section is not included in this table). Because most of the requirements are the same for SQHUWs and LQHUWs, they are described together. The first sections (40 CFR 273.10 and 273.30) are called ''applicability,'' and explain who the subpart B and C requirements apply to. The second sections, ''prohibitions'' (40 CFR 273.11 and 273.31), prohibit handlers from disposing of, diluting, or treating universal waste except in certain circumstances. The third sections, ''notification,'' are different for SQHUWs and LQHUWs. 40 CFR 273.12 notes that SQHUWs are not required to notify EPA of their universal waste activities and are not required to obtain an EPA identification number. 40 CFR 273.32 requires LQHUWs to notify EPA and to obtain an EPA identification number.

The fourth sections, ''waste management'' (40 CFR 273.13 and 273.33), explain the requirements SQHUWs and LQHUWs must follow when handling universal waste. They require that universal waste be managed in a way that prevents releases to the environment, specify packaging requirements for universal wastes, and set forth procedures that must be followed when handling batteries (e.g. sorting battery types, mixing battery types, disassembling battery packs, removing electrolyte, etc.), and when removing mercury-containing ampules from thermostats. The next sections, ''labeling/marking'' (40 CFR 273.14 and 273.34), require handlers to label or mark universal wastes or containers of universal waste to identify the type of universal waste (e.g., used batteries, pesticides). The ''accumulation time limit'' sections (40 CFR 273.15 and 273.35) limit the time that handlers may accumulate universal waste to one year (with one exception), and require handlers to be able to demonstrate that wastes are not accumulated for more than one year. The seventh sections, ''employee training'' (40 CFR 273.16 and 273.36), are somewhat different for SQHUWs and LQHUWs. SQHUWs must distribute basic handling and emergency information to employees handling universal waste. LQHUWs must ensure that employees are familiar with waste handling and emergency procedures as appropriate based on their responsibilities.

The eighth sections are entitled ''response to releases'' (40 CFR 273.17 and 273.37) and require handlers to immediately contain any releases of universal waste and to handle residues appropriately. The ''off-site shipments'' sections (40 CFR 273.18 and 273.38) require handlers to send universal waste only to persons within the universal waste system and specify procedures to be followed when a shipment is rejected by the receiving facility. The ninth sections, ''tracking universal waste shipments'' (40 CFR 273.19 and 273.39), are different for SQHUWs and LQHUWs. SQHUWs do not have any requirements. LQHUWs must maintain basic records documenting shipments received at the facility and shipments sent from the facility. The last sections, ''exports'' (40 CFR 273.20 and 273.40),

specify notification procedures that must be followed when handlers ship universal wastes to foreign destinations.

III.B.2.b. Transporters of Universal Waste

The requirements for transporters of universal waste are found in subpart D of part 273. See Table 1. Transporters are persons who transport universal waste from handlers of universal waste to other handlers, destination facilities, or foreign destinations. A transporter may be an independent shipper contracted to transport the waste, or may be a handler who self-transports the waste. A universal waste handler who self-transports his waste becomes a transporter for those self-transportation activities and is subject to the requirements of subpart D of this rule.

The universal waste rule does include some specific requirements for transporters. However, the basic approach to transportation under the universal waste system is that no hazardous waste manifests are required, and transporters must comply with the Department of Transportation (DOT) requirements that would be applicable to the waste if it were being transported as a product. For example, if transporting universal waste batteries, the transporter must comply with the appropriate DOT requirements, which are based on whether the particular battery type is a DOT hazardous material, and if so, which DOT hazardous material requirements apply to the specific battery type.

The universal waste transporter requirements consist of seven sections. The first, ''applicability'' (40 CFR 273.50), explains to whom the transporter requirements apply. ''Prohibitions'' (40 CFR 273.51), prohibits transporters from disposing of, diluting, or treating universal waste. The third section, ''waste management'' (40 CFR 273.52), explains that transporters must comply with applicable DOT requirements if the waste they are transporting is a hazardous material under DOT regulations. The fourth section, entitled ''accumulation time limits'' (40 CFR 273.53), notes that transporters may store waste for up to ten days at a transfer facility during the course of transportation. Transfer facilities are transportation related facilities such as loading docks, parking areas, and storage areas. If a transporter stores waste for more than ten days at one location, the transporter must comply with the appropriate universal waste handler rules while storing the waste.

The fifth transporter section, ''response to releases'' (40 CFR 273.54), requires transporters to immediately contain any releases of universal waste and to handle residues appropriately. ''Off-site shipments'' (40 CFR 273.55) prohibits transporters from transporting universal waste to any place other than a universal waste handler, destination facility, or foreign destination. Finally, ''exports'' (40 CFR 273.56), requires transporters to follow certain requirements for exports of hazardous waste.

III.B.2.c. Destination Facilities

The requirements for destination facilities are found in subpart E of part 273. See Table 1. Destination facility means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

The universal waste rules include only two specific universal waste requirements for destination facilities. In general, however, these facilities are subject to the same requirements that are applicable to treatment, storage, and disposal facilities under the full hazardous waste regulations. This includes permitting as well as general facility standards and unit specific requirements. In addition to the full hazardous waste requirements, there are three sections specifying universal waste requirements for destination facilities. For the most part these requirements simply mirror universal waste handler requirements for receipt of universal waste, since destination facilities also receive universal waste.

First, ''standards for destination facilities'' (40 CFR 273.60) indicates which of the full hazardous waste regulations destination facilities must follow. These are the same full hazardous waste regulations these facilities would be subject to if they were handling non-universal hazardous wastes. Specifically, facilities that treat, dispose of, and recycle universal wastes, except for those activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33, are subject to the permitting or interim status requirements of 40 CFR parts 264 or 265. Facilities that recycle universal waste without accumulating the waste before it is recycled are subject to the recycling requirements of 40 CFR 261.6(c)(2).

Second, ''off-site shipments'' (40 CFR 273.61) sets forth procedures for rejecting a shipment of universal waste. Finally, ''tracking universal waste shipments'' (40 CFR 273.62) requires destination facilities to retain the same records for receipt of universal waste shipments that LQHUWs are required to retain. By documenting receipt of universal waste shipments, these records complete documentation of shipments sent from handlers.

III.B.3. Import Requirements

Subpart F of the universal waste regulations clarifies the requirements for universal wastes that are imported. In general, once universal waste enters the United States it is subject to the same universal waste requirements it would be if it had been generated in the United States.

III.B.4. Petitions to Include Other Wastes Under Part 273

Subpart G of part 273 includes two sections setting forth the procedures to be used to petition the Agency to add additional wastes to the universal waste regulations. Further requirements are specified in 40 CFR 260.20 and 260.23.

IV. Detailed Discussion of Final Rule

IV.A. Goals of Final Rule

In the proposed part 273 regulations, EPA proposed a set of special requirements for universal hazardous wastes which were designed to accomplish three general goals. One goal was to encourage resource conservation, while ensuring adequate protection of human health and the environment. Another broad goal defined in the proposal was to improve implementation of the current subtitle C hazardous waste regulatory program. And, the final goal, by simplifying the requirements and encouraging collection of these hazardous wastes, EPA hoped to provide incentives for individuals and organizations to collect the unregulated portions of these universal waste streams (e.g., from households or CESQGs) and manage them using the same systems developed for the regulated portion, thereby removing these wastes from the municipal waste stream and minimizing their input of hazardous constituents to municipal landfills, combustors, and composting projects. Each of these goals is discussed below.

The first goal for the universal waste rule stated in the proposal was to encourage resource conservation. EPA believes that today's final rule serves to stimulate achievement of this goal. While today's final rule applies to both universal wastes destined for recycling and those destined for disposal, as proposed, several features of the rule remove major obstacles faced by persons

desiring to recycle these wastes. Today's final rule reduces the management requirements for generators, consolidation points (in the final rule referred to as small and large quantity handlers of universal waste), and transporters. Destination facilities must continue to meet all requirements, except manifesting requirements, of the subtitle C regulations. By relaxing the standards for these handlers, collection of universal waste is simplified, thereby, encouraging participation in collection programs. The Agency believes that the ability to access large quantities of universal waste from central collection centers may encourage the development and use of safe and effective ways to recycle these wastestreams. Conversely, limiting the rule to universal waste destined for recycling only, may discourage the use and development of recycling technologies as universal waste handlers may be hesitant to participate in a program that requires knowledge that their universal waste is recycled.

The second goal of today's final rule is to improve implementation of the hazardous waste program. EPA believes that today's rule, as modified in response to comments, will have significant impacts on waste management practices nationwide. Implementation of the hazardous waste program will be improved by the simplified set of requirements set forth in the rule. The provisions are now written such that they are more easily understood by handlers of universal wastes. The Agency believes that today's final rule is protective of human health and the environment, will be clear and easily understood by the diverse community which is targeted in this rule, and will not require expending unreasonable amounts of time and effort to understand the applicable requirements. The final rule also allows the part 273 regulations to be applied to all universal wastes, regardless of whether they are destined for recycling or disposal. Thus, compliance and enforcement procedures are easier to implement. Finally, because the final rule does not require that universal waste handlers count those universal wastes managed under part 273 toward their monthly quantity determination, today's rule will greatly simplify the procedures used to determine monthly hazardous waste generation rates for universal waste handlers, thus facilitating the implementation of the regulations.

The third goal of today's final rule is to separate universal waste from the municipal waste stream. Under the full subtitle C regulations, the management of waste differs based on the waste's generation source. That is, waste generated by consumers in their homes is not regulated under RCRA Subtitle C when discarded, because it is excluded from the definition of hazardous waste under 40 CFR 261.4(b)(1). Conversely, the same waste would be subject to RCRA Subtitle C regulation if generated by commercial establishments, industries and other non-exempt generators. Wastes covered under the universal waste regulations (batteries, pesticides, and mercury thermostats) are examples of wastes that are generated by both groups. Because the waste itself is the same, and therefore looks the same to waste handlers, universal waste that belongs in a hazardous waste system may be entering municipal solid waste landfills or combustors instead. The Agency believes that today's rule is practical enough that, as an infrastructure develops for collecting universal waste, all categories of handlers will manage their universal waste under the part 273 requirements. Therefore, in the final rule, management of universal waste is material-specific rather than source-specific, therefore, universal waste, regardless of the source of generation, should be easily managed under today's final rule.

IV.B. Scope of Final Rule

This section discusses the scope of the final universal waste rule. The first section discusses the question raised in the proposal of whether the universal waste system should be limited to wastes that are recycled, or should include both wastes that are recycled and wastes that are treated and disposed. The second section discusses each of the wastes that have been included in the final rule, and several wastes that have not been included. The third section addresses another question raised in the proposal, whether Conditionally Exempt Small Quantity Generators (CESQGs) should be required to manage their universal wastes under the universal waste system or have the option of managing the waste under the existing CESQG exemption.

IV.B.1. Recycling Versus Recycling or Disposal

The Agency requested comment in the proposed universal waste rule on whether the streamlined universal waste regulations should cover wastes that are to be either recycled or disposed of, or whether they should be limited only to wastes that are to be recycled. The Agency discussed three options: (1) Limiting the regulations to recycled wastes only; (2) allowing management of wastes that are to be either recycled or disposed of; or (3) a hybrid of options 1 and 2 under which generators and transporters could manage waste that was to be either recycled or disposed of under the streamlined universal waste regulations, but the streamlined regulations would be available only to consolidation points that send wastes on for recycling.

The proposed regulatory text was crafted following option 2: the streamlined regulations would be applicable to both recycled and disposed of wastes. Although limiting the regulations to recycled wastes might encourage recycling, which the Agency supports, the Agency explained that at the time it believed that not limiting the regulations was the best option for a number of reasons. The vast majority of commenters who addressed this issue agreed that the universal waste regulations should be available for both wastes that are recycled and wastes that are disposed of. Commenters generally agreed with the Agency's basis for not limiting the regulations and also discussed additional supporting factors. Based on these comments, the Agency has decided to include both recycled and disposed of universal wastes under the final universal waste regulations of part 273. The main reasons that commenters supported this approach and that the Agency has chosen this approach for the final rule are discussed below.

Not limiting the universal waste system to recycled waste makes the regulations much less complex and more user friendly, thus encouraging participation in universal waste collection programs. Persons are more likely to be willing to participate in collection programs if they are not required to determine whether recycling is available and cost effective, particularly in situations where recycling markets and capacity are volatile. In these cases it may not actually be possible to make such a determination early in the collection system, and the determination may vary over time, making compliance and enforcement difficult. The Agency believes, and commenters agreed, that less complex regulations will increase collection of universal wastes. Increased collection under the universal waste regulations will result in increased environmentally protective management of universal wastes at Subtitle C hazardous waste facilities. The Agency believes that the environmental benefits to be obtained from improved management of these wastes, whether it is recycling or treatment and disposal, outweigh the possible increases in

recycling that might occur if the regulations were limited.

Not limiting the regulations also avoids one problem that the Agency and the regulated community have had difficulties with in the past. Regulations that are based on the intent of a person to do something in the future are very difficult to enforce, and sometimes even make it difficult for regulated persons to know what regulations they should be following. The Agency believes, and commenters agreed, that the compliance and implementation difficulties that are inherent in requirements that vary depending on a future action (e.g., recycling or disposal) make distinguishing between wastes to be recycled and wastes to be disposed of infeasible under the universal waste regulations.

Several commenters argued that limiting the regulations to recycled waste might, in fact, discourage collection and recycling. Commenters believed that persons are not likely to be willing to collect wastes for potential recycling under the universal waste regulations if they are vulnerable to liability for full Subtitle C violations, if, at a later time, they determine that recycling is not available. Given the volatility of recycling markets and capacities, particularly for recycling technologies that are under development and not fully established, this is a real concern. One commenter also pointed out that some universal wastes are likely to be collected in mixtures of recyclable wastes and non-recyclable wastes (e.g., mixed batteries). Such wastes would have to be managed under the full hazardous waste regulations, thus nullifying the benefits of the universal waste regulations, inhibiting collection of even the recyclable wastes, and ultimately limiting recycling. The Agency agrees with these commenters that the difficulties inherent in having two systems based on the ultimate disposition of the waste is not practical and may, in some cases, actually inhibit recycling.

Several commenters argued that providing streamlined regulations only for recycled wastes would provide an even greater incentive than already exists for persons managing wastes to claim that they are recycling, when their operations may be sham rather than legitimate recycling. This would make it even more difficult for both persons shipping wastes to recyclers and regulating agencies to determine whether persons claiming to be recycling (or sending wastes to recycling), are legitimately recycling. The Agency's experience has been that it is not an easy task to determine whether an operation is a legitimate or sham recycler. The added incentive for sham recycling, and the increased importance of distinguishing legitimate from sham recycling would further complicate a system limited to recycled wastes, making it less effective in accomplishing the goals of removing waste from non-hazardous waste management systems and improving implementation of the hazardous waste regulations.

Numerous commenters pointed out that there may be a number of wastes for which the universal waste system would be successful in greatly improving waste management practices, but for which recycling is not available because it is not either technologically or economically feasible. Waste pesticides are a good example. Recycling is rarely, if ever, an option and incineration is frequently the only management option available. If the universal waste regulations were limited to wastes that are recycled, waste pesticides could not be included. This would greatly limit the environmental benefits to be obtained from collection and proper management of pesticides, and other similar wastes, under the universal waste regulations. These commenters, and the Agency, agree that the benefits of encouraging proper management for such wastes far outweigh the possible increases in recycling that might occur if the regulations were limited.

Finally, the Agency notes that the treatment standards of the land disposal restrictions program specifically require recycling for many wastes included in the final universal waste rule, including lead-containing batteries, cadmium-containing batteries, and high concentration mercury wastes such as high-mercury batteries and thermostats. Land disposal, and treatment followed by land disposal, is not allowed for these wastes. Under the final rule, all universal wastes must go to a destination facility for any treatment, recycling, or disposal. The land disposal restrictions, including the treatment standards, are fully applicable to destination facilities. Thus, for these universal wastes recycling is actually mandatory. The Agency notes that in cases such as these the land disposal restrictions program has been used to require recycling for particular hazardous wastes where it has been determined to be the best demonstrated available technology (BDAT). These requirements continue to apply under the universal waste regulations.

IV.B.2. Wastes Included in Final Rule

In the universal waste proposal, hazardous waste batteries and suspended and/or cancelled pesticides that are recalled were included as universal wastes in the proposed regulatory text. In the preamble, the Agency suggested several additional waste types for which it believed regulation under the universal waste system might be appropriate. The waste types discussed included spent antifreeze, paint residues, used thermometers, and used thermostats. The Agency requested comment on whether these wastes should be included in the universal waste system, and on what requirements would be appropriate to include in the regulations to ensure that management under the universal waste regulations was protective of human health and the environment. Specific waste management requirements for thermostats were discussed in some detail. The Agency has decided to include three waste categories in the final universal waste rule: hazardous waste batteries, certain hazardous waste pesticides, and hazardous waste thermostats. These wastes are exempt from 40 CFR parts 262—270, except as specified in 40 CFR part 273. These wastes are now subject to the new part 273 regulations and, therefore, are not fully regulated under the current hazardous waste regulations. The universe of wastes included in each of these categories is discussed in detail in the subsections below. Comments received on each of the waste categories and the Agency's responses to these comments are also discussed. Also discussed are several waste types for which a number of comments were received, but that were not included in the final universal waste rule.

IV.B.2.a. Hazardous Waste Batteries

The Agency proposed to include all batteries that are hazardous waste in the universal waste regulations, to encourage collection and proper management of these wastes. The main reason for including all batteries was to simplify the regulations and make them easy to comply with. The Agency requested comment on several issues, including the proposed definition of battery, whether the regulation should distinguish between ''wet'' and ''dry'' batteries, whether the regulation should distinguish between various sizes of batteries, and how lead-acid batteries should be addressed. This latter issue is discussed in detail in the following section of this preamble.

The Agency has decided to generally retain the proposed approach to including batteries in the final rule. Thus, all batteries that are hazardous waste may be managed under the final universal waste regulations. However, based on comments received, the final definition of battery has been revised from the proposal. A number of commenters raised questions concerning the proposed definition and suggested various revisions. Several commenters also recommended using a standard definition that is already in use and accepted by major industry groups. One commenter identified the American National Standards Institute (ANSI) standard definitions for battery and cell, and recommended using a combination of the two.

The Agency agrees that a recognized, standard definition for battery is most likely to properly identify the universe of articles that should be covered by the universal waste regulations. The Agency's intent is to include those items commonly understood to be batteries, without inadvertently including other items or excluding some particular type of battery. A standard definition is most likely to accomplish this. Thus, the Agency has chosen to use a combination of the American National Standards Institute (ANSI) standard definitions for battery and electrochemical cell to define the term battery in the final rule. (See ''The New IEEE Standard Dictionary of Electrical and Electronics Terms,'' Fifth Edition, published by the Institute of Electrical and Electronics Engineers, Inc., IEEE Standard 1000–1992.) The definition of battery in the final rule is ''a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.''

As suggested by commenters, the final definition has been revised to specify that a battery must store electrical energy in addition to receiving and delivering electrical energy. This distinction is to ensure that gas-powered or electric generators are not included. The definition has also been expanded to clarify that the definition of battery does include batteries from which the electrolyte has been removed. This was clearly the intent of the proposal, which specifically allowed removing electrolyte from batteries. Commenters did not object to electrolyte removal, but were concerned that it be clear that batteries may not be crushed or broken to remove electrolyte. Note also that the waste management requirements for batteries prohibit breaking batteries during electrolyte removal.

With respect to the question of whether the universal waste regulations should distinguish between ''wet'' and ''dry'' batteries (batteries with a liquid vs. non-liquid electrolyte), those commenters who addressed this issue agreed that no distinction should be made. The Agency has decided to include both types of batteries in the regulation based on these comments and the argument that including all hazardous waste batteries greatly simplifies the regulations, making them easier to comply with and thus encouraging collection and improved management. Similarly, the Agency has decided to include all sizes of batteries in the final rule. Few commenters addressed this question, and again the Agency believes that not limiting the universal waste system will result in improved management of all batteries, regardless of size.

Finally, a number of commenters raised questions about which types of batteries exhibit characteristics of hazardous waste and therefore would be covered under the universal waste system. Several commenters requested that the Agency specify which battery types are hazardous. A few commenters provided some data on various types of batteries, but the Agency did not find the data to be comprehensive enough to make broad generalizations about whether various battery types are always or never hazardous. In addition, the Agency found it was not possible to commit the resources that would be required to conduct sufficient testing of numerous brands, sizes, and ages of batteries to make any broad generalizations. Furthermore, even if resources were available, it would likely not be possible to make definitive determinations in any case.

As a result, the Agency has decided to retain the proposed approach of using the term ''hazardous waste batteries'' to identify the universe of batteries that may be managed under the universal waste regulations. As is true under all of the hazardous waste regulations, it remains up to the generator (handler) of batteries to determine whether they must be managed under the hazardous waste regulations at all. If so, then the universal waste regulations apply. However, the Agency continues to believe that the universal waste regulations are simple and basic enough that it will be easier and more efficient to manage all kinds of batteries, and particularly mixed batteries, under the universal waste system rather than making individual determinations about batteries or battery types.

Of course, where sufficient information is available for a generator (or other handler) to determine that a particular battery is not hazardous, then that battery need not be managed under the universal waste regulations. However, one of the Agency's goals for the universal waste system has been to reduce the complexity and burden of complying with the hazardous waste regulations for these wastes. One of the major difficulties with the hazardous waste regulations has been hazardous waste determinations in cases where wastes are generated in small quantities by large numbers of people who are not familiar with the specific composition of the waste. Batteries are a classic example of this problem. Thus, the Agency hopes that the universal waste regulations are sufficiently improved to allow persons to manage batteries within the universal waste system without placing too much emphasis on whether they are hazardous or not. Obviously, in cases where it is known that batteries are not hazardous this is not necessary. But where it is not known, it is hoped that resources will be spent on improved management rather than on extensive, initial analytical work.

The Agency would like to note that the Universal Waste Rule applies only to hazardous waste batteries as defined in 40 CFR 260.10 and 273.6, and not to the unit or device in which the battery is contained. There may be a situation in which a regulated business is sending a device containing a battery to a facility to be repaired. At this point, the device would not be considered a universal waste as: (1) The device is still a product, and therefore not yet a solid waste; and (2) the device does not fall into any of the current categories of universal waste (hazardous waste batteries, thermostats, and certain pesticides). If, however, the person (either the original generator or the repair facility) decides to dispose of the device, he must determine if the entire device is or is not a hazardous waste.

IV.B.2.b. Lead-Acid Batteries

In the proposed rule, EPA proposed to maintain the current exemption for lead-acid batteries under subpart G, part 266. Under these regulations, persons who generate, transport, or collect spent lead-acid batteries, or who store them but do not reclaim them (other than spent batteries that are to be regenerated) are not subject to the

hazardous waste regulations. Persons who accumulate spent lead-acid batteries before reclaiming them (e.g. cracking, and/or smelting the batteries) must notify EPA and obtain a RCRA permit for that storage. Under the universal waste proposal, persons had the option of continuing to manage lead-acid batteries under the part 266, subpart G exemption or under the part 273 requirements. The existing recycling program for automotive lead-acid batteries currently in place, which operates under this exemption, has been extremely successful, with recycling rates in excess of 90% nationwide. By retaining the part 266, subpart G exemption, the Agency believes that this program can continue to operate without unnecessary modifications nor an adverse effect on the environment. Therefore, in today's final rule, the subpart G, part 266 exemption has been retained. Therefore, handlers of spent lead-acid batteries are who are managing them under the requirements of § 266.80 are not subject to the requirements under 40 CFR part 273. However, handlers of spent lead-acid batteries who are not managing them under the § 266.80 requirements are subject to the requirements under 40 CFR part 273.

In addition, 40 CFR 266.80 (a) and (b) have been revised to clarify that lead-acid batteries that are regenerated remain exempt from the hazardous waste regulations throughout the management cycle. Since the final rule retains the lead-acid battery provisions of 40 CFR 266.80, it is most appropriate to also include regenerated lead-acid batteries so that all lead-acid batteries may be managed similarly. However, since the activities of a regeneration facility are more similar to a facility that accumulates waste than a facility that processes a waste to recover a usable product, batteries that are regenerated have also been exempted from the requirements for lead-acid battery reclamation facilities (for further discussion of regenerated batteries, see section IV.J. of today's preamble).

Most commenters agreed that the current exemption for lead-acid batteries under subpart G of 40 CFR part 266 should be retained. Commenters agreed that by maintaining this exemption, the current recycling program for automotive lead-acid batteries can continue to operate successfully.

A few commenters, however, argued that EPA should consolidate all requirements applicable to batteries into one set of regulations to reduce confusion on the part of handlers as to which requirements must be complied with for proper management. Some commenters stated that extending the part 266 exemption to all batteries would be the most appropriate, while others express a desire for all batteries to be incorporated into part 273. Others recommended a combination of the two by incorporating the part 266 exemption into the part 273 regulations.

The Agency believes that retaining the exemption under part 266, subpart G will not make the management of hazardous waste batteries overly confusing or complex. The part 266, subpart G exemption is primarily used for the reclamation of automotive lead-acid batteries, which are easily identifiable. As such, the Agency believes separate management of this waste stream is simple to accomplish and therefore does not place a burden on handlers managing these batteries.

It was noted by one commenter that automotive batteries of various formulations are currently under development for use in electric vehicles, and thus, in the future, the chemistry of automotive batteries (eg., lead-acid versus other formulations) may not be as easily identifiable as it is at this time. The Agency would like to clarify that under the hazardous waste regulations as revised by today's addition of part 273, if the handler believes a battery is a hazardous waste but is not clear whether the battery is lead-acid or another chemical formulation, the battery should be managed under part 273 regulations. The Agency believes, however, that the final part 273 requirements are simple and straightforward enough that management of any mixed battery types, including electric vehicle batteries, will not be overly burdensome.

Another commenter expressed concern regarding the management of small (non-automotive) lead-acid batteries. The Agency expects that small, sealed dry cell lead-acid batteries will likely be handled under the part 273 regulations along with other hazardous waste batteries, therefore eliminating the need for the handler to separate these batteries from other hazardous waste batteries. Managing small sealed lead-acid batteries together with other hazardous waste batteries under part 273 is acceptable under the final rule.

IV.B.2.c. Hazardous Waste Pesticides

Among the wastes proposed to be included in the universal waste regulations was a narrowly limited set of hazardous waste pesticides. Specifically, the proposed rule established streamlined requirements for the collection of unused pesticides that are suspended or canceled under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and recalled, and that are collected for discard. FIFRA regulates pesticides from initial distribution by producers to ultimate disposal. As proposed, to meet the applicability criteria of part 273, the pesticides were required to be: (a) Part of a voluntary or mandatory recall under FIFRA section 19(b); or (b) owned by a registrant responsible for conducting a recall under FIFRA section 19(b); or (c) part of a registrant-conducted recall of a canceled or suspended pesticide under FIFRA section 6. A number of changes have been made to the universe of pesticides covered in the universal waste rule and in the corresponding regulatory text, which was proposed to delineate which pesticides were or were not subject to the requirements of part 273.

First, in the final rule, the Agency has expanded and organized the applicability section for pesticides into four subsections, as follows: (1) Pesticides covered under part 273; (2) pesticides not covered under part 273; (3) generation of hazardous waste pesticides; and (4) pesticides that are not wastes. The Agency decided to restructure the pesticides applicability section in this way because several commenters stated that it was difficult to determine which pesticides were covered or which pesticides were not covered under the proposed rule. For example, the proposal § 273.20(a) included §§ 273.20(a) (2) and (3) which both described hazardous waste pesticides *not* covered under part 273. Similarly, § 273.21(a) included § 273.21(a)(2) which described recalled pesticides that never become hazardous wastes and thus are never generated. The Agency agrees that these and other sections could confuse readers attempting to determine whether their pesticides were covered under part 273. The Agency believes that the restructured applicability section for pesticides, 40 CFR 273.3, will be much more clear and less cumbersome in that all of the provisions addressing which pesticides are covered are now located in one section and the section is clearly organized to assist readers in making this determination.

Second, the universe of pesticides included under the final universal waste regulations has been expanded. This expansion is codified in § 273.3(a), which describes the types of hazardous waste pesticides that are considered universal wastes and may be managed under part 273. The first paragraph of this § 273.3(a)(1) rewords, but essentially retains, the proposed

regulatory text from § 273.20(a)(1) that described the recalled pesticides that are subject to FIFRA recall procedures and were proposed to be managed as universal wastes. The second paragraph of this § 273.3(a)(2), has been added to the final rule and describes the universe of pesticides that has been added to the universal waste regulations in addition to the recalled pesticides described above. Specifically, the Agency has broadened this section to include unused pesticide products that are collected and managed as part of a waste pesticide collection program. These unused pesticide products are generally materials that are no longer useful for their intended purpose. Frequently, they are agricultural pesticides that have been banned for use on crops or are obsolete and have been replaced by newer products. They may also be pesticides that have become damaged (e.g., exposed to temperature extremes) or that are no longer needed due to factors such as changes in cropping patterns.

Ultimately, farmers nationwide have accumulated these materials in their sheds or barns for many years. To encourage the removal of unused pesticide products from long term accumulation on the farm, a number of state agricultural departments have implemented programs to collect and properly dispose of these materials. By including unused pesticide products under part 273, farmers will be able to ship their universal waste pesticides to the collection programs without needing to meet the full requirements under 40 CFR parts 260 through 272.

Several factors prompted the Agency to include unused pesticide products that are collected and managed as part of waste pesticide collection programs into the part 273 universal waste management standards. One factor for including unused pesticide products was that unused pesticide products are generated by a wide variety of generators and are present in large amounts in the agricultural community. Another factor was that potential risks posed by the presence of unused pesticide products during accumulation and transport are similar to the risks posed by recalled pesticides during accumulation and transport. Finally, the inclusion of unused pesticides under part 273 will greatly facilitate participation and implementation of state programs that are currently collecting the unused pesticide products found on farms.

Most of the commenters addressing pesticide related portions of the proposed rule supported including such unused pesticide products in the final rule. These commenters specifically argued that unused pesticides posed risks similar to risks posed by pesticides already included under the proposed regulations. Some commenters, argued that if the proposed pesticide regulations for recalled pesticides could be expanded to include stocks of unused pesticide products, state approved programs currently collecting unused pesticide products could greatly improve participation by farmers. These commenters indicated that certain current requirements under 40 CFR parts 260 through 272 had deterred many farmers from participating in, and benefitting from, waste pesticide collection programs, and that streamlined requirements under part 273 would remove many such barriers to participation.

Third, the Agency has developed a subsection under the final rule which describes the types of pesticides that are not covered under part 273. Paragraph 273.3(b)(1) reiterates that qualifying hazardous waste pesticides can be regulated in compliance either with 40 CFR parts 260 through 272 or with part 273. For example, farmers managing hazardous waste pesticides in compliance with 40 CFR 262.70 are not subject to the regulations of part 273. Under § 273.3(b)(2) of the final rule, hazardous waste pesticides that do not meet the conditions described in § 273.3(a) are required to comply with the full hazardous waste regulations in 40 CFR part 260 through 272. This provision has been retained from § 273.20(a)(2) of the proposed rule. Similarly, §§ 273.3(b) (3) and (4), which describe recalled pesticides that are not yet solid wastes and therefore are not subject to the hazardous waste regulations including part 273, have also been retained from the proposed regulatory text from § 273.21(a)(2). Again, the Agency recodified these paragraphs in one subsection of the final rule to make it clearer to the reader which types of hazardous wastes are not covered under part 273 standards of the final rule.

The text in the applicability section for universal waste pesticides was complex in the proposed rule. Part 273.21(a) (''Generation of Hazardous Waste Pesticides), the Agency proposed criteria to establish the date at which waste pesticides are generated, but also included criteria to distinguish when pesticides are or are not solid wastes and, therefore, not subject to the hazardous waste regulations. To clarify the applicability section of the final rule, the final rule text separates these criteria into two separate paragraphs (§§ 273.3 (c) and (d)), as described below.

Section 273.3(c) will help readers determine the date at which a recalled or unused pesticide becomes a waste. Understanding this factor is important since a pesticide that has not become a waste also has not become a hazardous waste and is not covered under part 273 (see also preamble discussion on §§ 273.3 (b) and (d)). The text in § 273.3(c)(1) simplifies but retains the meaning of text in § 273.21(a)(1) of the proposed rule. Section 273.3(c)(1) states that a recalled pesticide becomes a waste on the first date on which two conditions occur. These conditions are: (1) The generator of the recalled pesticide agrees to participate in the recall; and, (2) the person conducting the recall decides to discard the pesticide or burn the pesticide for energy recovery. For example, if a farmer decides to participate in a recall and sends the recalled pesticide back to the registrant for reclamation and reformulation, the pesticide would be considered an unused commercial chemical product being reclaimed and therefore would not be a solid waste (or hazardous waste) under RCRA section 261.1. A recalled pesticide sent by a recall participant to the recall facility does not become a waste until the registrant makes a decision to discard the pesticide (e.g., burn for energy recovery). Once a decision to discard the pesticide or burn the pesticide for energy recovery is made, both conditions of § 273.3(c)(1) have been met and the registrant becomes the generator of the universal waste. Section 273.3(c)(2), describing when an unused pesticide products becomes a waste, has been added to the final rule to accommodate the changes mentioned above to the proposed regulatory text from § 273.20(a).

Section 273.3(d)(1) of the final rule further explains the decision-making role played by the person conducting the recall of a pesticide in determining whether the pesticide becomes a waste. The regulatory language established in the final rule is retained from § 273.21(a)(2) in the proposed rule. The final rule also adds § 273.3(d)(2) describing the generator's role in determining whether a pesticide is a waste. This addition accommodates the expansion of the applicability section at § 273.3(a)(2), mentioned earlier. This decision-making process remains as proposed and is specific to pesticides involved in a recall. Recalled pesticides are covered by procedures under FIFRA section 19(b) and 6(g). Other situations are covered generally under § 261.2.

IV.B.2.d. Hazardous Waste Thermostats

In the proposed rule, the Agency requested comment on whether used mercury-containing thermostats should be added to the universal waste regulations. The Agency specifically requested comment on whether used mercury-containing thermostats fit the factors proposed to be used to evaluate whether new candidate wastes are suitable for inclusion under part 273. In addition, the Agency asked for comment on whether the universal waste requirements proposed for universal waste batteries would be appropriate for managing used mercury-containing thermostats.

Commenters overwhelmingly supported adding mercury-containing thermostats to the universal waste regulations. Commenters agreed that mercury-containing thermostats are an appropriate waste type to manage under the universal waste system and that they meet the criteria proposed for adding wastes to the part 273 regulations. Commenters argued that thermostats are generated in a wide variety of settings by a large number of generators, since they can be generated at almost any building, including commercial, industrial, agricultural, community, and household buildings. Commenters asserted that thermostats are likely to be managed in the municipal waste stream because they are small, generated infrequently, and usually generated by persons not familiar with the hazardous waste regulations or hazardous waste management systems.

Several commenters described a ''reverse distribution'' or ''take back'' system that is under development by one thermostat manufacturer. A trade association representing manufacturers of thermostats indicated that all of the members intend to participate in this collection system, thus making the system industry-wide and allowing collection of virtually all brands of thermostats used in the United States. The ''take back'' system will be used to collect used mercury-containing thermostats to recover the mercury and reuse it in the production of new thermostats. The manufacturer implementing the ''take back'' system has developed packaging, marking, and labeling procedures that will be required for participation in the program that will ensure that the waste mercury thermostats are appropriately handled. The information provided indicated that the nation-wide waste mercury thermostat collection and recycling program would greatly reduce the amount of mercury that is now being managed in the municipal waste stream across the United States.

Commenters further argued that mercury-containing thermostats present relatively low risk during accumulation and transport because they are designed to protect the ampules that contain mercury from breakage. One commenter explained that ampules are attached to a bi-metal strip designed to absorb shocks. The commenter further explained that ampules are also enclosed within plastic or metal outer casings that protect them further from breakage. This commenter described experience with warrantee take back programs and indicated that less than .01% of new mercury thermostats returned to them are returned due to breakage of the ampules. Commenters also stated that during accumulation, waste mercury thermostats are not subject to deterioration, therefore, the risk of mercury release will not increase as accumulation time increases. The packaging, marking, and labeling procedures that will be part of the industry ''take back'' program provide further evidence that the risks during accumulation and transport will be low.

The Agency agrees with commenters that used mercury-containing thermostats meet the proposed (and final) factors for adding new wastes to the universal waste regulations and that these wastes are appropriate to be managed under the universal waste system. The Agency recognizes that due to the administrative burden, costs, and stigma associated with managing these wastes under the full hazardous waste regulations, it is not likely that a ''take back'' system such as that described by commenters will be implemented if compliance with the full hazardous waste regulations is required of participants. Thus, the Agency has included mercury-containing thermostats in the final universal waste regulations promulgated today. It should be noted that universal wastes, including mercury-containing thermostats, are exempt from regulation under both the 40 CFR 262–270 and 40 CFR part 273 if they are household waste (see 40 CFR 261.4(b)(1)), therefore the possible burden of compliance with the current Subtitle C regulations lies with generators, transporters and storage facilities currently regulated under 40 CFR parts 262–270.

One commenter suggested a regulatory definition to identify what wastes are covered under the universal waste regulations. The Agency agrees that a definition is necessary, and has included the following definition in 40 CFR 273.6 of the final rule: ''thermostat means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2).'' This definition differs slightly from the definition that was recommended by the commenter. The commenter suggested limiting the definition to wall-mounted thermostats, rather than extending the definition to all temperature control devices that contain metallic mercury in ampules. The commenter expressed concern that difficulties may arise when managing small wall-mounted thermostats together with other mercury thermostats. The Agency recognizes the commenter's concerns, but points out that universal waste handlers are not required to accept any type of universal waste that they are not prepared to manage. Thus, if a collection program is designed only to handle a certain type of thermostat, only that type of thermostat should be accepted by the operators of the program. The Agency does not want to limit the possibility that other collection programs may be developed for other types of thermostats, or that different types of thermostats could be managed separately (i.e., transport and accumulate wall-mounted and other thermostats separately). Thus, the definition has not been limited to wall-mounted thermostats.

In addition, the definition suggested by the commenter has been expanded in the final rule to include mercury-containing ampules that have been removed from thermostats. As is discussed in section IV.E.3.c of this preamble, requirements for managing thermostats under the universal waste rule have been drafted to allow removal of ampules as long as certain conditions are met. In order to allow management of the ampules under the universal waste system once they have been removed from the thermostat casing, it was necessary to include them in the definition of thermostat. The definition specifies that the ampules must be removed following the universal waste handler waste management conditions set forth in § 273.13(c)(2) or §273.33(c)(2).

Finally, with the exception of the issue of ampule removal, commenters overwhelmingly supported applying the requirements proposed for universal waste batteries to used mercury-containing thermostats. Thus, in the final rule, persons managing universal waste thermostats are subject to the same basic requirements as persons managing other universal wastes:

requirements for small and large quantity handlers, transporters, and destination facilities. Specific waste management requirements have been added to the small and large quantity handler sections to address the commenter's concerns about ampule removal. These requirements are discussed in detail in section IV.E.3.c of this preamble, entitled waste management.

IV.B.2.e. Other Wastes Suggested by Commenters

A number of commenters suggested additional wastes that they believed should be added to the universal waste regulations. For example, wastes suggested included electronic components, photographic wastes, aerosol cans, solvent contaminated rags and wipers, treated wood, auto shredder fluff, and a number of others. Several wastes were suggested by numerous commenters and merit further discussion. These are spent lamps (lighting waste), used mercury containing equipment, and antifreeze. Spent lamps are discussed in section II.A, of this preamble, entitled mercury-containing lamps. Used mercury-containing equipment and spent antifreeze are discussed in the following sections of this preamble.

Although many of the wastes suggested may be appropriate candidates for the universal waste system in the future, the Agency has decided to include only three wastes in this final rule: hazardous waste batteries, thermostats, and certain unused pesticides. This decision was made because, first, with a few exceptions discussed below, commenters provided only very limited information about the suggested waste(s), current management of the waste(s), and appropriate waste management controls that could be used to develop universal waste regulations for the waste(s). Most commenters did not evaluate how the suggested waste(s) compared against the factors proposed to add new wastes to the universal waste regulations. For most suggested wastes, the Agency did not feel that it had sufficient information to consider adding the waste to the universal waste regulations at this time. Unlike unused pesticide products and mercury-containing thermostats on which we have a body of information, adding other suggested waste types would require additional research to determine appropriate waste management practices and other issues related to these wastes. Second, in this final rule the factors used to evaluate candidate wastes to determine whether they are appropriate to be added to the universal waste regulations have been revised from those proposed.

Finally, the universal waste system is a new program. The Agency believes it is important to begin implementation with a limited number of waste types, and conduct at least an initial assessment of how the program is working before adding a great deal of new wastes. Thus, due to resource constraints, the Agency has decided to add only the above-named wastes and focus it's efforts on promulgating the basic structure of the regulations, while initially including only a few wastes in the program. If determined necessary, revisions to the regulatory structure could be made at the same time that new wastes are added.

The fact that the Agency has decided not to add a commenter's suggested waste to the universal waste regulations at this time does not mean that the Agency will not consider adding the waste at some time in the future. In fact, commenters are encouraged to assess whether their suggested wastes fit the final evaluation factors, and if so, to submit a petition making that demonstration and including suggested waste management controls that could be used to develop universal waste regulations for the waste. Petitions should follow the procedures set forth in 40 CFR 260.20, 260.23, 273.80, and 273.81 as revised by this final rule.

IV.B.2.f. Used Mercury-Containing Equipment

In addition to supporting the addition of mercury-containing thermostats to the universal waste regulations, a number of commenters suggested expanding the scope of this waste type to be a category of wastes including other mercury-containing equipment. Commenters pointed out that thermostats are a form of mercury switch, and that there are many other types of mercury switches that may present issues similar to those for thermostats. Other items commenters identified as mercury-containing equipment that should be included were gauges, manometers, relays, and circuit boards. Commenters also noted that some of these items may contribute substantial amounts of mercury to non-hazardous waste management systems.

Although the Agency believes that adding a broader category of mercury-containing equipment to the universal waste rule may ultimately be the best way to approach this issue, at this time only mercury-containing thermostats have been included in the final rule. In addition to the reasons discussed above for limiting this final rule to batteries, pesticides, and thermostats, the Agency does not believe that it has sufficient information at this time to add the broader category to the universal waste regulations. Specifically, the universe of wastes that would fit into such a category is not clearly identified. The Agency does not know exactly what types of wastes would be included if it were to add such a category. For example, it is not known how much mercury might be in such equipment. It is possible that there are some pieces of equipment that have very large amounts of mercury that may be of more concern for management under the universal waste regulations than equipment with small amounts of mercury. It is also not known how various types of mercury-containing equipment are constructed, and thus it is not known whether the mercury is sufficiently contained to provide some assurance that the mercury would not be released during management under the universal waste system. Similarly, it is not known what type of waste management controls would be appropriate to include in the universal waste regulations for the broader category.

The Agency would welcome a petition to add some form of broad category of mercury-containing equipment to the universal waste rule. In developing such a broad category, the Agency would be particularly interested in several issues. First, suggestions on how to define the category to limit it to wastes appropriate for the universal waste system would be useful. Second, the Agency would need a listing of the types of equipment that would be included in the category, and general information about the amounts of mercury contained in each and how the equipment is constructed to protect the mercury from release. Third, it would be helpful to know whether there is some mercury quantity limit that might be used to ensure that the risks of managing the wastes under the universal waste rule are low (relative to other hazardous wastes), while at the same time including as many of these wastes as is appropriate. Fourth, the Agency would appreciate suggested waste management requirements that, taking into account the construction of the mercury-containing equipment, would minimize the risks of managing these wastes under the universal waste regulations. Finally, any available information about systems that are used or could be used to collect these wastes would be useful (e.g., reverse distribution systems).

IV.B.2.g. Spent Antifreeze

In the preamble to the universal waste rule the Agency suggested that used antifreeze might be a good candidate for addition to the universal waste regulations. Comment was requested on whether spent antifreeze fit the factors for addition to the universal waste rule, and on what specific management requirements would be appropriate if spent antifreeze were added. Numerous comments were received addressing this issue, but commenters disagreed on both whether used antifreeze should be added to the universal waste system at this time and on what requirements would be appropriate.

A number of commenters argued that spent antifreeze did fit the proposed factors and should be added to the rule. Several commenters addressed each of the proposed factors in turn and maintained that antifreeze fit them all. A number of other commenters, however, questioned how frequently spent antifreeze actually fails the toxicity test and is thus hazardous waste. They noted that one of the factors proposed to be used to evaluate new wastes for addition to the universal waste system was whether or how frequently the waste was hazardous. They argued that regulation under the universal waste rule would imply a presumption that used antifreeze is hazardous, making management of that portion of spent antifreeze that is not hazardous more difficult. Several of these commenters also predicted that the lead levels in used vehicle antifreeze will diminish over time as more and more vehicles are produced with cooling systems that have little or no exposed lead solder. They thus believe that less and less antifreeze will fail the toxicity characteristic over time.

Commenters also recommended a wide range of management requirements for spent antifreeze if it were to be added to the universal waste system. Some commenters believed that the requirements proposed for batteries and pesticides were generally appropriate. A number of commenters also maintained that the antifreeze recycling pattern is very different from the limited recycling or treatment and disposal options available for wastes such as batteries and pesticides. They described antifreeze recycling as requiring less sophisticated technology and being practiced at many dispersed locations rather than a few centralized facilities. They did not believe that the universal waste regulatory structure was appropriate to accommodate this type of waste management pattern.

Several commenters argued that because antifreeze is a high volume liquid, the management requirements should be somewhat different than those included in the proposal. Some commenters argued that requirements for used antifreeze should be based on the small quantity generator regulations. Many others suggested requirements similar to the used oil management standards of 40 CFR part 279. Some commenters suggested specific sets of requirements that they believed were appropriate for used antifreeze management.

Spent antifreeze is not included in the final universal waste rule. The Agency made this decision for several reasons. First, because the Agency did not request specific comments on issues related to spent antifreeze, the comments received were not focussed on any particular issues and provide little clear direction for the Agency to move forward with this issue at this time. As suggested by several commenters, the Agency does not believe it would be wise to add spent antifreeze to the universal waste regulations without first proposing and accepting comment on specific management standards.

Second, commenters opinions on whether spent antifreeze should be added to the universal waste regulations ranged so widely that it is clear that more investigation into this issue is necessary before promulgating final regulations. Specifically, some additional information on the frequency with which used antifreeze exhibits the toxicity characteristic may be available and should be reviewed prior to making a decision on how to address antifreeze. In addition, the Agency should also investigate further suggestions that improved handling by generators (e.g., managing antifreeze only in dedicated containers) could reduce the rate at which antifreeze exhibits the toxicity characteristic. Similarly, opinions on appropriate management standards also varied so greatly that the Agency recognizes it would not be possible, based on the information available at this time, to develop management requirements that adequately address the issues raised by commenters.

Third, many commenters argued that the question of how antifreeze recycling is regulated is central to the development of appropriate management standards. As explained in section II.B of this preamble, entitled Redefinition of Solid Waste, the general question of how recycling should be regulated is being addressed in a larger forum and is outside the scope of today's final rule. The Agency believes that it may be necessary to proceed somewhat further with this effort before it will be possible to determine how best to address the issue of antifreeze management.

Finally, for this initial final rule, the Agency decided to focus its efforts and available resources on wastes for which commenters demonstrated more agreement about the major issues of whether to include the waste and appropriate management requirements. Once the basic structure of the universal waste system is in place, it may be more clear whether and how more controversial wastes such as antifreeze may fit into the system. Thus, spent antifreeze has not been included in this final rule, but the Agency has not ruled out adding it in the future if it seems appropriate and if it appears possible to develop requirements that would improve management of used antifreeze.

IV.B.3. Conditionally Exempt Small Quantity Generator Waste

In the proposed part 273 regulations, the Agency proposed to retain the 261.5 CESQG conditional exemption from the hazardous waste regulations for universal wastes. Under this approach, CESQGs would have the option of managing universal wastes under either part 273 or § 261.5. Thus, CESQGs would not be required to manage their universal waste under part 273. However, the Agency requested comment on whether this approach should be retained, or whether CESQGs should be required to manage their universal wastes under part 273. In the final rule, the Agency has decided to retain the approach proposed and is allowing CESQGs the option of handling their universal wastes under part 273 or under the CESQG exemption in § 261.5.

Most commenters responding to this request for comment argued that CESQGs should be allowed flexibility in managing their universal wastes. Commenters stated that CESQGs should have the option of managing these wastes as universal wastes under part 273 if they so choose, or to continue to handle these wastes in compliance with the requirements of the CESQG exemption under § 261.5. Commenters argued that this option would allow each CESQG the flexibility to select the disposal method that is least costly and best meets the needs of its business. They also argued that CESQGs often do not have ready access to new information and markets for their wastes and therefore should not be required to manage their universal wastes under part 273 to the exclusion of other existing waste management options. Many commenters pointed out that as

an infrastructure develops for the universal waste collection systems, CESQGs are likely to voluntarily participate in such programs. Other commenters stated that management under part 273 should be mandatory in order to reduce confusion related to how these waste types should be handled and to ensure protection of the environment.

The Agency believes that allowing individual CESQGs to choose the regulatory option that best meets their circumstances will aid in assuring effective collection, management and disposal of universal wastes. Requiring compliance with part 273 would be an added administrative and cost burden for CESQGs, many of whom may be small businesses and small organizations. In addition, compliance with some aspects of the program may be difficult for these generators. The Agency believes that as an infrastructure develops for protectively handling these wastes, CESQG waste is most likely to be incorporated into the universal waste system through voluntary efforts, state or local programs, and the availability of convenient collection systems rather than through additional regulatory requirements. Therefore, in the final rule, the Agency has retained the opportunity for CESQGS to manage their wastes under either the CESQG exemption or under part 273. The option for CESQGs to send their universal wastes to a universal waste handler or destination facility has been added to 40 CFR 261.5(f)(3)(vi) and 261.5(g)(3)(vi) as was proposed. As was proposed at 40 CFR 273.10(b)(1)(ii) and 40 CFR 273.20(b)(1)(ii), 40 CFR 273.5(a)(2) has been added to the final rule to clarify that CESQGs may, at their option, manage their universal wastes under part 273.

Further, the Agency is retaining the intent of the proposed requirement that if universal wastes from CESQGs are commingled with universal wastes from larger, regulated hazardous waste generators, and the commingled waste is a hazardous waste under 40 CFR 261.3 (i.e., is listed or exhibits a characteristic), the commingled waste must be managed under the part 273 requirements. As explained in the proposal, this provision is included to clarify this point for persons managing universal waste, but is actually merely a restatement of existing hazardous waste requirements.

In the proposed universal waste rule, the Agency also proposed not to require hazardous waste generators to count those universal wastes managed under the part 273 requirements toward the monthly quantity calculation used to determine generator regulatory status (i.e., CESQG, SQG, LQG). Today's final rule retains the approach as proposed. Section 261.5 has been redrafted to clarify this point.

One commenter was concerned that this exclusion would cause more hazardous waste to be sent to non-subtitle C facilities because more generators would be CESQGs if universal wastes are not counted. The remainder of the commenters agreed with excluding universal wastes managed under part 273 from the generator's calculation of monthly generation rates to determine generator status.

The Agency does not believe that excluding universal wastes from the generator's calculation of monthly generation rates will have a significant impact on the amount of hazardous waste sent to non-subtitle C facilities. The volume of universal wastes typically generated by any one generator is not large. Thus, the Agency believes that the number of generators that will move from the regulated SQG category to the conditionally exempt SQG category will be small.

More importantly, the Agency believes that on balance, encouraging generators to manage their wastes under part 273 by allowing generators not to count those universal wastes managed under part 273 will likely increase the overall quantity of hazardous waste recycled or disposed of at Subtitle C facilities. Excluding universal hazardous wastes that are managed under part 273 from the generator's monthly quantity determination will encourage generators to manage wastes under the universal waste rule, and therefore maximize the benefits to the environment by redirecting these hazardous wastes from non-hazardous waste management to more protective management. The Agency strongly believes that the benefits of capturing these universal wastes for safe handling outweighs the potential risks of small quantities. Therefore today's final rule retains this exclusion.

In addition, as other waste types are considered for inclusion in part 273, they will be evaluated according to the criteria in § 273.81. Part 273.81(d) states that ''systems to be used for collecting the waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste.'' EPA believes that this criterion, the other criteria included under § 273.81(a)–(h), and the petition and rulemaking procedures for adding new wastes to the universal waste system will ensure that any wastes added in the future will be managed in an environmentally protective manner.

One commenter stated that it is not clear that SQGs and LQGs should use the same procedures for determining generator status as that used by CESQGs since the regulatory language explaining the calculation is located in § 261.5, which applies to CESQGs. Although the language in § 261.5(c) makes it clear that the counting procedures apply to all generators (''the quantity determination of this part and parts 262 through 266, 268, and 270''), the Agency agrees that it might be easier for SQGs and LQGs to find the counting procedures if they were referenced in part 262. Thus, this rule revises § 262.10 by adding a new paragraph (b) to read ''40 CFR 261.5 (c) and (d) must be used to determine the applicability of provisions of this part that are dependent on calculations of the quantity of hazardous waste generated per month.''

Finally, as proposed, the final rule adds part 273 to the list of parts in § 262.11(d) where exclusions or restrictions for hazardous waste management are found. In addition, to clarify that § 261.5 provides additional exclusions as discussed above, the final rule also adds part 261 to this list. Thus, § 262.11(d) now reads ''If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 269, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.''

IV.C. Adding Additional Wastes in the Future

The proposed universal waste rule included a process for adding additional waste types to the universal waste system in the future. The process consisted of procedures for persons to petition the Agency requesting the addition of new waste types, procedures for the Agency to use in responding to petitions, and factors to be used to evaluate whether a new waste type is appropriate to be added to the system. The final rule includes a similar process, but based on the comments addressing this issue some changes have been made to both the procedures and the factors. In addition, the Agency has decided to allow states the flexibility to add additional wastes to their state list of universal wastes without requiring the waste to be added at the federal level. The following two sections discuss changes made to the petition procedures and the factors.

IV.C.1. Procedures for Adding New Wastes

In the proposed universal waste rule, EPA proposed that any person may petition to have additional hazardous wastes added to the part 273 universal waste regulations. Proposed regulations governing the petition process were found in §§ 260.20, 260.34, and 273.2. Detailed procedures for submitting and reviewing petitions, however, are set forth in existing 40 CFR 260.20 and were only referenced in the proposed regulatory text. These procedures are the same procedures that are used for submitting and reviewing all petitions for regulatory amendments to the hazardous waste regulations.

The proposed rule indicated that in order for a petitioner to be successful, it must be demonstrated that regulation under the universal waste system is appropriate and that the part 273 requirements will improve waste management practices for the waste. This demonstration was to be made by submitting information to support the factors listed in § 273.2 (a) and (b).

In today's final rule, the procedures for submitting petitions remain substantially unchanged, although several minor revisions have been made. First, the requirements for petitions for inclusion of other wastes under part 273 have been moved from § 273.2 in the proposal to subpart G of part 273 in today's final rule. The Agency believes that putting the petition requirements in a separate subpart makes them easier to locate, and thus makes the entire regulation easier to follow. In addition, the proposed § 260.34, entitled ''Petitions to amend part 273 to include additional hazardous wastes'' has been renumbered to be § 260.23 in the final rule. This change has been made to keep the sections of part 260 that discuss regulatory amendments together.

Second, the petition procedures have been revised to allow petitions to add categories of waste as well as individual wastes to the universal waste system. This revision was made in response to comments. It was suggested that the term ''waste'' may be more limiting than the Agency intended. Use of the term ''waste category'' will allow petitioners to submit a group of wastes such as ''hazardous waste batteries'' instead of petitioning for each type of hazardous waste battery individually (hazardous waste nickel-cadmium batteries, hazardous waste lithium batteries, etc.). One commenter also suggested that a category of wastes such as unused products in original packaging might be appropriately managed under the universal waste system. The Agency agrees with these comments and has incorporated this suggestion into the final rule.

Third, to clarify the Agency's goals for the universal waste program (which the petition factors are designed to address) and to clarify the standard that will be used to make decisions on petitions, the final rule has been revised to read: ''the decision will be based on the weight of evidence showing that regulation under part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.'' This language merely reflects more closely the goals discussed in the proposal for the universal waste system than did the language in the proposed rule.

Fourth, many commenters expressed concern that petitions seeking a regulatory amendment to add new hazardous wastes to part 273 must contain quantitative information on each of the factors outlined in the proposed rule under § 273.2 (found in § 273.81 in the final rule). Commenters believed that the proposed rule was not clear on whether or not information must be submitted to address every one of the factors or only some of the factors. The Agency agrees that the proposal was confusing on this point. As suggested by several commenters, the Agency also agrees that it may not be possible or appropriate to address each of the factors for any particular waste or waste category. Thus, the petition process regulations (found in both §§ 273.80 and 260.23 of the final rule) have been revised to clarify that: (1) A petition should address as many of the factors as are appropriate for the waste or waste category addressed in the petition; and (2) the decision to grant or deny a petition will be based on the weight of evidence showing that regulation under part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

Thus, the Agency clarifies in the final rule that an individual waste would not be disqualified from inclusion under part 273 merely because every factor was not addressed. Rather, the Agency will consider the overall weight of the evidence demonstrating that the goals of the universal waste system would be met by adding the particular waste or waste category to the universal waste system. Thus, a waste that several of the factors demonstrate very strongly would accomplish the Agency's goals may be more likely to be added to the universal waste system than a waste that all of the factors weakly support.

In addition to concern about the number of factors that must be addressed, commenters also expressed concern that the proposal was vague with regard to the quality and quantity of data that must be submitted regarding each of the factors. In response, the Agency reiterates that decisions will be made based on the weight of the evidence demonstrating, using the listed factors, that the Agency's goals for the universal waste system will be met. Thus, the quantity of data submitted is not as critical as how strongly the data supports these goals. Of course, the more complete the data are, the more likely it is that they will demonstrate that the Agency's goals would be met. The Agency also notes that although quantitative data are desirable, due to the nature of the wastes likely to be appropriate for the universal waste system the Agency recognizes that direct quantitative data about these wastes and their management may not be available. Thus, quantitative data are not necessarily required for a successful petition. Any information that can be extrapolated from available related quantitative data is recommended, as would be any estimates that can be developed based on available qualitative information. In addition, as discussed in the proposal, the Agency will take into consideration the quality and completeness of the data submitted by the petitioner as a way to set priorities among the many various waste streams that may be suggested for this program. If a petitioner's request is complete and supporting data are adequate, EPA is likely to evaluate the request and determine whether to propose a regulatory amendment sooner than if a request has only minimal information.

Fifth, commenters expressed confusion concerning the process for submitting a petition. In § 273.80 of today's final rule, the Agency more fully details the process for submitting a petition. The substance of the requirements have not changed. Section 273.80(b) reiterates that the petitioner must follow the requirements in § 260.20(b) (Subpart C—Rulemaking Petitions), which sets forth general requirements which apply to all such rulemaking petitions. As proposed, the regulatory language in § 260.20(a) also has been amended to add reference to the part 273 requirements. As discussed above, § 273.80(b) also specifies that the petition should address as many of the factors listed in § 273.81 as are appropriate for the waste or waste category addressed in the petition. It should also be noted that the procedures

for submitting petitions and for the Agency's review of and response to petitions for regulatory amendments are described in detail in § 260.20.

In response to some confusion expressed by commenters, § 273.80(c) clarifies that the Administrator will evaluate petitions using the factors listed in 40 CFR 273.81 and that the Administrator will grant or deny a petition using these same factors. This clarification reiterates the procedures proposed in § 260.34 of the proposal and included in § 260.23 of the final rule. As discussed above, § 273.80(c) also explains that the Administrator's decision will be based on the weight of evidence showing that regulation under part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

Sixth, petitioners expressed concern about the length of time it may take for the Agency to evaluate petitions. Many commenters suggested that a time limit be set for such evaluations and that, in addition, petitions be released for public comment. While the Agency agrees that it is important for petitions to be considered in a timely manner, the Agency has decided to continue to follow the general procedures for responding to petitions for regulatory amendments set forth in § 260.20 of the hazardous waste regulations. As with all petitions submitted under § 260.20, a specific time limit is not defined for the review process. Although the Agency expects to review and respond to petitions within a reasonable timeframe, due to competing priorities and other statutory and court ordered mandates the Agency is not able to commit to a definitive review schedule. Committing to such a schedule would also not be possible because the Agency has no previous experience with this program and is not able to predict the number and depth of petitions that may be submitted, and thus the workload that will be required to respond to them.

With respect to public comment on the Agency's response to petitions and on proposals to add new wastes to the universal wastes system, § 260.20 specifies that the Agency will make a tentative decision to grant or deny a petition and publish that determination in the **Federal Register** for written public comment. Any persons who have additional information relevant to a particular petition would be able to submit the information for the Agency's review. The Agency may also hold an informal public hearing to consider oral comments on the tentative decision.

For any waste or waste category that the Agency tentatively decides to add to the universal waste system, the Agency will propose regulatory requirements that would apply to management of the waste under the universal waste system. Comments would be solicited on the tentative decision to add the waste or waste category, and on the appropriateness and practicality of the requirements. After reviewing and responding to any comments submitted, the Agency would publish a final rule amending the universal waste regulations to include the new waste unless the tentative decision was reversed (in which case a denial would be published). For any waste or waste category the Agency tentatively decides not to add to the universal waste system, the Agency would publish a tentative decision to deny the petition and request comment. A public hearing may be held. After reviewing and responding to comments, the Agency would publish a final denial, unless the tentative decision was reversed (in which case a subsequent proposal to add the new waste would be required).

Finally, as is discussed in detail in Section V of this preamble, entitled ''State Authority,'' it should be noted that States may apply for and be granted authorization to implement any part of today's amendments to the hazardous waste regulations. This includes the petition process for inclusion of additional wastes in the universal waste program. Thus, in States authorized for the universal waste regulations and the petition process, petitions may be submitted to the State agency to regulate management of a waste or waste category under the universal waste regulations within that State. The State agency would then grant or deny petitions, using the criteria established for evaluating wastestreams for inclusion in the program. If a petition is granted, the waste would be managed under the streamlined universal waste requirements within that state. However, the full hazardous waste regulations would apply once the waste is transported out of the state in which it is considered universal waste into other states that have not included the waste in their universal waste programs (or states that are not authorized for or do not have universal waste programs). Thus, manifests and hazardous waste transporters would be required for the shipment out of the state, and all subsequent management must be at RCRA treatment, storage, and disposal facilities.

IV.C.2. Factors for Evaluating New Wastes

The proposed universal waste rule included two sets of factors to be used to evaluate whether candidate wastes are appropriate to be added to the part 273 universal waste regulatory system. The first set of factors was designed to determine whether the waste presents a problem to human health and the environment due to its presence in the municipal waste stream or due to other, widespread management practices. The second set of factors was designed to determine whether the universal waste system would satisfactorily address the problem presented by the hazardous waste.

In response to a number of issues raised by commenters concerning the proposed factors, the Agency has substantially revised the factors for the final rule. Major issues raised by commenters and the changes made to the factors are discussed below.

First, in the final rule, the two sets of proposed factors have been consolidated into one set of factors. This change was made in response to several comments pointing out that having two separate sets of factors was potentially confusing, particularly because the content of the two sets seemed to overlap. The Agency agrees with these commenters, and believes that having only one set of factors will eliminate possible confusion, making it easier for the regulated community and regulating agencies to implement the evaluation factors. In addition, as discussed further below, the Agency has revised the factors to focus more on a positive showing that regulation under the universal waste system would improve waste management practices rather than a negative showing that a waste is being managed improperly. Combining the two sets of factors assists with this change of focus.

Second, the Agency has added text to the general introduction to the final petition factors (40 CFR 273.80) and revised 40 CFR 260.34(b) to clarify that not all of the factors must be either addressed or demonstrated in a petition in order for an individual waste to be added to part 273. The text clarifies that the Agency will consider the overall weight of evidence presented in determining whether regulation under the universal waste system is appropriate for the waste, and whether the part 273 regulations will further the Agency's goals of improving management practices for the waste and improving implementation of the hazardous waste program.

This change was made in response to several commenters who indicated that there was some confusion regarding whether all factors must be addressed for inclusion under part 273. In addition, the text of proposed 40 CFR 260.34, which indicated that all factors must be addressed, contradicted the preamble which suggested that not all factors must be addressed. The Agency chose this approach because it does not believe that each and every factor must be met in order for a waste to be appropriate for the universal waste system, and for regulation of the waste under part 273 to improve waste management and implementation. Thus, the Agency will make decisions based on the weight of evidence showing that regulation of a particular waste under part 273 will further the Agency's goals for the program. It seems likely, however, that the more factors a petition addresses the more likely it is that there will be a substantial amount of supporting evidence.

The Agency notes, however, that resources for making changes to the hazardous waste regulations are limited, and that these resources must be focused on areas where the most improvement can be made. In fact, the Agency does not expect to have the resources to add great numbers of wastes to the universal waste system. Therefore, the Agency will prioritize addition of new wastes to the universal waste system based on the strength of the case made that addition of a particular waste will further the goals discussed above. For example, as suggested by one commenter, the Agency would give priority to a waste that is generated in higher volumes nationally, that a greater percentage of the waste is hazardous, or that are generated by a larger number of generators. Priority would be given because addition of such a waste to the universal waste system is likely to improve overall waste management and implementation more than addition of a waste that does not meet these factors. In addition to adding to the strength of such a case, the completeness and quality of supporting data submitted by a petitioner may also affect the Agency's prioritization in that the Agency may not itself be able to expend a great deal of resources gathering additional data.

Third, the Agency notes that the final rule has been revised to allow petitions to add, and the addition of, categories of waste to the universal waste system as well as individual waste types (see 40 CFR 273.80, 273.81, 260.20, and 260.23). This change was made at the suggestion of one commenter who pointed out that there may be broad categories of waste that could fit well into the universal waste system but that are identified by characteristics other than a single waste classification. For example, wastes that remain in their original product packaging (e.g., unused products) are easily identifiable, and presumably the packaging provides protection since it was designed to protect the product during storage and transportation. The Agency agrees with the commenter that some categories of waste may be appropriate for addition to the universal waste system and thus has made this change. It should be noted that a petition to add any category of waste would have to make the same demonstration for the category that a petition would have to make for an individual waste type.

The following sections discuss each of the factors included in the final rule and any changes made from the proposal. The final section discusses proposed factors that are not included in the final rule.

IV.C.2.a. Final Factor 40 CFR 273.81(a)

The Agency has revised proposed § 273.2(a)(1), which addressed the idea that a waste should either be a listed hazardous waste, or that a proportion of the waste should exhibit one or more characteristics of hazardous waste in order to be considered for addition to the universal waste system. In the final rule, this factor, which is now § 273.81(a), has been revised by adding a parenthetical statement discussing wastes that are hazardous due only to exhibiting characteristics. Numerous commenters expressed concern that the Agency would be adding wastes to the universal waste system that are not already hazardous. The Agency is clarifying, and would like to emphasize, that *only wastes that are hazardous (i.e., are listed or exhibit one or more characteristics of hazardous waste) are subject to the universal waste regulations.* This is because the universal waste regulations are part of the RCRA hazardous waste regulations, under which only wastes that are hazardous are regulated. This has been further clarified by adding a definition of the term ''universal waste'' (see 40 CFR 273.6 and 260.10), specifically identifying only *hazardous* wastes as universal wastes (e.g., *hazardous waste* batteries).

The Agency understands that this may be confusing in cases where a waste added to the universal waste system is identified using a generic name (e.g., battery, thermostat), but only a portion of the waste stream actually exhibits a characteristic and is thus hazardous. For example, some battery types exhibit one or more characteristics and are hazardous, while others may not. The Agency has used the generic term hazardous waste battery in the universal waste regulation for several reasons. One reason is that, when appropriate, the Agency wishes to encourage persons to manage both regulated waste and unregulated waste in the same collection systems, to eliminate duplication of collection systems, and to eliminate excess effort identifying, documenting, and keeping separate regulated waste and unregulated waste. As long as all commingled waste is managed in a system that meets the requirements of the universal waste regulations, such efforts are not necessary.

Another reason for using a generic term is to make the system flexible, so that the regulation does not have to be revised every time a waste (such as a particular battery type) either becomes hazardous or is no longer hazardous due to changes in manufacturing practices or technology. A final reason is that the Agency will likely not be able to make across the board hazardous waste determinations for entire categories of waste and must leave that responsibility to individual waste generators. For example, as the chemistry in a type of battery changes over time and varies from manufacturer to manufacturer, some older batteries may exhibit characteristics while some newer batteries do not. Given such a situation, it would not be possible for the Agency to identify individually which batteries are hazardous and which are not. Thus, the Agency stresses that although generic terms may be used in some cases, the term will be modified with the phrase ''hazardous waste'' and only those wastes that are hazardous (are listed or exhibit characteristics) are subject to hazardous waste regulation, including the universal waste rule.

IV.C.2.b. Final Factor 40 CFR 273.81(b)

To retain and expand on the concept included in proposed § 273.2(a)(2) and discussed in the proposal preamble that universal wastes are typically generated by a wide variety of types of generators, the Agency has added another factor to the final rule. Final § 273.81(b) indicates that wastes that are good candidates for the universal waste system would not be exclusive to a specific industry or group of industries, and would commonly be generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, service businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as

large industrial facilities). This factor is also similar to one proposed by a commenter who suggested that positive demonstrations, such as this one, should be utilized in place of negative showings that wastes are a ''problem'' or pose risks because such negative factors will inhibit persons from petitioning to add their wastes or products. This factor will assist petitioners and the Agency in determining whether a waste is appropriate to be added to the universal waste system.

This new factor also addresses an issue raised by several commenters; whether industrial wastes could be added to the universal waste system. As was discussed in the preamble to the proposal, the Agency does not believe that wastes that are generated *primarily* in an industrial setting are appropriate for the universal waste system. In this context, the term industrial setting, however, is used to describe locations where large production-type operations are conducted and where large quantities of waste are generated. The Agency believes that wastes that are primarily generated in such settings can be managed under the current hazardous waste regulations because such facilities are usually set up to comply with the applicable requirements. The new factor makes it clear that wastes appropriate for addition to the universal waste system should be generated by a wide variety of types of establishments, which could include, but should not be exclusively, large industrial operations. One of the problems the universal waste rule is designed to address is that a relatively large portion of some waste types are exempt from the hazardous waste regulations (i.e., are generated by households and CESQGs) and are indistinguishable from the regulated portion of the waste. This ''look alike'' problem makes implementation of the program for these wastes extremely difficult. For example, batteries are probably the classic example of a waste type that is generated by all types of establishments, including large industrial operations. The Agency points out that some wastes commenters described as ''industrial'' might be appropriate for the universal waste system as indicated by the new factor. For example, a large percentage of antifreeze is generated by do-it-yourselfer households, while other portions are generated by CESQGs, small businesses, service businesses, government organizations, as well as large industrial facilities. The Agency envisions that most wastes that meet the new factor would be post-user wastes rather than residues from production or other industrial operations.

IV.C.2.c. Final Factor 40 CFR 273.81(c)

The Agency has essentially retained the proposed factor, § 273.2(a)(3), which addressed the number of generators of a candidate waste, as final factor 273.81(c). This factor will assist in identifying wastes that are appropriate for addition to the universal waste system. The text of the factor has been revised to indicate that universal wastes should be generated by a large number of generators, but that the number 1,000 is an example rather than a hard and fast number. In fact, the Agency believes that in general universal wastes should be generated by many more than 1,000 generators. The goal of the universal waste program is to capture wastes that due to their widespread nature are difficult to manage under the current hazardous waste regulations. The Agency believes that a waste must be generated by a large number of generators in order for regulation under the universal waste system to contribute largely to improving management practices and to improving implementation of the hazardous waste program. Because of this, the Agency does not anticipate adding wastes to the universal waste system that are generated by a small number of generators (e.g., less than 1,000) in large volumes, as was suggested by one commenter.

In fact, to further assist in identifying wastes that are appropriate for the universal waste system, the Agency has added a qualifier to the final factor clarifying that wastes that are appropriate to be added to the universal waste system are frequently generated in relatively small quantities by each generator. This concept comes from proposed § 273.2(a)(4)(iv), which was generally interpreted by commenters to mean that only wastes generated by small quantity hazardous waste generators would be considered for addition to the universal waste system. The revised § 273.81(c) should clarify that the Agency would consider wastes that are generated in relatively small quantities by each generator, regardless of the total quantity of all hazardous wastes generated by the generator. For example, even a very large industrial generator of large volumes of hazardous waste may generate relatively small quantities of batteries. It should be clarified that this factor is intended only as a gross indicator of quantities generated. Specifically, the term ''relatively'' is used to contrast small quantities of universal wastes with the quantities in which large volume industrial hazardous wastes can sometimes be generated, e.g., tens of thousands of pounds or gallons per month.

The Agency also confirms, as was suggested by one commenter, that the factor concerning number of generators could be applied prospectively in cases where newly developed products are likely to be appropriate for the universal waste system. Thus, if a newly developed product (or redesigned product) can be shown to be likely to be produced and disposed of in such a way as to be appropriate for the universal waste system, a petition could be submitted even before there are actually a large number of generators of the waste.

IV.C.2.d. Final Factor 40 CFR 273.81(d)

The final rule retains as § 273.81(d) the factor proposed as § 273.2(b)(2) which indicates that collection systems that ensure close stewardship would make a waste a more likely candidate for addition to the universal waste system. All of the comments addressing this factor were positive. The Agency emphasizes, however, that this factor is not intended to be biased toward collection systems run by product manufacturers. Although manufacturers may have easy access to information about products that may assist them in developing collection programs, the goal of this factor is to facilitate addition of wastes to the universal waste system that are most likely to be collected, and to be collected in a manner that ensures good management of the waste. Thus, any collection system that would ensure good stewardship would be a favorable factor, regardless of what organizations run the program. The Agency also notes that the economics of collecting and recycling or disposing of a waste can provide some insight into the stewardship that may be provided a waste. For example, if a waste can be recycled at profit, it may be more likely that collectors will maintain close stewardship of the waste.

IV.C.2.e. Final Factor 40 CFR 273.81(e)

Proposed factor 273.2(b)(1), which addressed the risk posed by the waste during accumulation and transport, has been retained largely as it was proposed. The final factor, § 273.81(e), has been revised to clarify that good candidate wastes for the universal waste system would pose relatively low risks *compared to other hazardous wastes* during accumulation and transport. This revision should clarify that, although it is possible that a candidate universal waste may pose more risk than other non-hazardous wastes during

accumulation and transport (since they are identified as hazardous), wastes appropriate for the universal waste system should pose relatively less risk than other hazardous wastes since the universal waste accumulation and transport requirements are relatively less stringent than the existing hazardous waste regulations. Examples of reasons a waste might pose relatively low risk during accumulation and transport include the construction or physical form of the product or waste, packaging of the waste, chemical characteristics of the waste, ease of containment, and standard handling procedures for the waste.

The final factor (§ 273.81(e)) also addresses, as did the proposed version, the concept that waste management requirements appropriate for the universal waste regulations can be used to mitigate risks posed by accumulation and transport of the waste. This part of the factor has been clarified to indicate that petitioners should suggest or reference waste management requirements specific for the candidate waste that could be added to the universal waste regulations (or that are independently applicable, e.g., DOT requirements) that would protect human health and the environment from risks posed by the waste during accumulation and transport. Such waste management requirements may include volume reduction incident to collection activities. The activities should be designed to ensure that these management practices do not dilute the hazardous constituents or release them to the environment. For example, if mercury-containing lamps were considered for addition to the universal waste system, crushing might be allowed as appropriate management if the crushing process was performed in a controlled unit which did not allow any releases of mercury or other hazardous constituents to the environment.

IV.C.2.f. Final Factor 40 CFR 273.81(f)

The Agency has revised and combined proposed § 273.2(b)(3) and part of proposed § 273.2(a)(2), which addressed, respectively, whether addition to the universal waste system would facilitate removal of the waste from the municipal waste stream and the presence of the waste in the municipal waste stream. The revised factor, § 273.80(f), addresses whether ''regulation of the waste under part 273 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous commercial or industrial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA.''

The Agency combined the two proposed factors to reduce the duplication that several commenters pointed out existed in the two sets of factors. The revised factor encompasses the concepts included in both the proposed factors, in that it would be necessary to show that some portion of a waste is being managed in non-hazardous waste management systems in order to argue that regulation under part 273 would increase the likelihood of diversion from these systems.

The revised final factor also addresses diversion of waste from non-hazardous waste management systems generally, rather than specifically from the municipal waste stream. This revision was made in response to a number of commenters who pointed out that the goal of the universal waste system should be to improve management of wastes that are managed in any type of non-hazardous waste system, such as, for example, disposal through municipal sewer systems. These commenters suggested that the term implied that the only waste management system the agency was interested in removing hazardous wastes from was the municipal solid waste stream. The Agency agrees that the term ''municipal waste stream'' was too specific and could have been interpreted to prevent addition of wastes to the universal waste system that may be primarily managed in non-hazardous waste systems other than the municipal solid waste system. This was not the Agency's intent. Thus, the revised factor uses the term ''non-hazardous waste management systems'' and provides some examples to clarify this point.

In addition, the revised factor focuses more on a positive showing that regulation under the universal waste system will improve waste management, rather than a negative showing that the waste is being managed improperly. Several commenters argued that requiring such a negative showing would discourage potential petitioners from seeking the benefits of the universal waste system. For example, commenters argued that manufacturers and generators would not want to develop and submit data that demonstrate that their used products or wastes are ''problem'' wastes that are managed illegally and pose significant risks to human health or the environment. Requiring submission of such data would force petitioners to stigmatize their wastes, and could potentially subject them to significant liabilities in the future.

It should also be noted that diversion of unregulated portions of a waste, such as household waste and CESQG waste, from non-hazardous waste management systems could be a reason to add a waste to the universal waste system. For example, in some cases it may be likely that facilitating the collection of commingled regulated and unregulated waste would encourage development of collection systems that could divert significant quantities of the waste, including unregulated waste, from non-hazardous waste management systems. Such a showing would not require petitioners to focus on management of regulated waste in non-hazardous waste management systems.

IV.C.2.g. Final Factor 40 CFR 273.81(g)

Proposed factor 273.2(b)(5) addressing improved implementation of the hazardous waste program has been essentially retained in the final rule as § 273.81(g). Commenters supported the factor as proposed. The final factor has been revised only to clarify that improving compliance with the hazardous waste program is an important facet of improving implementation of the program. Thus, the final factor specifies that if regulation of a waste under the universal waste system is likely to improve both implementation and compliance, a waste would be a stronger candidate for addition to the system.

IV.C.2.h. Final Factor 40 CFR 273.81(h)

Finally, one commenter requested additional guidance on what other factors might be addressed under the proposed factors that discussed ''other appropriate information'' and ''such other factors as may be appropriate'' (proposed §§ 273.2(a)(6) and 273.2(b)(6)). These factors have been combined in the final rule as § 273.81(h), which addresses ''such other factors as may be appropriate.'' In response, there is no list of specific subjects that the Agency expects might be addressed under this factor. The Agency retained this factor because it believes that it is likely that for any particular waste or waste category there may be unique factors which would demonstrate that regulation under the universal waste system is: Appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. These unique factors might result from physical or chemical characteristics of the waste, characteristics of waste generators (e.g.,

organization or distribution of generators), characteristics of collection programs, or other aspects of the waste or its management. The Agency does not mean to imply that petitioners must address other factors, but believes that it is important to be able to take unique factors into account if such factors exist.

IV.C.2.i. Proposed Factors Not Included in the Final Rule

First, the proposed factor 273.2(a)(4), which addressed typical generation sites, is not included in the final rule. Commenters overwhelmingly argued that the proposed factor would unintentionally limit universal wastes because there are few wastes generated at such locations, and would limit universal wastes to wastes generated by small businesses, many of which would be CESQGs anyway. The Agency had intended that this factor would assist in identifying wastes that are generated in situations that make them more difficult to manage and thus the universal waste system could improve management. However, the Agency agrees that the proposed factor was overly restrictive, and that many wastes appropriate for the universal waste system may not be generated primarily at the types of locations described. The Agency recognizes that although universal wastes may frequently be generated by large organizations, due to the small quantity and type of waste generated at any one location, regulation under the universal waste system may be appropriate if the goals of the system would be advanced. Thus, the Agency decided to delete this factor. However, as discussed above, one concept from the proposed factor has been clarified and added to another final factor. Specifically, the idea that universal wastes are frequently generated in relatively small quantities by any one generator has been added to final § 273.81(c).

Second, the proposed factor 273.2(a)(5), which addressed the risk posed by management of the waste in the municipal waste stream (e.g., municipal waste combustors or landfills), is also not included in the final rule. The Agency agrees with numerous commenters who pointed out that any waste that has been identified as hazardous waste (i.e., is either listed or exhibits one or more characteristics), by definition could pose a risk to human health or the environment under non-hazardous waste management scenarios. The purpose of identifying wastes as hazardous waste is to identify those that pose such risks. Since only hazardous wastes are eligible for the universal waste system, the Agency decided it is not necessary to require any additional demonstration of risk for typical management scenarios. The Agency also agrees with commenters who argued that requiring such a demonstration of risk would inhibit petitioners because they would be unwilling to stigmatize their products or wastes or increase future liabilities by highlighting the risks posed by the products or wastes in non-hazardous management systems.

Third, the proposed factor 273.2(b)(4), which addressed the availability of recycling technologies, is also not included in the final rule. Commenters were divided on this issue, but the Agency agrees with several points made by commenters opposing the use of this factor. Several commenters argued that recycling technology is quickly developing and that the availability of volumes of input material is a major factor in driving this development. Thus, using the prior existence of recycling technology as a factor for adding wastes to the universal waste system may inhibit collection of volumes of potentially recyclable wastes and thus may actually inhibit development of technologies for recycling. The Agency thus believes it is appropriate to evaluate wastes for addition to the universal waste system based on other factors, such as whether waste management practices for a waste will be improved, regardless of whether the waste is recycled or treated and disposed of under existing Subtitle C requirements.

Other commenters argued that the environmental benefits of removing hazardous wastes from non-hazardous waste management systems should not be lost only because a recycling technology has not yet been developed for a particular waste type. Although the Agency encourages environmentally protective recycling of hazardous wastes, this argument is convincing. The Agency would prefer to get hazardous wastes out of non-hazardous waste management systems as soon as possible, rather than waiting for a recycling technology to develop, which in some cases may be technologically or economically unlikely.

IV.D. Participants in the Universal Waste System

The following three sections describe the four regulatory categories of participants in the final universal waste management system: Small quantity handlers of universal waste, large quantity handlers of universal waste, transporters, and destination facilities. The differences between these categories and the proposed categories of generators, consolidation points, transporters, and destination facilities are also described.

IV.D.1. Small and Large Quantity Handlers of Universal Waste

In the proposed rule, regulated persons managing universal waste were categorized into four categories: Generators, consolidation points, transporters, and destination facilities. In the final rule there are also four types of regulated persons. The transporter and destination facility categories are retained essentially as they were proposed. The persons who would have been included in the proposed generator and consolidation point categories will now fit into either the category of small quantity handlers of universal waste (SQHUWs) or the category of large quantity handlers of universal waste (LQHUWs).

Under 40 CFR 273.6 of the final rule, a Universal Waste Handler is defined to mean a generator of universal waste or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or a foreign destination. The Agency further clarifies the definition of Universal Waste Handler by stating that a Universal Waste Handler does not mean: (1) A person who treats (except under the provisions of § 273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles universal waste; or (2) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility (see preamble discussion under sections IV.E.8 of today's rule).

In the final rule, the term Universal Waste Handler is subdivided into two categories: Small Quantity Handler of Universal Waste (SQHUW) and Large Quantity Handler of Universal Waste (LQHUW). Part 273.6 defines a Small Quantity Handler of Universal Waste to mean a universal waste handler, as defined above, who does not accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time. A Large Quantity Handler of Universal Waste is defined in § 273.6 to mean a universal waste handler (as defined above) who accumulates 5,000 kilograms or more total of waste (batteries, pesticides, or thermostats, calculated collectively) at any time. The 5,000 kg accumulation cut-off level does not refer to *any one category* of universal waste, calculated separately but refers to the *total* quantity

of universal waste accumulated on-site. Thus, a universal waste handler who accumulates one or more categories of universal waste (batteries, pesticides, or thermostats) must determine their status as a small or large quantity handler of universal waste by calculating the *total* quantity of *all* universal waste categories accumulated on-site.

The Agency decided to make this change for several reasons. First, numerous commenters suggested that there should be a third category of universal waste handler: front-line collectors of universal waste who collect small quantities of universal waste, largely from consumers and small businesses. These commenters pointed out that such collectors would frequently be retail-type operations (e.g., a department or specialty store that has a spent battery collection box) participating in national or regional collection programs. Such front-line collectors would likely accumulate only small quantities of universal waste because they are not principally in the business of managing waste and because they would ship wastes frequently using package shipping services or similar systems set up by the collection programs.

These commenters argued that front-line collectors should be subject to less stringent requirements than the proposed consolidation point requirements for several reasons. One reason was that the universal waste they would have on-site would pose limited risk due to the small quantities involved. Another reason was that some of the requirements would inhibit the participation of many retail-type operations (such as the large retail chains) which would greatly limit the success of universal waste collection programs in removing these wastes from the solid waste stream.

The Agency agrees with the concept that the activities of persons such as front-line collectors managing small quantities of universal waste pose less risk and require less stringent standards than those managing larger quantities of universal waste. Therefore, instead of adding an additional category of front-line collectors with less stringent standards, the Agency decided to extend this concept to all persons both generating and collecting universal waste. Thus, under the final rule, persons accumulating large quantities of universal waste (5,000 kilograms or more accumulated on-site) are subject to more stringent requirements than persons accumulating small quantities.

The second reason the Agency decided to restructure the categories of persons managing universal wastes was in response to comments received on the issue of recordkeeping for universal waste shipments. The Agency had proposed that a manifest be required for shipments from final consolidation points to destination facilities, based on the concept that such shipments would be larger shipments and thus require closer tracking. In addition to other issues, a number of commenters pointed out that it is not necessarily true that shipments from consolidation points to destination facilities will be larger shipments. For example, shipments between consolidation points or between generators and destination facilities may also be large shipments.

The Agency agrees that it does not necessarily make sense from a risk perspective to require recordkeeping for certain shipments based solely on the type of universal waste management activity conducted by the shipper and receiver (i.e., whether the shipper generates or collects universal waste or whether the receiver collects or disposes of universal waste). The Agency believes that the appropriate variable for applying more stringent requirements is the quantity of waste managed, not whether waste is generated or received from off-site. Therefore, under the final rule the level of requirements applied to any handler (i.e., small or large quantity handler requirements) is based purely on how much universal waste is managed at the location. Requirements for SQHUWs and LQHUWs, including notification requirements are found in subparts B and C, respectively, of today's final rule. These requirements are discussed in detail in this preamble under section IV.E., Universal Waste Handler Requirements.

IV.D.2. Transporters

In the final rule, transporter is defined as ''a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.'' This definition remains substantially unchanged from the proposed definition, except that the term ''universal waste'' has replaced the term ''hazardous waste.'' Persons meeting the definition of transporter are subject to the universal waste transporter requirements of subpart D of part 273. Using the term ''universal waste'' merely clarifies that the part 273 transporter requirements apply only to shipments of universal waste.

The universe of persons covered by the transporter definition is the same as that covered by the proposed definition, and includes those persons who transport wastes from one universal waste handler to another, to a destination facility, or to a foreign destination. In response to several commenters' questions about self-transportation of universal waste by generators, the final rule also clarifies in 40 CFR 273.18(b) and 273.38(b) that any handler who self-transports universal waste from his facility to another handler, a destination facility, or a foreign destination, becomes a universal waste transporter for those self-transportation activities and is subject to the requirements of subpart D of this rule. The purpose of this language is simply to clarify, for any handlers who might be unsure, that a handler transporting his or her own universal waste off-site is regulated the same as anyone else would be transporting that universal waste off-site.

IV.D.3. Destination Facilities

In the proposed part 273 regulations, a destination facility was defined as ''a hazardous waste treatment, storage, recycling, or disposal facility which: (1) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter, or (3) is a recycler regulated under 40 CFR 261.6 (c)(2). If a waste is destined for a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.''

Many commenters argued that this definition should be revised to include only facilities that are actually recycling or disposing of universal wastes. For example, they argue that a facility that only receives shipments of used hazardous waste batteries, consolidates them, and then ships them to a recycling facility should not be defined to be a ''destination facility'' just because it is already a RCRA permitted or interim status facility due to other activities conducted at the facility. Commenters pointed out that non-permitted facilities conducting the exact same universal waste management activities would, under the proposed rule, be defined as consolidation points and would be subject to the less stringent consolidation point requirements. Commenters argued that it does not make sense to regulate facilities differently that are conducting the same universal waste management activities.

Commenters further noted that defining a destination facility in terms of whether or not it has a RCRA permit would require any facility operating under a RCRA Part B permit to manage this waste under the full Subtitle C

regulations instead of the less stringent requirements contained in the proposed part 273 regulations, whether or not they are actually treating or recycling the universal waste. Commenters also pointed out that this definition would provide an incentive for managing universal waste at unpermitted facilities with less experience in hazardous waste management and would inhibit management at permitted facilities that have hazardous waste management experience as well as oversight from regulating agencies. Commenters stated that although the proposed rule provided flexibility for most managers of universal waste, the proposed definition of destination facility would restrict the ability of permitted facilities to manage universal wastes.

The Agency agrees with these commenters and did not intend for the destination facility requirements under part 273 to apply to permitted hazardous waste facilities serving solely as consolidation areas for a particular category of universal waste. The Agency agrees that the more stringent destination facility requirements should apply only to those facilities that actually treat, recycle and/or dispose of a particular category of universal waste. Permitted facilities that only consolidate a particular category of universal waste, but do not treat, recycle, and/or dispose of this particular category of waste, should be subject to the small or large quantity handler of universal waste requirements under part 273, as appropriate. Thus these facilities would be subject to the same requirements as any other facility that conducts the same universal waste management activities.

Thus, in today's Final Rule, the definition of destination facility has been revised to clarify this point. In § 273.6 of the final rule, destination facility is defined as ''* * *a facility that treats, disposes of, or recycles a particular category of universal waste except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.'' By defining a destination facility based on the universal waste management activity conducted at the facility rather than by whether the facility has a RCRA permit for other waste management activities, the final rule indicates that only facilities that actually treat, dispose of, or recycle a particular category of universal waste must comply with the destination facility requirements at § 273.60. The universal waste handler definition (§ 273.6) has also been structured to conform to this change and includes all facilities that accumulate a particular category of universal waste but do not treat, dispose of, or recycle them. Thus, such facilities must comply with only the appropriate universal waste handler requirements for managing that particular category of universal waste regardless of whether they have a permit for management of other hazardous wastes or other categories of universal waste which they *do* treat, recycle, and/or dispose. Therefore, a facility which only accumulates a particular category of universal waste is a universal waste handler for that particular category of universal waste. However, if this facility also treats, recycles, and/or disposes of another category of universal waste, that facility is a destination facility for that particular category of universal waste and must comply with the destination facility requirements for that category of waste.

IV.E. Universal Waste Handler Requirements

As described in Section III, Summary of Final Universal Regulations, subparts B and C of part 273 set forth the final requirements for small and large quantity handlers of universal waste. Each of these subparts consists of ten sections. All but three of the sections include requirements that are the same for both small and large quantity handlers of universal waste. However, the notification and tracking sections for LQHUWs include regulatory requirements, while these same sections for SQHUWs merely explain that small quantity handlers are not subject to notification and tracking requirements. Also, the employee training section for large quantity handlers of universal waste includes more extensive requirements than does the employee training section for small quantity handlers of universal waste.

The requirements included in the final rule for each of the ten universal waste handler sections are discussed in detail in the following subsections of this preamble. Any changes made from the proposed rule, comments received on the proposed requirements, and the Agency's responses to these comments are also discussed.

IV.E.1. Prohibitions

In the proposed rule, the Agency proposed three prohibitions that were applicable to generators, transporters, and consolidation points managing universal waste. First, these handlers were prohibited from diluting or disposing of universal waste, except that the existing § 262.70 provision allowing farmers to dispose of waste pesticides from their own use on their own farms was retained. Second, handlers were prohibited from treating waste, except by removing electrolytes from batteries or responding to releases. Third, handlers were prohibited from sending or taking universal waste to a place other than a consolidation point, destination facility, or foreign destination. In the final rule, the three prohibitions have been revised in response to comment as discussed below, and are applied to small quantity handlers of universal waste, large quantity handlers of universal waste, and transporters of universal waste. The final prohibitions for small and large quantity handlers of universal waste are found, respectively, in §§ 273.11 and 273.31 of this final rule. The handlers to which the prohibitions apply under the final rule are the same as under the proposal since the universe of small and large quantity handlers of universal waste under the final rule is the same as the universe of generators and consolidation points under the proposal. (See section IV.D.1 of today's preamble for a full discussion of universal waste handlers).

IV.E.1.a. Prohibition on Disposal

The first proposed prohibition is related to dilution and disposal of universal waste and has essentially been retained in the final rule, although dilution has been moved and included in the second prohibition concerning treatment. Thus, the first prohibition now simply prohibits handlers from disposing of universal waste. In the proposal, farmers disposing of waste pesticides from their own use on their own farms, in compliance with 40 CFR 262.70 were exempted from the part 273 management standards. In the final rule, management under 40 CFR 262.70 is still permissible, however it is not written as an exemption. Part 273.3(b)(1) states that farmers using this exemption are not covered under part 273. As proposed, the 40 CFR 262.70 provision allowing farmers to dispose of waste pesticides from their own use on their own farms has been retained. Commenters generally did not disagree with the prohibition on disposal. A number of commenters added that the proposed prohibition on disposal is reasonable. Thus the Agency has retained the prohibition essentially as proposed at §§ 273.11 and 273.31 of today's final rule.

IV.E.1.b. Prohibition on Treatment

The second proposed prohibition on treatment of universal waste has been retained in the final rule, but several

revisions have been made. As mentioned above, the dilution prohibition was moved from the first prohibition and combined with the second treatment prohibition. This change clearly separates disposal activities from treatment activities, since dilution is a form of treatment. Further, by combining the treatment and dilution prohibitions into the same provision it is further clarified that exceptions identified to the treatment prohibition also apply to the dilution prohibition. Also, the proposed treatment prohibition included one exception allowing the removal of electrolyte from batteries as long as certain requirements were met. (See proposed §§ 273.11(d)(2) and 273.11(e)(1)). Commenters generally supported the exception on electrolyte removal. Thus, the substance of this exception has been retained. In the final rule, however, the electrolyte removal exception has been made part of a more general exception for routine battery management activities, which has been added for small and large quantity handlers of universal waste under sections 273.13(a)(2)(vii) and 273.33(a)(2)(vii). This more general exception allows handlers of universal waste batteries to conduct routine battery management activities as long as the casing of each individual battery is not breached and remains closed and intact.

Routine battery management activities include sorting batteries by type, mixing battery types in one container, discharging batteries, regenerating used batteries, disassembling battery packs, removing batteries from discarded consumer products, or removing electrolyte from batteries. The types of battery management activities that are allowed under the exception and the requirements that must be met are referenced in the prohibitions section and detailed in the waste management section. (See, for example, 40 CFR 273.11(b), 273.13(a)(2) and (3), and 273.33(a)(2) and (3) of the final rule.) The requirements for battery management are discussed further in section IV.E.3.a of the preamble, waste management.

Numerous commenters argued that the treatment prohibition could be construed to preclude persons collecting batteries from performing activities that are necessary and essential to battery collection and management. Second, commenters believed that such management activities do not pose an appreciable risk to the environment because the battery casings remain intact and thus there is no increase risk of exposure or release of battery contents to the environment. Finally, commenters argued that these activities are necessary to facilitate proper recycling. Therefore, the Agency has added text to the prohibitions section under § 273.11(b) which prohibits treatment of universal waste batteries except in response to releases or management of batteries as provided in §§ 273.13(a)(2) and 273.33(a)(2). These sections allow certain battery management activities provided that the casing of each individual battery is not breached and the battery remains closed and intact.

In response to comment, another exception to the treatment prohibition has been added to the final rule that allows certain thermostat management activities. This exception allows handlers to remove mercury-containing ampules from thermostats. As with the battery management exception, these activities must meet certain requirements referenced in the prohibitions section and detailed in the waste management section. (See, for example, 40 CFR 273.11(b), 273.13(c)(2) and (3), and 273.33(c)(2) and (3). The requirements for ampule removal are discussed further in section, IV.E.3.c, waste management, of today's preamble.

This exception for ampule removal has been added to the final rule in response to a comment. The commenter argued that all the mercury is located within the ampule not the entire thermostat and, therefore, only the mercury ampule, not the entire used mercury containing thermostat, should be regulated. The commenter also argued that removal of used mercury ampules from the thermostats will be done by trained personnel in a setting where appropriate health and safety measures have been instituted. The Agency agrees with the commenter and has included a thermostat management exception for small and large quantity handlers of universal waste, 40 CFR 273.13(c) and 40 CFR 273.33(c), who conduct mercury ampule removal activities, provided that they meet the regulatory provisions of part 273 for mercury ampule removal. For further discussion regarding mercury ampule removal, please refer to section IV.E.3.c, waste management.

Finally, some commenters were concerned that the proposed treatment prohibition, for all universal waste types, unfairly limited universal waste management activities of generators. These commenters stated that under full Subtitle C regulation, generators are allowed to treat hazardous waste in accumulation containers (§ 262.34(a) and (d)), therefore, compliance with full Subtitle C requirements is less restrictive for generators than the streamlined part 273 standards. The Agency disagrees with the commenters and revises the prohibition provisions of today's final rule with the modifications mentioned above. The Agency points out that the existing accumulation provisions are available only to regulated generators who have EPA identification numbers and are complying with the full part 262 requirements including 90- or 180-day accumulation time limits (and permitting for exceeding these limits), 40 CFR 262.34 accumulation unit standards, biennial reports, and manifests. The Agency does not believe it is appropriate to allow a similar provision for generators who are not required to comply with the part 262 controls, but are instead following the streamlined requirements of the universal waste regulations.

IV.E.1.c. Prohibition on Shipments of Universal Wastes

The third proposed prohibition on sending or taking universal waste to a place other than specifically identified locations (e.g., generators could take their universal waste only to a consolidation point, destination facility, or foreign destination) has been substantially retained in the final rule, with minor modifications. In the final rule, this prohibition has been moved to new sections entitled off-site shipments. (See 40 CFR 273.18(a) and 273.38(a).) In the final rule, this provision has been revised to fit the categories of universal waste handlers used in the final rule. (See section IV.D.1 of today's preamble for a full discussion on universal waste handlers). The prohibition has been substantially retained in the final rule, but has been modified to allow shipment to any universal waste handler. The off-site shipment prohibition is discussed in detail in section IV.E.8 of this preamble entitled off-site shipments.

IV.E.2. Notification

In the proposed rule, the Agency required generators and consolidation points accumulating more than 20,000 kg of hazardous waste batteries at any time to notify EPA of their waste management activities. EPA requested comment on the proposed approach not to require generators of universal waste pesticides to notify, and the proposed notification quantity limits.

The notification requirement in the proposed rule consisted of a letter to the EPA Regional Administrator identifying the generator's facility. Specifically, generators and consolidation points accumulating more than 20,000 kg of hazardous waste batteries at any one

time were required to send a one-time written notification to the EPA Regional Administrator describing their hazardous waste battery accumulation activities. EPA would then assign an EPA identification number. Information required in the written notification included: (1) The generator's or consolidation point's name and mailing address; (2) the name and business telephone number of the person at the generator's or consolidation point's site who should be contacted regarding the battery accumulation activity; (3) the address or physical location of the battery accumulation activity; and (4) a statement indicating that the generator or consolidation point accumulates more than 20,000 kilograms of hazardous waste batteries. Alternately, a generator or consolidation point could apply to the EPA Regional Administrator using EPA Form 8700–12, ''Notification of Regulated Waste Activity,'' and checking the appropriate box indicating that they are a hazardous waste generator or consolidation point.

The Agency did not propose notification requirements for generators and consolidation points handling *only* hazardous waste pesticides that are suspended and/or canceled and recalled. As discussed in the preamble to the proposed rule (58 FR 8121), the Agency considered the requirements for identifying recall participants and recordkeeping, authorized by FIFRA section 19(b), to provide sufficient information concerning the identity and location of persons managing these pesticides. In addition, FIFRA section 6(g) requires notice to EPA and appropriate state and local officials of the location, quantities, and possession of pesticides that are suspended or canceled under FIFRA section 6.

Based on commenters' support for the Agency's decision not to require the part 273 notification requirements for generators or consolidation points accumulating recalled pesticides, the Agency has decided to retain this exemption. Thus, under the final rule a person who handles only (e.g., does not manage other universal waste) recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) and who has sent notification to EPA as required under FIFRA section 19(b) and 6(g) is not required to notify under § 273.32 of today's rule.

In the final rule, the Agency has also decided to retain the notification provisions for hazardous waste batteries found in the proposed rule, with some minor revisions. In the final rule, the notification requirements have been modified by: (1) Expanding the notification requirements to accommodate additions to the applicability section of the rule; (2) incorporating the revisions made in the final rule regarding the categorization of generators and consolidation points; (3) reducing the 20,000 kilogram cut-off level for notification; and (4) clarifying that cut-off for the notification requirements apply on a ''site-by-site'' basis. These modifications are discussed below.

First, the Agency has broadened the applicability of the final rule to include, along with hazardous waste batteries, unused pesticide products and used mercury-containing thermostats. Thus, in the final rule, notification requirements previously required only for hazardous waste batteries also apply to unused pesticide products and used mercury-containing thermostats under §§ 273.3 and 273.4 respectively. A full discussion regarding the expansion of the universal waste rule to unused pesticides products and used mercury-containing thermostats can be found in sections IV.E.3.b and IV.E.3.c, respectively, of today's preamble.

Second, the final rule has been revised from the proposed rule such that generators and consolidation points are now designated as universal waste handlers. The persons who would have been included in the proposed generator and consolidation point categories will now fit into either the category of small quantity handlers of universal waste (defined in § 273.6 as a universal waste handler who accumulates less than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time) or the category of large quantity handlers of universal waste (defined as in § 273.6 as a universal waste handler who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time). Thus, under the final rule, universal waste handlers accumulating large quantities of universal waste are subject to more stringent requirements than persons accumulating small quantities.

The Agency believes that the appropriate variable for applying more stringent requirements is the quantity of waste managed, not whether the waste is generated or collected. The Agency selected 5,000 kilograms of accumulated waste as the cutoff for this notification requirement (i.e., as the cut-off between small and large quantity handlers of universal waste) because the universal waste rule is designed for wastes that present a relatively low risk during collection (compared to other hazardous waste), and thus it is appropriate to have a higher cut off limit for this notification requirement than applies under the full hazardous waste regulations (i.e., the conditionally exempt small quantity generator limit of 1,000 kg). Further information regarding small and large quantity handlers of universal waste, can be found in section IV.D.1 of the preamble.

A third modification made to the notification requirements reduces the notification cut-off level from 20,000 kilograms to 5,000 kilograms total of universal waste. In the proposal, as stated above, generators or consolidation points accumulating more than 20,000 kilograms of universal waste batteries would have been required to notify EPA. Under today's final rule, the applicability of part 273 has been expanded to also include unused pesticide products and thermostats. Thus, under the final rule, universal waste handlers accumulating 5,000 kilograms or more total of universal waste (batteries, pesticides, or thermostats) at any one time are required to notify EPA of this activity. Therefore, a universal waste handler who accumulates 5,000 kilograms or more total of universal waste at any one time is designated a large quantity handler of universal waste and is subject to the notification requirements of 40 CFR 273.32. However, a universal waste handler who does not accumulate 5,000 kilograms total of universal waste (e.g., batteries, pesticides, or thermostats, calculated collectively, at any one time) is designated a small quantity handler of universal waste and is not subject to any notification requirements under part 273. The Agency points out that since the universe for generators and consolidation points and universal waste handlers are the same, the only difference between the proposed notification requirements and the notification requirements of this final rule is the cut-off level. Thus, the notification provisions in today's rule have not changed substantially. In addition, as explained previously, handlers of recalled pesticides only need notify if they have not already notified under FIFRA.

The Agency's decision to reduce the cut-off level was based on recommendations by a number of commenters. Although some commenters generally supported the 20,000 kilogram cut-off level, several commenters recommended that EPA reduce the level because the 20,000 kilogram cut-off was excessive and that most generators or consolidation points would not accumulate such large amounts of universal waste. These commenters suggested reducing the

notification quantity limit to 1,000 kilograms. Another commenter recommended reducing the 20,000 kilogram notification limit to 5,000 kilograms total because the reduction eliminates the small one-time collections and average size generators while ensuring that regulatory agencies are aware of the larger generators and more permanent consolidation points. The Agency agrees with the commenter and believes that such a quantity level is appropriate. EPA believes that the amount of universal waste that a facility is accumulating is a good indicator of the quantities of waste that the facility is handling, is easily verified by regulating agencies through an inspection of the facility, and is a good indicator of the risk posed by management of universal waste at the facility.

The Agency also believes that the 5,000 kilogram quantity limit will not obstruct people managing universal waste from participating in the universal waste collection program because the recordkeeping requirements for large quantity handlers of universal waste is basic enough to be fulfilled by standard business records. Thus, handlers will arrange universal waste management activities to achieve efficiency rather than to avoid regulatory requirements. To achieve efficiency, those facilities handling large quantities in short periods of time will naturally accumulate these large quantities in order to take advantage of the economies of scale available from making fewer large shipments of universal waste, as opposed to numerous small shipments. The Agency, however, would like to emphasize that all handlers who anticipate accumulating 5,000 kilograms or more total of universal hazardous waste at any one time must send written notification to the Regional Administrator, and receive an EPA Identification Number before exceeding the 5,000 kg quantity limit.

Finally, the Agency has clarified in the final rule that the notification requirement is a one-time notification for facilities accumulating 5,000 kilograms or more total of universal waste, calculated collectively on-site. The Agency believes clarification is necessary because a number of commenters raised the question of whether or not notification is necessary only when a particular site exceeds the cut-off limit or if notification is required if an entire company accumulates greater than the cut-off limit at all of its sites combined. Commenters specifically recommended that the cut-off figure apply on a location, or ''site-by-site'' basis and not on a company-wide basis. The Agency agrees with commenters' recommendation to require notification on a ''site-by-site'' basis only. The Agency believes the notification requirement in the proposed rule, and in today's final rule, already addresses this concern. In addition, the Agency clarifies that renotification is not required for large quantity handlers who have previously notified. This means that if a large quantity handler of universal waste has already notified EPA of his hazardous waste management activities and has received an EPA identification number, he is not required to re-notify under 40 CFR 273.32.

The final rule maintains the notification requirements of the proposal, but has reduced the 20,000 kilogram cut-off level to 5,000 kilograms as discussed previously. The notification requirements of § 273.32 recognize that a person may own several non-contiguous properties which accumulate universal waste independently of each other. The notification requirement under § 273.32 does not require a company owning non-contiguous properties to add together the total quantity of universal waste accumulated at each non-contiguous property and subsequently notify EPA if the total quantity of universal waste for all non-contiguous properties equals or exceeds 5,000 kilograms.

As written, the 5,000 kilogram cut-off level applies only to the total amount of all categories of universal waste accumulated at one site. Non-contiguous property is viewed as a separate site. Thus, a person who owns or operates two or more universal waste management facilities located on pieces of property which are non-contiguous should not add together the quantities of all universal waste accumulated at all of his facilities to determine if he exceeds the 5000 kilogram cut-off level. Owners or operators should consider each facility separately and is responsible for calculating the quantity of universal waste at each facility separately. If the 5,000 kg cut-off level is exceeded for the universal waste accumulated at one facility, he would be required to notify EPA of his universal waste activities. If the quantity of universal waste at this facility is less than the 5,000 kg cut-off, notification would not be necessary. In other words, the owner or operator of a facility, including all contiguous property, that accumulates 5,000 kilograms or more total of universal waste, is subject to the notification requirements of § 273.32.

On the other hand, non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are considered on-site property. Thus, a person who owns or operates two or more universal waste management facilities located on pieces of property which are connected by a right-of-way which he controls and to which the public does not have access, should add together the quantities of all universal waste accumulated at these facilities to determine if he exceeds the 5000 kilogram cut-off level. If the quantity of universal waste at his on-site facilities is greater than the 5,000 kg cut-off, notification would be necessary, if the owner has not already notified. The Agency believes that this clarification will redress any further confusion caused by the proposed notification requirements.

IV.E.3. Waste Management

The final waste management requirements for small and large handlers of universal waste are found in §§ 273.13 and 273.33 of this final rule. The subsections of §§ 273.13 and 273.33 address waste management issues specific to each waste category. Subsection (a) consists of requirements for universal waste battery management, subsection (b) consists of requirements for universal waste pesticide management, and subsection (c) consists of requirements for universal waste thermostat management. The three waste category-specific provisions are discussed in the following three subsections of this preamble.

Each of the subsections set forth a general performance standard requiring that handlers ''manage universal waste in a way that prevents releases of any universal waste or component of a universal waste to the environment.'' The universal waste proposal included a similar provision, which was proposed for management of universal waste batteries. The proposed provision, however, required that persons manage batteries ''in a way that *minimizes* releases* * *'' Several commenters argued that the requirement to minimize releases was too lax and in essence allowed releases. They pointed out that such a standard implied that releases could occur, as long as the handler attempted to minimize them. These commenters suggested that the standard should be changed to require management in such a way that *prevents* releases. The Agency agrees with this point, and stresses that releases of universal waste or universal waste components to the environment *are not* allowed under the universal waste

regulations. For example, management in a container that has signs of visible leakage would unquestionably be out of compliance. The standard of performance for universal waste management is to prevent *any* release and therefore, leakages that are not visible are also not permissible. Thus, the Agency has revised the text of the provision to clarify that universal waste batteries, pesticides and thermostats are to be managed in such a way as to *prevent* releases.

In the final rule, this performance standard is applied to all universal waste rather than only to batteries. Thermostats are included because the Agency had discussed applying the proposed requirements for battery management to thermostats and commenters generally supported this approach. Pesticides are included simply to make it clear that releases are to be prevented, although this requirement is actually redundant.

IV.E.3.a. Universal Waste Batteries

Subsection (a) of the small and large quantity handlers of universal waste management sections sets forth requirements for the management of universal waste batteries. Three provisions are included.

The first provision of §§ 273.13(a)(1) and 273.33(a)(1) address containment of leaking or damaged batteries. The Agency added this provision to the final rule after reviewing comments on the issue of waste management requirements for batteries. Commenters disagreed on this subject. A number of commenters argued that the management requirements proposed for batteries were sufficient to ensure that universal waste battery management will be protective of human health and the environment. They believed that the general performance standard concerning releases and the prohibitions were sufficient and urged the Agency not to impose additional waste management requirements. In fact, several commenters argued that batteries should be subject to regulations like those of subpart G of 40 CFR part 266, which includes no requirements for handlers other than recyclers.

Several other commenters, however, argued that more stringent controls should be imposed on battery waste management. They believed that the proposed general performance standard and other requirements were inadequate to protect against environmental damage. These commenters recommended various additional requirements including accumulation of batteries on surfaces that can contain releases, detailed employee training, financial assurance, temperature and ventilation controls, water run-on and run-off controls, fire/explosion and security precautions.

In response to these comments the Agency has decided to add to the final rule a containment provision requiring that handlers ''contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.'' This means that the containers must be in good condition (no severe rusting, apparent structural defects, or deterioration). The Agency believes that this requirement will ensure that any potential releases to the environment from universal waste batteries are prevented. The Agency further believes that this requirement is specific enough to provide clear direction to handlers of universal waste batteries on how to prevent releases. Because the requirement is not technically difficult to follow, the Agency is confident that universal waste handlers will be able to comply. Although the Agency has added this new containment requirement for batteries, the Agency is sensitive to concerns that overly burdensome requirements will discourage participation in the universal waste system, resulting in decreased quantities of these wastes being collected for proper management. The Agency is confident that this requirement is rigorous enough to protect human health and the environment from the risks of battery management, but at the same time will not present a barrier to participation in universal waste collection programs.

The second provision of the waste management section for batteries, §§ 273.13(a)(2) and 273.33(a)(2), specifies conditions that must be met by handlers conducting these activities. This provision also identifies certain battery management activities that may be conducted by handlers. This provision was added in response to numerous commenters who all argued that certain activities that might be considered treatment, and thus banned under the prohibition on treatment of universal waste, are necessary to quality battery management and pose no increased health or environmental risks. Commenters mentioned the following activities: sorting batteries by type; mixing battery types in one container; discharging batteries so as to remove the electric charge; disassembling batteries or battery packs into individual batteries or cells; and removing batteries from discarded consumer products. According to these commenters, these activities are essential to effective battery management. For example, battery types are mixed in containers at collection points to avoid the complexity of requiring those dropping off batteries to identify and manage battery types separately. Collected mixed batteries must be sorted by type in order to send them to the appropriate destination facilities for proper recycling or treatment. Batteries must be removed from discarded consumer products to make shipping and handling economical. Discharging batteries may be conducted as a safety precaution prior to accumulation or shipping.

The Agency agrees with commenters that these activities are an important part of battery management and should be allowed under the universal waste regulations. The Agency also agrees with commenters' point that as long as the metal or plastic casing of each individual battery or cell is not breached and remains closed and intact, the risk of releases to the environment is not increased by these activities. Thus, the Agency has added this new provision to the final rule specifying that handlers may conduct the battery management activities listed above as long as the battery or cell casings are not breached and remain closed and intact.

The Agency notes that it has removed the 40 CFR 261.6 exemption for used batteries that are to be regenerated and has added a provision specifying that facilities regenerating used batteries are subject to the part 273 standards for small or large quantity handlers of universal waste. The Agency believes that regeneration of batteries is a management activity that should also be exempted from the treatment prohibitions. Thus, regeneration of used batteries has also been included as part of the management activities mentioned above for universal waste batteries (For further discussion regarding regenerated batteries, please refer to section IV.J of the preamble). To resolve commenters' concerns that these activities might be banned under the general prohibition on treatment, in the final rule the Agency has also revised the treatment prohibition to specifically exempt these activities. Removing electrolyte, which was allowed under the proposed rule and not opposed by commenters, has also been included in this provision as an allowable activity.

The third provision of the waste management section for batteries

273.13(a)(3) and 273.33(a)(3), has been expanded from a proposed provision discussing how electrolyte removed from batteries is regulated (see, for example, proposed 40 CFR 273.11(e)(1)). The final provision has been expanded to address not only electrolyte, but any non-universal waste generated in the process of managing universal wastes. These non-universal wastes could include any solid waste generated in the battery management activities discussed above (e.g., plastic or metal battery pack construction materials or consumer electronics hulks from which batteries have been removed). The provision has been expanded to address these other wastes because commenters raised the issue of battery management activities and the same issues arise with wastes generated in these activities as with electrolyte.

In addition, this provision has been expanded to address the question raised by commenters of how electrolyte (and other generated non-universal wastes) would fit into the hazardous waste regulations. Under the final rule the handler who generates hazardous waste electrolyte or other hazardous wastes are subject to the generator requirements of 40 CFR part 262. Compliance with the generator regulations of part 262 is appropriate because a generator begins the hazardous waste management procedures (e.g., manifesting, shipping to regulated facilities), which is what would be required for a non-universal waste generated as a result of universal waste management which must be moved into the full hazardous waste regulatory system.

Finally, this provision has also been expanded to clarify that if electrolyte or any other generated non-universal wastes are not hazardous wastes, they may be managed under applicable solid waste management regulations. This is always true under the hazardous waste regulations, but the Agency believes that restating this will make the regulations more clear and user friendly for battery handlers.

IV.E.3.b. Universal Waste Pesticides

In the proposed universal waste rule, the Agency proposed that suspended and/or canceled and recalled pesticides managed under the universal waste regulations must be packaged to meet one of the following four conditions: (1) The pesticide must be packaged in the original packaging (container or tank) used to contain the pesticide when it was being distributed or sold, which must be kept closed and not leaking; (2) the pesticide must be packaged in the original packaging and overpacked in a larger container that is closed and non-leaking; (3) the pesticides must be contained in a tank that meets the hazardous waste tank requirements; or (4) the pesticides must be contained in a non-leaking transport vehicle or vessel. The Agency also requested comment on whether the regulations should allow handlers of recalled pesticides to repackage universal waste pesticides from original packaging into other containers (i.e., physically transfer the pesticide from its original packaging into a different container).

In the final rule, the first, second, and fourth options for packaging have been substantially revised in response to comments. The third option, on which very little comment was received, has been retained as proposed. In addition, because the universe of pesticides included in the final rule has been expanded (see discussion in section IV.B.2.c. of this preamble), the packaging requirements in the final rule are applicable to unused pesticide products collected in collection programs as well as to suspended and/or canceled and recalled pesticides.

The first and second proposed packaging options (which were the only available options if a pesticide was to be managed in containers or portable tanks rather than tanks or transport vehicles), essentially required that the pesticide remain in the original packaging used when it was distributed or sold. If the original packaging was leaking, the second option required that it be overpacked in a larger, non-leaking container. However, both options required that original packaging be used. (See proposed 40 CFR 273.22(a)(1)(i) and 273.23(a)(1)(i).)

In the final rule, these packaging options have been substantially revised to allow management of pesticides in containers other than original packaging, as long as certain conditions are met. Specifically, the first revised option allows pesticides to be managed in ''a container that remains closed, is structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.'' See 40 CFR 273.13(b)(1) and 273.33(b)(1) of the final rule. The second revised option requires that a pesticide managed in a container not meeting the conditions of the first option be overpacked in a container that does meet the requirements of the first option. See 40 CFR 273.13(b)(2) and 273.33(b)(2) of the final rule.

The result of these revisions is that any universal waste pesticide that is managed in a container must be managed in a container that is in good condition (no severe rusting, apparent structural defects, or deterioration). The good-condition container may be the primary container (under the first option), or if the primary container is not acceptable, a good-condition container may be used to overpack the primary container (i.e., the primary container is placed into a good-condition overpack container). It should be noted that although original packaging is no longer required under these revisions, original packaging may be used to contain pesticides as long as the original packaging meets the conditions set forth in the options.

The Agency's decision to allow the use of packaging other than original packaging was based on a couple of factors. First, a number of commenters pointed out that a significant portion of waste pesticides found on farms (both recalled pesticides, and unused pesticide products collected in ''clean sweep'' programs) are in containers other than the original container. In most cases, the original containers for these pesticides are no longer available. Commenters argued that limiting the universal waste rule to those pesticides for which the original container is available would severely limit the quantities of waste that could be managed under the universal waste system. In turn, this would decrease the amounts of pesticides collected from farmers and others for proper management. Commenters argued that the risks of releases of these pesticides are likely to be less under the universal waste regulations than under conditions of long term accumulation on farms, particularly if the regulations ensure management in good-condition, non-leaking containers.

The Agency notes that its intent in requiring original packaging was to ensure that pesticides were managed in appropriate containers. The Agency believed that original packaging was most likely to remain in good condition since it was designed to store the pesticide during its product life. However, based on the comments received, the Agency now believes that requiring original packaging would unnecessarily limit the pesticides that can be managed under the universal waste system, and, at the same time, would not necessarily ensure adequate containment. Thus, the Agency has developed revised packaging requirements for containers that ensure that pesticides are managed in containers that are protective of human health and the environment, and that pesticides are not prohibited from management under the universal waste system merely because the original packaging is no longer available. The

Agency agrees with commenters' points and believes that the revised packaging requirements for containers are environmentally protective, but flexible enough to accommodate pesticides collected under recalls as well as waste pesticide collection programs (''clean sweeps'').

Second, a number of other commenters argued that the proposed requirements to keep pesticides in original containers that are closed and non-leaking were not sufficiently protective. These commenters pointed out that cancellation may sometimes follow suspension by a considerable period of time, and that pesticide containers may not be properly maintained over this time period. Similarly, pesticides collected in ''clean sweep'' programs have frequently been accumulated for long periods of time. As a result, such containers may deteriorate or be damaged. These commenters believed that the proposed packaging provisions requiring that pesticides be kept in closed and non-leaking containers could be construed to allow the use of original containers that are damaged, but not yet actually leaking. Although the Agency did not intend to allow the use of damaged containers, the Agency agrees that the proposed language could have been interpreted to allow such containers. To resolve this problem, under the final rule universal waste pesticides must be contained in containers (or overpack containers) that remain closed, are structurally sound, compatible with the pesticides, and that lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The Agency believes that this requirement provides sufficient insurance that pesticide containers will be protective of human health and the environment.

The same conditions have also been added to the fourth packaging option, which as proposed, allowed the used of ''non-leaking transport vehicles or vessels.'' This provision has been revised in the same way as the first two options since the ''non-leaking'' condition raises the same issue as the proposed non-leaking container requirements. To resolve the concern that damaged, but not yet leaking transport vehicles or vessels could be used to contain pesticides, the final rule requires that handlers use a transport vehicle or vessel that is ''closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.''

The final rule has also been revised to clarify when overpacking is required for pesticide containers in response to confusion cited by some commenters regarding these requirements in the proposal. The Agency believes that the wording of the second revised packaging option makes it clear that overpacking is required when the primary container does not meet the good-condition requirements found in the first revised packaging condition. The Agency believes that this regulatory structure will be more clear to the reader than the proposed regulatory structure.

Several commenters addressed the question of whether the universal waste regulations should allow universal waste handlers to repackage pesticides (i.e., to transfer pesticides from one container to another). Most of these commenters supported allowing repackaging. The Agency generally prefers that handlers overpack leaking or damaged containers rather than transfer the pesticide to another container because the risk of spillage is likely to be less when overpacking. However, the Agency recognizes that in some cases, for example if no overpack materials are available, it may be preferable to repackage pesticides than to wait until overpacking is possible. In addition, there are other controls that will ensure that any repackaging of universal waste pesticides is conducted in an environmentally protective manner. For recalled pesticides, the recall procedures under FIFRA section 19b addresses repackaging. For example, under proposed regulations at 40 CFR part 165 (58 FR 26857; May 5, 1993) pesticide recallers would submit a recall plan for approval by the Agency. Part of the plan would include a description of the responsibilities of the recaller and pesticide holders with respect to interim storage, preparation for transportation, and transportation of the pesticide.

For unused pesticide products managed in collection programs, the pesticide management procedures required by the collection program will generally address repackaging and, if allowed, will specify precautions to be taken during repackaging. Because repackaging may be an important method of cost control for collection programs (e.g., consolidation of small containers of the same pesticide), the Agency does not wish to interfere with these practices. The Agency believes that waste pesticide collection programs will develop responsible procedures and would like to leave the decision of whether to allow repackaging, and what requirements to impose, to the collection programs or States.

Based on these factors, the Agency has decided not to prohibit repackaging in the final universal waste regulations. The Agency points out, of course, that any spillage of universal waste pesticide is required to be cleaned up immediately and managed appropriately under the universal waste release response provisions. The Agency also notes that any spillage that is not cleaned up would be considered illegal disposal under the hazardous waste regulations.

IV.E.3.c. Universal Waste Thermostats

In the proposed rule, the Agency requested comment on whether the waste management requirements proposed for universal waste batteries would be appropriate for managing mercury-containing thermostats. The Agency also requested comment on any additional requirements necessary to ensure that thermostats are collected in a manner that is protective of human health and the environment.

With the exception of one issue concerning mercury-containing ampule removal, commenters overwhelmingly supported applying the requirements proposed for universal waste batteries to used mercury-containing thermostats. These commenters agreed that the proposed part 273 requirements would facilitate collection and recycling of the mercury contained in the thermostats. Thus, in the final rule, persons managing universal waste thermostats are subject to the same basic requirements as persons managing other universal wastes: Requirements for small and large quantity handlers, transporters, and destination facilities. Specific waste management requirements have been added to the small and large quantity handler sections to address one commenter's concerns about ampule removal.

A manufacturer of thermostats who is developing a ''take back'' program for mercury-containing thermostats did suggest that some modifications to the waste management requirements proposed for batteries were necessary to reflect differences between the proposed waste mercury thermostat recycling program and procedures envisioned for battery recycling programs. The commenter expressed concerns as to whether the waste management provisions proposed for universal waste batteries would be sufficiently protective of human health and the environment if applied to the management of mercury-containing thermostats. Commenters recommended that for safety reasons, such removal

should only be performed by trained personnel in a setting where appropriate health and safety measures have been instituted.

Paragraph (c) of §§ 273.13 and 273.33 include requirements applicable to handlers of used mercury-containing thermostats. Subsection (c)(1) requires a universal waste handler to contain any universal waste thermostat that is leaking in a non-leaking container. Subsection (c)(2) sets forth requirements for universal waste handlers who remove mercury-containing ampules from thermostats. These requirements, based on controls suggested by the commenter, are designed to ensure that ampule removal is conducted in a safe and environmentally protective manner.

First, the handler must remove the ampules in a manner designed to prevent breakage of the ampules. Second, he must remove the ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage). Third, he must ensure that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34. Fourth, he must immediately transfer any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34. Fifth, he must ensure that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury. Sixth, he must ensure that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers. Seventh, he must accumulate removed ampules in closed, non-leaking containers that are in good condition (no severe rusting, apparent structural defects, or deterioration); and finally, eighth, he must pack removed ampules in the container with packing materials adequate to prevent breakage during accumulation, handling, and transportation. Handlers not complying with these requirements for ampule removal are not managing universal waste, and are not subject to part 273. They are subject to the full hazardous waste requirement of parts 262 through 270. The Agency believes that these procedures ensure that the handler is removing the mercury ampule from the thermostat casing in a manner designed to prevent breakage of the ampules and to ensure proper containment of any spilled or leaked mercury.

The Agency recognizes that in some cases, spills or leaks resulting from ampule removal may occur. Thus, the Agency has added paragraph (c)(3) in §§ 273.13 and 273.33 to address concerns related to mercury residuals generated as a result of removal of mercury ampules from the thermostats. If spillage or leakage of mercury from a broken ampule or during ampule removal occurs, the handler must contain any universal waste thermostat that is leaking in a non-leaking container. A universal waste handler must determine whether such spillage or leakage exhibits a characteristic of hazardous waste. If the waste does exhibit a characteristic of hazardous waste, the handler is considered the generator of the mercury resulting from spills or leaks and is subject to all applicable requirements of 40 CFR parts 260 through 272, including 40 CFR part 262.

Similar to the battery waste management requirements, the handler must also determine whether or not any other solid waste (e.g., thermostat casing) generated during management activities exhibits a characteristic of hazardous waste. If the generated waste does exhibit a characteristic of hazardous waste, it must be managed under the hazardous waste management requirements mentioned above. If, however, the generated waste does not exhibit a characteristic of hazardous waste, it is not subject to the hazardous waste requirements, nor is it subject to the requirements of part 273. This waste is, however, required to be handled in compliance with applicable solid waste regulations and the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations. The Agency believes the specific requirements for ampule removal address the commenter's concerns regarding the improper removal of used mercury-containing ampules and ensure that such activities are safe and environmentally protective.

The Agency clarifies that if a handler determines that some waste he or she is managing as universal waste is actually not hazardous waste (and thus by definition is not universal waste), and it is therefore not required to be managed under the hazardous waste regulations, including the universal waste regulations. For example, a handler who receives shipments of mixed battery types may sort the batteries to separate the various battery chemistries. If one of the sorted battery types does not exhibit any characteristics of hazardous waste, it is not a hazardous waste and the handler may wish to manage it outside of the hazardous waste regulations.

IV.E.4. Labeling/Marking

In response to suggestions from commenters that the Agency include marking and labeling requirements in the part 273 regulations, the Agency has decided to implement marking and labeling requirements that were not proposed. Although commenters agreed that some form of labeling and marking requirement be required, commenters' recommendations on methods used to identify the materials contained within the tanks or containers differed. For example, one commenter suggested that EPA should require that all tanks or containers be marked with the words ''hazardous waste'', ''hazardous material'' or ''waste destined for recycling''. Another recommended that if the intent of the universal waste rule is to divert wastes into the recycle stream, the waste should not be labelled ''universal hazardous waste'', but simply ''Universal Waste.''

Under the final rule, labeling and marking requirements for universal waste have been included to identify the types of universal waste being managed. The Agency has added labeling and marking requirements for universal waste batteries, universal waste mercury-containing thermostats, and universal waste pesticides. The labeling requirements vary depending on the type of waste. These requirements are found in §§ 273.14 and 273.34 of the final rule. Paragraph (a) of these sections discusses the marking and labeling requirements for universal waste batteries. Under the final rule, a universal handler managing batteries at his facility is required to label each individual universal waste item or container holding the universal waste with the words ''Universal Waste—Battery(ies)'', or ''Waste Battery(ies)'', or ''Used Battery(ies).'' Similarly, a universal waste handler managing used mercury-containing thermostats under part 273 must label each universal waste item or container holding these universal wastes, with the words ''Universal Waste—Mercury Thermostat(s)'' or ''Waste Mercury Thermostat(s)'' or ''Used Mercury Thermostat(s).'' These requirements are in paragraph (d) of §§ 273.14 and 273.34 of the final rule.

Labeling and marking requirements similar to those described above for universal waste batteries and thermostats apply also to universal waste pesticides. Thus, a person managing universal pesticides must

mark or label his containers with the words ''Universal Waste—Pesticide(s)'' or ''Waste—Pesticide(s).'' Refer to § 273.14(c)(2) or § 273.34(c)(2). However, because there are many types of pesticides posing different management issues, the Agency has decided to require more specific labeling for pesticides in addition to the more general label discussed above. Due to differences in management practices between universal waste pesticides that are a part of a recall and pesticides that are a part of a state approved collection program, the requirements for each type of pesticide are different. Universal waste handlers managing recalled pesticides are required to mark or label tanks or containers holding the recalled pesticide with the original FIFRA label that would be required under FIFRA if the pesticide were a product (refer to § 273.14(b)(1)). While pesticides in a recall may be located at the individual user level, a larger volume is likely to be recalled from the dealer/retailer level. Pesticides shipped to dealers by producers are often sent in multiple container package units. For example, individual containers may be shipped grouped together in cartons and/or palleted and shrink-wrapped in plastic. This extra packaging (e.g., shrink-wrap, carton) typically is removed only at the time of sale. In the recall process, these multiple container package units would normally be shipped back intact. To require pesticide containers to be individually labeled as waste pesticides would require the dealer to break open such multiple package units to access the individual containers. EPA believes it is unnecessary to require that such multiple container package units be individually labeled merely for the purpose of being shipped to another universal waste handler as part of a recall. Accordingly, 40 CFR 273.14(b) permits the required label or marking to be placed on the outer packaging of multiple container packaged units.

On the other hand, unused pesticides that are universal wastes are typically products whose registration has been cancelled, which are no longer marketed, or no longer used by the farmer. Existing stocks often remain at the user level for extended times, sometimes years, because there is no formal recall in these circumstances. State collection programs are intended to collect and properly dispose of such wastes from the user level and rarely collect from the retail level as with a recall. Thus, the initial universal waste handler is a user typically having only single containers of pesticides whose labels may not be available or may have deteriorated due to adverse conditions or over time.

Universal waste handlers managing unused pesticide products that are collected and managed as part of a waste pesticide collection program have several options for labeling tanks and containers. The first option is to label the pesticide tank or container with a label that was on the accompanied product as sold or distributed, if still legible. Refer to §§ 273.14(c)(1)(i) or 273.34(c)(1)(i).

The Agency notes that this is the ideal labeling option for unused pesticide products, but the Agency also recognizes that the FIFRA label for the unused pesticide products may not be a realistic option because such a label may not be available. As an alternative, the Agency has developed additional labeling options under §§ 273.14(c)(1)(ii) and (iii) and 273.34(c)(1)(ii) and (iii).

The second option requires that handlers mark or label the container or containing unit with a label required by the Department of Transportation under 49 CFR part 172. If neither of these options are possible, the final option is to use another label that is approved in advance by the collection program. The Agency believes that these labeling and marking requirements will provide sufficient information to ensure that universal waste pesticides can be managed in a safe and environmentally protective manner, yet provides sufficient flexibility for universal handlers who are users or dealers, without requiring undue cost or burden of labeling.

IV.E.5. Accumulation Time Requirements

The final accumulation time requirements for small and large quantity handlers of universal waste are found in §§ 273.15 and 273.35 of this final rule. In the proposed universal waste rule, generators and consolidation points were prohibited from accumulating universal waste for longer than one year from the date the universal waste was generated, or received from another facility. Generators and consolidation points were also required to document that universal wastes were not accumulated for longer than this time. See proposed §§ 273.11(b) and 273.21(c). This accumulation time limitation was designed to implement, for universal wastes, a statutory prohibition that is part of the 1984 Hazardous and Solid Waste Amendments to RCRA (section 3004j). Pursuant to the Land Disposal Restrictions (LDR) provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), all hazardous wastes listed or identified in accordance with RCRA section 3001 are prohibited, on specified timetables, from land disposal. The regulations for the LDR program in 40 CFR part 268 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities, unless they are specifically excluded from regulation in parts 261 or 268. In addition, the statutory provision prohibits the storage of restricted hazardous, unless the restricted hazardous wastes are being accumulated for the purpose of accumulating quantities necessary for proper recovery, treatment, or disposal. This prohibition is currently codified for restricted hazardous wastes in 40 CFR 268.50. For universal wastes, the Agency proposed to simplify this prohibition by simply prohibiting accumulation for more than one year. The simplified provision was based on the assumption that the sole reason for accumulating universal waste for up to one year was to accumulate the quantities necessary for proper recovery, treatment, or disposal.

In the final rule, the Agency has retained the proposed one year accumulation limit, but has added an additional provision allowing accumulation for more than one year if such accumulation is solely for accumulating such quantities of universal waste as are necessary to facilitate proper recovery, treatment, or disposal. See §§ 273.15(b) and 273.35(b) of the final rule. For any accumulation longer than one year, the handler must be able to prove that such accumulation is solely for accumulating quantities necessary to facilitate proper recovery, treatment, or disposal. Thus, under the final rule it is assumed that any accumulation up to one year is for this purpose, but for any accumulation beyond one year the handler bears the burden of proving that accumulation is solely for this purpose. This approach to implementing the statutory prohibition is taken directly from existing 40 CFR 268.50(c) (This approach has been held to be consistent with section 3004(j). *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355, 366–68 (D.C. Circuit Court, 1989)). The Agency believes that this provision will ensure that any universal waste accumulation will meet the statutory LDR storage prohibition. For further discussion on the LDR program regarding its applicability to universal waste, see Section IV.I. of the preamble.

The Agency's decision to revise the accumulation prohibition is based on numerous commenters' arguments that

the one year accumulation limitation was too restrictive and would not provide enough time to accumulate sufficient quantities of waste to facilitate proper recovery, treatment, or disposal. Because universal wastes are likely generated and managed in relatively small quantities (compared with other industrial hazardous wastes), the Agency recognizes that an absolute one year accumulation limit may not be enough time for some handlers to accumulate sufficient quantities of universal waste to properly recover, treat, or dispose of the waste. The Agency believes that the revised accumulation time limit discussed above will allow additional time for accumulation when it is truly needed, while retaining the simplified approach to accumulation (as proposed) for the first year.

A number of other commenters argued that the proposed part 273 provisions should provide a provision analogous to § 262.34(c), known as the generator satellite accumulation provision. Under this provision, a generator may accumulate small quantities of hazardous waste at or near the point of generation before moving it to the generator accumulation area where accumulation time is limited to 90/180/270 days. Accumulation time is unlimited at satellite accumulation points. Commenters argued that universal waste handlers should also be allowed unlimited accumulation time for small quantities of waste at points of generation, and that the one year accumulation time limit would make the universal waste rules more restrictive than the existing hazardous waste generator regulations.

The Agency has decided not to add a provision analogous to the satellite accumulation provision to the universal waste regulations for several reasons. First, under the universal waste final rule, handlers may already manage their wastes very similarly to management under the satellite accumulation provision. For example, the proposed and final universal waste regulations do not limit the location, or number of locations, at which a handler of universal waste may accumulate universal wastes. Thus a handler may continue to accumulate universal wastes at points of generation. A handler may accumulate these wastes for up to one year (which is two or four times longer than the 90 or 180 days allowed under the existing hazardous waste generator regulations), and under the revised final regulation a handler may accumulate universal waste for longer than one year if certain conditions are met. Further, the quantity of universal waste that can be accumulated at a point of generation is not limited to 55 gallons (a handler of universal waste must notify, however, if the total quantity of universal wastes accumulated on-site equals or exceeds the 5,000 kilogram notification limit). The only substantive additional requirement under the universal waste rule will be to mark or label the container (or use an alternate method) to document the earliest date any universal waste accumulated at the location became a waste.

Second, although the time limit may appear to be a constraint when compared to the satellite accumulation provision, with the revision discussed above, handlers of universal waste who need to accumulate wastes for more than one year to facilitate proper recovery, treatment, or disposal will have the option to do so. The handler, however, bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. In addition, the Agency points out that the existing satellite accumulation provisions are available only to regulated generators who have EPA identification numbers and are complying with the full part 262 requirements including 90- or 180-day accumulation time limits 40 CFR 262.34 accumulation unit standards, biennial reports, and manifests. The Agency does not believe it would be appropriate to allow unlimited accumulation time for handlers of universal waste who are not required to comply with the part 262 controls, but are instead following the streamlined requirements of the universal waste regulations.

Third, the Agency points out that one of its major goals in developing the universal waste regulations is to make the regulation clear and easy to work with for both the regulated community and implementing agencies. The Agency believes that having one consistent time limit for all universal waste managed at one site is important to this goal. The Agency also notes that handlers of universal waste who generate extremely small quantities of hazardous waste (<100 kg per month) would, under the final rule, still have the option to manage their wastes under the Conditionally Exempt Small Quantity Generator provisions of 40 CFR 261.5 rather than the universal waste regulations (or the full Subtitle C regulations).

IV.E.6. Employee Training

The final employee training requirements for small and large handlers of universal waste are found in §§ 273.16 and 273.36 of this final rule. In the proposed rule, the Agency proposed to require that generators and consolidation points provide basic training on waste handling and emergency response procedures. The Agency requested comment on whether these requirements should be further reduced or eliminated.

The Agency has decided to retain these training requirements in the final rule for all large quantity handlers of hazardous waste. Thus, large quantity handlers of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures related to their responsibilities during normal facility operations and emergencies. Small quantity handlers of universal waste, however, are subject to a less burdensome requirement. Small quantity handlers of universal waste must inform all employees that handle or have responsibilities for managing universal waste. The information must include proper handling and emergency procedures appropriate to the type(s) of universal waste managed at the facility.

Although most commenters supported EPA's proposed requirements for basic training of personnel regarding potential safety hazards posed by universal waste, a number of commenters recommended that the Agency adopt a two-tier approach for training requirements. These commenters argued that dissemination of safety instructions would be sufficient training for employees at front-line collection centers, and the more comprehensive training requirements should apply only to larger consolidation points, because the consolidation point will be handling large quantities of universal waste while small front-line collectors will manage only small quantities, often in a retail setting.

The Agency believes the final rule mirrors the commenter's recommendations in that the level of training required for small quantity handlers of universal waste is less stringent than that for large quantity handlers of universal waste. The Agency agrees with commenters that the level of training should be greater for people who handle larger quantities of universal waste.

Other commenters argued that the cost of implementing a training program as proposed would be unduly burdensome. Although the Agency recognizes these commenter's concerns, the Agency believes that the employee training requirements in the final rule will not be too costly or burdensome for universal waste handlers. First, in response to these concerns, the Agency

has reduced the training required for small quantity handlers of universal waste. A small quantity handler of universal waste must inform all employees that handle or have responsibility for managing universal waste. The information must include proper handling and emergency procedures appropriate to the type or types of universal waste handled at the facility. Although providing the information through oral communication would be allowed, the Agency expects that brochures or documents providing such information have already been or will be developed by trade associations and the organizations running centralized collections programs (e.g., battery manufacturers, thermostat manufacturers, and pesticide registrants). Thus, small quantity handlers of universal waste participating in these collection programs will be able to distribute information of higher quality than they would be able to produce individually with little or no development costs.

Second, the Agency further believes that the training requirements as proposed will not be unduly burdensome for large quantity handlers of universal wastes. The Agency points out that the employee training requirement as proposed, and as retained in the final rule for large quantity handlers of universal waste, does not require that any records be kept for training provided to employees, requires only that employees that have responsibilities for managing universal waste or for responding to emergencies be trained, and requires only that these employees be trained as is appropriate for their universal waste management responsibilities. Thus, employees who only minimally handle universal waste need only be trained to properly carry out that activity and to carry out their responsibilities, if any, in case of an emergency. These requirements are analogous to those currently required for hazardous waste small quantity generators. They basically require that the large quantity handler of universal waste provide sufficient training to ensure that employees are familiar with proper handling procedures and that employees who would have responsibilities during emergencies are familiar with emergency procedures.

Finally, a number of commenters maintained that an employee training requirement is not necessary because training required under other programs provides adequate assurance that employees will be sufficiently trained to properly manage universal waste (e.g., OSHA, worker right-to-know, pesticide licensing, etc.). The Agency continues to believe that a basic employee training requirement is necessary to ensure that employees are specifically familiar with waste handling procedures, including, if appropriate, RCRA requirements. The Agency notes that any training provided under other programs that would meet any or all of the part 273 training requirements may be used to fulfill the RCRA requirements. As long as the substantive standards of the training provisions are met, the handler has fulfilled the training requirement. There is no requirement that training provided to meet the RCRA requirements be separate from other training given to employees.

IV.E.7. Response to Releases

The final response to releases requirements for small and large quantity handlers of universal waste are found in §§ 273.17 and 273.37 of this final rule. Under the proposed rule, basic release response requirements were imposed on universal waste generators, transporters, and consolidation points. These universal waste collectors were required to immediately contain all releases of or from universal wastes, and to appropriately manage any materials resulting from a release (e.g., cleanup equipment, contaminated soils, etc.). Specifically, they were required to determine if any of the resulting materials were hazardous wastes, and if so, manage them under the full hazardous waste regulations.

In the final rule, these release response requirements have been retained essentially as proposed for all collectors of universal waste. Since the categories of collectors have been changed in the final rule, these requirements are now imposed on small and large quantity handlers of universal wastes and universal waste transporters. Commenters who addressed this issue overwhelmingly supported the release response requirements as proposed. They agreed that the requirements to immediately contain releases and properly manage residues were sufficient to protect human health and the environment from any releases of universal waste that might occur and that facility-wide corrective action is not necessary for universal waste management.

Under the final rule, as under the proposal, destination facilities are subject to the full hazardous waste regulations applicable to treatment, storage, disposal, and recycling facilities. These regulations include extensive release response requirements.

One commenter argued that collectors should be allowed to send residues from cleanups along with universal waste to destination facilities. The Agency disagrees for several reasons and has not revised the final regulation to allow this. First, cleanup residues are likely to be quite different in form and composition from the universal waste they come from. The universal waste regulations are designed specifically for universal wastes, and are not designed to address the varied risks that may be posed by cleanup residues. Thus, it is not appropriate that subsequent collectors manage such residues under the universal waste regulations. Second, the destination facility to which universal waste is sent may not be able to, or permitted to, treat or dispose of cleanup residues. It is not unlikely that universal waste destination facilities' processes are designed to handle universal wastes but are not designed to handle residues that may have very different compositions. Thus, the final rule retains the requirement that collectors determine whether any residues are hazardous waste, and if so, manage them under the full hazardous waste regulations.

In the preamble to the proposed rule, the Agency noted that under the existing hazardous waste regulations hazardous waste facilities are subject to facility-wide corrective action. The Agency requested comment on whether some form of corrective action should be imposed on universal waste collection facilities, which were called consolidation points in the proposal. The majority of commenters addressing this issue argued that facility-wide corrective action requirements should not be imposed on universal waste collectors. They contended that facility-wide corrective action is currently one of the biggest barriers to participation in waste management systems, and that if these requirements are imposed on universal waste collectors it will prevent many people from participating in universal waste collection systems. The hazardous waste corrective action requirements could thus impede development of collection systems and undermine the goals of the universal waste regulations. Commenters also pointed out that, due to the relatively low risk nature of wastes identified as universal wastes, as well as the release response requirements discussed above, corrective action for universal waste handlers would be unnecessarily burdensome.

Commenters also agreed that the existing imminent hazard provisions of RCRA section 7003 provide the Agency sufficient authority to compel

immediate action in response to releases if necessary. The Agency also notes that any releases of universal waste not cleaned up would constitute illegal disposal, further allowing action under RCRA. In addition, any releases of hazardous substances above reportable quantity (RQ) thresholds must be reported under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. Since universal wastes are hazardous wastes, and thus hazardous substances under CERCLA, reporting for universal waste releases is required (if over RQs). Such reports provide notification to the Agency concerning releases and would thus allow the Agency to take action, if necessary, under either RCRA or CERCLA.

Although several commenters did argue that facility-wide corrective action should be imposed on universal waste collectors, the Agency decided not to do so in the final rule. The Agency agrees with the commenters' points discussed above, and believes that on balance, given the desire to encourage participation in the universal waste program, and the availability of response to release requirements in today's rule (as well as additional authorities available to impel cleanup if necessary), the risks of impeding the development of universal waste collection systems outweigh the risks of not including facility-wide corrective action requirements. It should be noted that under the final rule (as under the proposal), full facility-wide corrective action does apply to destination facilities as part of the treatment, storage, and disposal facility regulations.

IV.E.8. Off-Site Shipments

The Agency has added new sections in the final rule for small and large quantity handlers of universal waste and destination facilities, entitled off-site shipments. It was clear from the comments that off-site shipments present various issues, thus warranting separate sections covering these issues. The Agency has included the requirements for off-site shipments in subpart B (standards for small quantity handlers of universal waste), subpart C (standards for large quantity handlers of universal waste), and subpart E (destination facilities). Including these provisions in separate off-site shipments sections for each category of person managing universal waste makes the provision easy to locate, and thus makes the entire regulation easier to follow. The off-site shipments sections for handlers, found at §§ 273.18 and 273.38, address one issue discussed in the proposal, as well as a new issue raised by commenters. The off-site shipments section for destination facilities, 40 CFR 273.62, addresses only the new issue raised by commenters. These two issues are discussed below.

First, in the proposed rule, requirements concerning off-site shipments of universal waste were found in the prohibitions section of each of the universal waste handler categories (generator, transporter, and consolidation point). Generators were allowed to send universal waste only to consolidation points, destination facilities, or foreign destinations. Transporters were allowed to transport universal waste only to consolidation points, destination facilities, or foreign destinations. Consolidation points were allowed to send universal waste only to other consolidation points, destination facilities, or foreign destinations. The prohibitions concerning off-site shipments, in today's final rule, have been moved into paragraphs (a) of 40 CFR 273.18 and 273.38, the new off-site shipments sections, and, except as discussed below are substantially retained as proposed.

This off-site shipment provision has also been revised to fit the new categories of universal waste handlers used in the final rule. Handlers of both small and large quantities of universal waste are prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination. This change results in one substantive difference from the proposed prohibition. Under the proposal, generators were prohibited from sending universal waste to other generators, and consolidation points were prohibited from sending universal waste to generators. Under the final rule, universal waste handlers (which include both generators and consolidation points, classified by quantity of waste managed rather than by whether wastes are generated or collected) may send waste to any other universal waste handler.

The Agency has decided to make this change in response to several commenters who argued that companies or organizations that generate universal waste at numerous locations should not be penalized by being categorized as consolidation points merely because they centralize their waste by bringing it to one location to facilitate better management (e.g., bringing waste from unstaffed locations to staffed locations where waste can be better monitored). Under the proposed prohibition, such consolidation could only be conducted if the central location was categorized as a consolidation point, which was based only on the fact that universal waste was transported to the location. As discussed earlier in the section of this preamble entitled ''Universal Waste Handlers (section IV.D.1)—Small and Large Quantity Handlers of Universal Waste'', the Agency believes that the appropriate variable for applying more stringent requirements is the quantity of waste managed, not whether waste is generated on-site or received from off-site. Thus, the prohibition in the final rule allows shipment to any universal waste handler, and the level of requirements applicable to any handler (i.e., small or large quantity handler requirements) is based purely on how much universal waste is accumulated at the location.

In addition, a provision has been added to the small and large quantity handler off-site shipments sections of the final rule, 40 CFR 273.18(b) and 273.38(b), to clarify the language of the proposed off-site shipment prohibition. Several commenters exhibited some confusion about the language ''sending or taking'' universal waste. This language was intended to indicate that handlers could either contract with someone else to transport their universal waste or transport it themselves. The language was not intended to imply that handlers who transport their own universal waste are not subject to the transporter requirements. In fact, the proposed definition of transporter (which is retained in the final rule) clearly stated that anyone engaged in off-site transportation of universal waste is considered a transporter, and the transporter requirements (proposed and final) make it clear that any universal waste transporter is subject to the universal waste transporter requirements. To clarify this point, a paragraph (b) has been added to the off-site shipments sections of the final rule clarifying that a handler who self-transports universal wastes off-site becomes a universal waste transporter for those self-transportation activities and must comply with the universal waste transporter requirements while transporting the waste. (See 40 CFR 273.18(b) and 273.38(b)). Paragraph (c) of §§ 273.18 and 273.38 have been added to clarify that if a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171–180, the handler of universal waste must package, label, mark, and placard the shipment in accordance with the applicable Department of

Transportation regulations under 49 CFR parts 172–180 and must prepare the proper shipping papers. Because persons who offer for transportation or who transport a hazardous material must do so in conformance with requirements specified in the Department of Transportation's Hazardous Materials Regulations, these revisions to the regulatory text do not constitute new requirements. Rather, paragraph (c) serves to communicate more clearly that applicable DOT requirements still apply to all persons managing universal waste.

Second, in the final rule, paragraphs (d) through (h) have been added to the small and large quantity handler off-site shipments sections, and 40 CFR 273.61(a) through (d) have been added to the destination facility requirements, addressing a new issue raised by commenters. Specifically, commenters argued that consolidation points (in the final rule referred to as either small or large quantity handlers) should be allowed to return shipments of universal waste to generators (in the final rule referred to as either small or large quantity handlers) in cases where generators (shipping handlers) send materials that the collection facility (receiving handler) is not able or prepared to manage. The Agency agrees with this point and reiterates that nothing in the universal waste rule is intended to imply that universal waste handlers are required to accept any particular type of universal waste, any universal waste that they are not willing or able to handle, or any particular shipment of universal waste. It should be noted, however, that there may be other regulations that do require handlers to accept such waste. For example, under FIFRA regulations, pesticide recallers are not allowed to return pesticides that are part of a recall. On the contrary, although persons who choose to manage universal wastes are subject to the applicable requirements of part 273, no one is required to manage any universal waste.

In response to these concerns, the Agency has added provisions to part 273 addressing this issue of rejected shipments. Under the final rule, both the shipper (a small or large quantity handler of universal waste who is shipping universal waste to another handler or destination facility) and the receiving facility (a small or large quantity handler of universal waste, or destination facility, receiving a shipment of universal waste from another universal waste handler) share certain responsibilities for the protective handling of the universal wastes being shipped.

In order to prevent or limit rejected shipments, §§ 273.18(d) and 273.38(d) of the final rule specify that a shipper sending universal waste to a receiving facility must ensure, before the shipment is sent, that the receiving facility agrees to receive the load. In addition, §§ 273.18(e) and 273.38(e) of the final rule specify that if the shipper sends universal waste to another handler or destination facility and the shipment is rejected, the shipping handler must receive the waste back or agree with the receiving facility on a destination facility to which the shipment will be sent.

Sections 273.18(f), 273.38(f), and 273.61(b) require that if an unsuitable shipment containing universal waste is received, the receiving facility, in turn, may reject the full shipment or a portion of the shipment. Examples of unsuitable shipments include, but are not limited to: Universal waste that the facility is not willing to handle (e.g., a load of universal waste batteries that also contains ''junk rechargeable items''; or, universal waste that the facility is not able to handle (e.g., universal waste thermostats sent to a battery reclamation facility). In such a scenario, the receiving facility must notify the shipper of the rejection and discuss reshipment of the load. The receiving facility may send the shipment back to the original shipper or send the shipment to a mutually agreed upon destination facility. Finally, a handler of universal waste who receives a shipment of non-hazardous, non-universal waste may handle the waste in any way that is in compliance with applicable federal or state solid waste regulations.

Commenters were also concerned about procedures to follow if a handler receives a shipment of hazardous waste that is not a universal waste. Sections 273.18(g), 273.38(g), and 273.61(c) have been added to the final rule to address this scenario. These procedures are actually not specific to universal waste handlers but merely clarify what anyone should do if they receive an illegal shipment of hazardous waste. Specifically, these subsections state that should such a shipment be received, the receiving facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The EPA regional office will provide instructions for managing the hazardous waste.

IV.E.9. Tracking Universal Waste Shipments

Under the proposed universal waste rule the use of a hazardous waste manifest was required for some shipments of universal wastes, but not others. Those shipments that required manifests also required the use of a transporter with an EPA transporter identification number.

More specifically, manifests were required for shipments from consolidation points to destination facilities, but were not required for shipments from generators to either destination facilities or consolidation points or for shipments from one consolidation point to another. The reasoning behind requiring manifests only for shipments from consolidation points to destination facilities was that it was believed that shipments from these ''last'' consolidation points would be relatively larger shipments and thus warranted a higher level of tracking and control.

The tracking requirements in the final rule have been substantially revised from the proposal in response to comments. In general, under the final rule, manifests are not required for any shipments of universal waste, but a basic recordkeeping requirement has been added to track waste shipments arriving at and leaving from handlers of large quantities of universal waste. In addition, a similar provision has been added to the destination facility requirements to require retention of basic documentation of universal waste shipments arriving at destination facilities. This basic tracking requirement is found in §§ 273.39 and 273.62 of the final rule. The required records may take the form of a log, invoice, manifest, bill of lading, or other shipping document, and are to be maintained for three years. No specific form is required for maintaining these records, and the Agency believes that standard business records that would normally be kept by any business will fulfill this requirement.

For each shipment of universal waste received at or by a large quantity handler, the record must include the name and address of the universal waste handler or foreign shipper from whom the universal waste was sent; the quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats); and the date of receipt of the shipment of universal waste. For each shipment sent from a large quantity handler, the record must include the name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent; the quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats); and the date the shipment of universal waste left the facility.

It should also be noted that under the proposal, the owner or operator of a destination facility would have been required to keep, for three years, manifests documenting receipt of shipments of universal wastes from consolidation points. (See proposed 40 CFR 273.14(a) and 273.24(a), and existing 40 CFR 264.71(b)(5) and 265.71(b)(5)). Records of shipments received from generators, without manifests, would have been required as part of the operating record (see existing 40 CFR 264.73(b)(1) and 265.73(b)(1)) and biennial report (see existing 40 CFR 264.75(c) and (d) and 265.75(c) and (d)). Since no manifests will be used for shipments received by destination facilities, the final rule requires that the owner or operator of a destination facility keep the same records for receipt of universal waste shipments as those kept by handlers of large quantities of universal wastes. This will complete the record of universal waste shipments, providing documentation of receipt and allowing comparison of outgoing shipments from handlers against received shipments at destination facilities.

The Agency decided to make these changes in the tracking requirements based on comment received on the issue. First, a number of commenters opposed requiring manifests and hazardous waste transporters for any shipments of universal wastes, arguing that the increased costs and administrative burden of using manifests and hazardous waste transporters would be a disincentive for collection of universal waste and would inhibit removal of these wastes from the municipal waste stream. Many commenters, however, including some of those opposing manifests, did support some form of tracking requirement to document transport of universal wastes. These commenters argued that a less burdensome tracking requirement would not inhibit participation, but could be used to reduce the liability of persons managing universal waste, increase enforceability of the universal waste system, and decrease potential abuses of the streamlined universal waste requirements. The Agency found these arguments compelling and thus has revised the final rule to include a basic recordkeeping requirement for tracking, but not to require use of manifests for any universal waste shipments.

A number of commenters also pointed out that the proposed approach of requiring manifests for some shipments but not others, based on the type of facility originating and receiving the shipment, was overly complex and would be confusing to participants. Commenters also pointed out that it is not necessarily true that the shipments for which manifests would have been required would actually be larger shipments than those for which manifests were not required. In fact, the requirement that manifests and hazardous waste transporters be used for shipments from consolidation points to destination facilities might increase the administrative burden and cost for such a transportation pattern such that more universal waste would actually be sent directly from generators to destination facilities, for which no manifest would be required. It was not the Agency's intent to make the tracking requirement complicated or confusing, or to discourage the use of centralized facilities to consolidate universal waste if that is the most efficient way to manage these wastes.

To address this concern about complexity, in the final rule, the Agency has decided to require tracking for all shipments received by and shipped from handlers of large quantities of universal waste, and not to require any tracking for handlers of small quantities of universal wastes. The Agency believes that this tracking requirement is less complex than the proposed approach because handlers generating universal wastes will know generally the rates at which they generate and the procedures used for shipping these wastes, and so will know whether they are handlers of large or small quantities (i.e., whether they will be accumulating 5,000 kilograms or more total of universal waste). Similarly, handlers collecting universal wastes will know, based on the types of universal waste accepted and the procedures used for shipping these wastes, whether they are handlers of large or small quantities. Thus, those persons who know they are handlers of large quantities will keep records for all shipments received and sent off-site, regardless of where the shipments come from or are sent to. In comparison, those persons who know they are handlers of small quantities will not be required to keep records of any shipments, although they may, of course, maintain any records they believe are appropriate based on their individual circumstances.

As discussed elsewhere in this preamble, the Agency has decided to require tracking (and other requirements such as notification and more in-depth training) only for handlers of large quantities of universal waste. This decision was made in order to impose these more protective requirements only in cases where facilities are handling larger quantities of universal waste and thus the risks from management of these wastes are greater. The Agency has decided not to impose these requirements on handlers of small quantities of universal waste based on numerous commenters' argument that the administrative burden of tracking would be such a strong disincentive that retail establishments, service centers, and other ''front line'' collectors managing small quantities would not participate in collection programs, thus undermining the goal of the universal waste program. In addition, because these operations accumulate smaller quantities of universal wastes, if managed properly, they will pose less risk than the accumulation of larger quantities. The Agency believes that the risk associated with management of small quantities of universal waste is lower than the management of larger quantities due to the reduced amount of waste handling involved and the lesser chance of mismanagement opportunities.

The Agency selected 5,000 kilograms of accumulated waste as the cutoff for this tracking requirement (i.e., as the cutoff between small and large handlers), because the universal waste rule is designed for wastes that present a relatively low risk during collection (compared to other hazardous wastes), and thus it is appropriate to have a higher cut off limit for the tracking requirement than applies under the full hazardous waste regulations (i.e., the conditionally exempt small quantity generator accumulation limit of 1,000 kg).

Finally, in commenting on the tracking requirements a number of commenters suggested that the biggest barrier to farmer's participation in programs to collect and properly manage unused pesticides products is their unwillingness to sign manifests for the wastes. Several of these commenters suggested that collection sites should be identified as the generator for waste pesticides, thus removing any requirement that farmers act as the generator and sign manifests. The Agency notes that the issue of when a material becomes a waste, and thus potentially subject to regulation, is a general concept that applies consistently to all materials potentially subject to the hazardous waste program and is much broader than just the universal waste rule. The Agency does not believe it is appropriate or defensible to try to alter that concept for specific wastes. The final rule explains the concept that waste pesticides become wastes at the point the generator decides to discard them (see § 261.33), but this provision merely clarifies how

the point of generation concept imbedded in the entire hazardous waste regulatory program applies specifically to waste pesticides.

In response to these commenters, however, the Agency notes that under the final rule, manifests are not required for universal waste shipments. Thus, the major barrier identified to farmers' participation in waste pesticide collection programs has been removed. Farmers who decide to discard universal waste pesticides would be considered universal waste handlers and would be required to comply with the small or large quantity handler regulations, depending on the amount of waste pesticides that they accumulate.

IV.E.10. Exports

The final export requirements for small and large handlers of universal waste are found in §§ 273.20 and 273.40 of this final rule. In the universal waste proposed rule, the Agency proposed export requirements for generators and consolidation points managing hazardous waste under part 273. As proposed, a generator sending universal waste to a foreign destination, without first sending the waste to a consolidation point or destination facility, would be subject to requirements equivalent to the existing hazardous waste export requirements, subpart E of part 262, even though a manifest would not have been required. (See proposed 40 CFR 273.15 and 40 CFR 273.25.) These requirements included advance notification to the receiving country and prior consent by the receiving country before the shipment could occur.

The Agency also proposed export requirements for consolidation points. However, depending upon the type of foreign facility receiving the exported hazardous waste (e.g., consolidation point or destination facility), a manifest may or may not have been required for each shipment. Shipments from consolidation points requiring a manifest would have followed the existing subpart E of part 262 export requirements. Shipments from consolidation points not requiring a manifest would have followed the export procedures for generators, which required notification and consent independent of a manifest.

Commenters generally supported EPA's proposal to adopt existing notification and consent requirements for exports. Thus, in the final rule, notification and consent requirements have been retained for all exports, although the proposed provisions have been revised somewhat. The revisions are discussed below.

First, the export provisions have been revised to apply to the new categories of universal waste managers used in the final rule. Generators and consolidation points are now designated as universal waste handlers, who are classified by quantity of waste managed rather than by whether wastes are generated or collected. In addition, the export provision applicable to each type of participant in the universal waste system has been moved into the subparts of part 273 applicable to each participant. For example, the export requirements for handlers of small quantities of universal waste are now located in subpart B, which contains all of the requirements for handlers of small quantities.

Second, under the final rule, manifests are not required for any universal waste shipments (see tracking section of preamble for more detailed discussion). Thus, under the final rule, all universal waste shipments will follow procedures for notification and consent which, as proposed, are independent of the manifest procedures. The Agency also notes that under the tracking requirements of the final rule, large quantity handlers of universal waste are required to keep records of where they send waste, and from where they receive universal waste, including foreign destinations or shippers.

In addition, commenters raised several other issues related to exports of universal waste. First, one commenter noted that the proposed export requirements did not conform to the Organization for Economic Cooperation and Development (OECD) Council Decision on waste exports. The Agency agrees, and notes that it will shortly promulgate a rule which will revise the relevant hazardous waste export requirements to conform to the OECD Council Decision. All pertinent revisions to the universal waste final regulations for shipments of universal waste to and from OECD countries pursuant to the OECD Council Decision will be made in that rule.

Third, the Agency explained in the proposal that it does not have the authority under RCRA to regulate registrants exporting suspended or canceled and recalled pesticides to a foreign country for use as a product. See proposed 40 CFR 273.25(e). One commenter argued that commercial chemical products (e.g., recalled pesticides exported to foreign countries) that have been banned for use in the United States should not be exported to foreign countries because they will invariably find their way back into the United States. The commenter further argued that if there are health or environmental reasons for banning a chemical in the United States, it would undoubtedly pose an identical health or environmental problem elsewhere.

The Agency sympathizes with the commenter's concerns, but reiterates that it does not have statutory authority under RCRA to regulate materials which are products and not wastes. In cases where the registrant decides to export a suspended or canceled pesticide for use as a product, the RCRA hazardous waste regulations, including the export requirements, do not apply because the pesticide would not be a solid or hazardous waste. To make this clear, the final rule retains language explaining the non-waste status of pesticides that are to be used as products. In the final rule, however, this language is no longer in the export section, but has been moved to the applicability section for pesticides (see 40 CFR 273.3(b)(4)). This section explains that pesticides that are to be used, reused, or reclaimed are not solid wastes and thus are not subject to hazardous waste regulations, including part 273.

The Agency notes, however, that the requirements of FIFRA section 17(a) do apply in such situations. These requirements include providing notice to the foreign purchaser that the product is not registered for use in the United States and cannot be sold in the United States. The foreign purchaser must sign a purchaser acknowledgement statement indicating that he is aware of that fact. A copy of the acknowledgement statement is to be submitted to EPA and thereafter is transmitted to an appropriate official of the importing country. The product to be exported must also be packaged according to the specifications of the foreign purchaser.

IV.F. Transporter Requirements

In the proposed part 273 regulations, the Agency proposed five provisions addressing requirements for transporters of universal waste. These five provisions included requirements for condition of the waste, prohibitions, waste management, storage, and exports. The Agency requested comment on the application and adequacy of the transporter requirements proposed in part 273, the in-transit ten-day storage limit, and the adequacy of DOT shipping requirements and/or the need for supplemental RCRA requirements for the transport of universal wastes.

Today's final rule includes requirements for transporters in subpart D of part 273. The standards include six substantive sections: prohibitions, waste management, storage time limits, response to releases, off-site shipments,

and exports (§§ 273.50 through 273.56 of the final rule). Each section of subpart D is discussed below.

The prohibitions for transporters are found in § 273.51 in today's final rule and are essentially the same as those presented in the proposed rule, with one minor modification regarding off-site shipments of universal waste. In the proposed rule, the prohibitions section for each of the universal waste handler categories contained requirements concerning off-site shipments of universal waste. This provision, in today's final rule, has been moved into a new off-site shipments section (§ 273.55); however, the requirements have been substantially retained.

Waste management standards for transporters are found in § 273.52 in today's final rule. Section 273.52 specifies that transporters must manage universal wastes in compliance with all applicable U.S. Department of Transportation (DOT) regulations. In the final rule, new text has been added in response to comments which indicated a lack of clarity regarding which DOT requirements were being referenced. In the final rule, the Agency has clarified this matter in § 273.52 by explicitly directing the reader to the applicable DOT regulations at 49 CFR parts 171 through 180. In addition, the Agency also provides the pertinent references for the Department of Transportation's definition of hazardous materials (49 CFR 171.8) and the Hazardous Materials Table (49 CFR 172.101). Adding new text to the waste management section for transporters clarifies the requirements of the proposed standard but does not add any additional requirements.

The Agency notes that the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) define a hazardous waste as any material that is subject to the Uniform Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. As shipments of universal waste do not require this manifest, it is not considered a ''hazardous waste'' by the DOT. However, such material may still be regulated under the defining criteria for one or more of the DOT hazard classes. Therefore, for any universal waste shipments, transporters of universal waste must decide if the waste falls under any of the other DOT hazard classes in order to determine if compliance with the DOT requirements under 49 CFR parts 171 through 180 is required. (A discussion of the manifest is found in the tracking section of today's preamble at IV.E.9.).

If the waste material does not meet the definition in the HMR for hazardous waste or any other type of hazardous material, its shipping description on shipping papers may not include a hazard class or identification number shown in the HMR.

Storage time limits for transporters are found in § 273.53 of today's final rule. Under the proposed rule, transporters could only store universal waste at a transfer facility for ten days or less. This requirement remains the same in today's final rule. Comments revealed some confusion about the status of the person handling the waste if the waste is stored for greater than 10 days. In § 273.53(b), the Agency has added text clarifying that if the waste is stored for greater than 10 days, the transporter becomes a small or large quantity handler of universal waste and is subject to the applicable regulations under subparts B or C of part 273 while storing the universal waste.

Several commenters expressed agreement with the 10 day in-transit storage time limit. One commenter argued that a longer period for storage should be allowed, while another commenter stated that the focus of the rule should be on the total time for the universal waste to reach its final destination, not the time it is stored in-transit. Commenters, however, provided little information to justify a longer in-transit storage time limit. EPA believes that, while the total time period required for a shipment of universal waste to reach its specified destination is important, the transportation phase requires more handling of the universal waste and presents certain exposure scenarios not likely when only storage of the universal waste is required. Transportation increases handling and movement of the waste, increased risk of spills and releases, and a greater likelihood of public exposure. For these reasons, EPA is continuing to require a ten-day storage limitation for transporters of universal waste. As stated above, the text in § 273.53(b) has been revised in order to clarify that if a transporter stores universal waste for greater than 10 days, the transporter becomes a small or large quantity handler of universal waste. Under this circumstance, the small or large quantity handler requirements apply, which allow for up to one year accumulation.

The fourth section of Subpart D contains the response to release standards for transporters. In the final rule, these requirements remain essentially unaltered from those in the proposed rule. These response to release requirements are found in § 273.54 of today's rule. Section IV.E.7. of today's preamble contains a full discussion of this subject.

The off-site shipment provision for transporters is found in § 273.55 of today's final rule. This requirement was located with other prohibitions in the ''Transporter Requirements'' section of the proposed rule. In the final rule, the Agency has moved the requirement to a new off-site shipments section, § 273.55, under Subpart D. This modification makes the provision easier to locate, and thus makes the entire regulation easier to follow. Although the Agency has shifted the placement of this provision, the requirement has been substantially retained.

Additionally, in the proposed rule, transporters were only authorized to transport universal waste to consolidation points or destination facilities. In today's final rule, the terms generator and consolidation point have been redefined and replaced with small quantity handler of universal waste and large quantity handler of universal waste. In today's final rule, a transporter may transport a shipment of universal waste to a small quantity handler, large quantity handler, or destination facility.

The final section of subpart D contains the export requirements for transporters shipping universal waste to a foreign destination. These requirements have been moved from the ''Export Requirements'' section of the proposed rule and are now found in § 273.56 of today's final rule. This modification makes it easier for transporters shipping universal waste to a foreign destination to locate the requirements. A full discussion of this topic is found in section IV.E.10. of this preamble. Again, although the Agency has relocated this provision, the requirement has been substantially retained.

IV.G. Destination Facility Requirements

Under the proposed part 273 regulations, destination facilities were referred to the current parts 264, 265, and 270 and § 261.6(c)(2) requirements applicable to permitted or interim status hazardous waste treatment, storage, and disposal (TSD) facilities, or recycling facilities that do not store hazardous waste prior to recycling. These sections include notification requirements, general facility standards, unit-specific management standards, and permitting requirements.

In the final rule, the requirements for destination facilities remain substantially unchanged, with two minor modifications and added provisions related to off-site shipments and recordkeeping. The destination facility requirements are found in

subpart E of today's final rule. The first modification revises the language of § 273.60(a) to correlate with the revised definition of destination facility in the final rule. (In response to comments, EPA has redefined destination facility to mean ''a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.'' A full discussion of this revision can be found at section IV.D.3 of today's preamble under Universal Waste Handlers - Destination Facilities). The second modification is that the export requirements applicable to destination facilities have been moved into subpart E, § 273.63, to make them easier for destination facility owners and operators to locate (see III.F.10 of this preamble for a discussion of issues related to Exports).

In addition to these modifications, two additional provisions have been added to part 273, subpart E. The first new provision, 40 CFR 273.61, was added in response to several commenters who expressed concern regarding the authority of destination facilities to reject shipments of universal waste and the appropriate measures to be taken if a shipment is rejected. This new requirement is discussed in detail in the section of this preamble entitled ''Off-site Shipments.''

The second provision added to subpart E of part 273, 40 CFR 273.62, requires that the owner or operator of a destination facility keep basic documentation tracking universal waste shipments that arrive at the destination facility. Under the proposal, owners and operators of destination facilities would have been required to keep, for three years, manifests documenting receipt of shipments of universal wastes from consolidation points. (See proposed 40 CFR 273.14(a) and 273.24(a), and existing 40 CFR 264.71(b)(5) and 265.71(b)(5)). Records of shipments received from generators, without manifests, would have been required as part of the operating record (see existing 40 CFR 264.73(b)(1) and (d) and 265.75(c) and (d)).

In the final rule, no manifests will be used for shipments received by destination facilities (see IV.E.9 of this preamble for a discussion of tracking issues). Therefore, in § 273.62 of today's final rule, owners and operators of destination facilities must keep the same records for receipt of universal waste shipments as those kept by handlers of large quantities of universal wastes. Section 273.62(a) requires the owner or operator of a destination facility to keep a record of universal waste received at the facility. The record must include information on the name and address of the universal waste handler or foreign shipper from whom the universal waste was sent; the quantity of each type of universal waste received; and the date of receipt of the shipment of universal waste. Section 273.62(b) requires that these records be retained for at least three years from the date of receipt of a shipment of universal waste. This provision will complete the record of universal waste shipments, providing documentation of receipt and allowing comparison of outgoing shipments from handlers against received shipments at destination facilities. No specific form is required for maintaining these records, and the Agency believes that standard business records that would normally be kept by any business will fulfill this requirement.

Several commenters requested that EPA relax the destination facility requirements for recycling facilities in order to stimulate recycling efforts. Commenters argued that obtaining a RCRA Permit is time consuming and cost prohibitive and, in most cases unprofitable for the recycling facilities. They stated, also, that the requirement for obtaining a RCRA part B permit is a disincentive for recycling facilities to accept the wastes and assume the associated liabilities. In addition, one commenter believed that lack of reclamation capacity is one of the factors limiting recycling efforts, and that one of the principal causes of this lack of capacity is subtitle C requirements applicable to reclamation facilities.

While EPA supports recycling, a change to the requirements for destination facilities that recycle universal waste is beyond the scope of this regulation which is intended to focus on the collection phase of universal waste management rather than the final treatment, disposal, or recycling phase. As discussed in the background section of this preamble entitled ''Definition of Solid Waste Task Force,'' the Agency has an ongoing effort to broadly address the question of how hazardous waste recycling should be regulated. Any modification of regulatory requirements for recyclers, including universal waste recyclers, will be a part of this broader effort. Therefore, in today's final rule, the Agency is maintaining the requirements proposed for destination facilities that recycle waste.

IV.H. Imports of Universal Waste

Several commenters pointed out that the Agency did not address the issue of imports in the proposed universal waste rule. This was an oversight. The Agency intended that once universal waste entered the country it would be subject to the same universal waste rules as any other universal waste. To clarify this, the final rule includes import requirements in 40 CFR 273.70, which is Subpart F of Part 273. Section 273.70 clarifies that universal waste that is imported from another country must be managed, upon entry into the country, in compliance with the appropriate universal waste requirements for transporters, handlers, or destination facilities, depending on the universal waste management activities conducted within the United States.

For example, if a person imports universal waste into the United States and only transports the imported waste to a facility owned and operated by someone else, he is subject to the transporter requirements of subpart D of part 273. However, if a person imports universal waste into the United States and subsequently transports the universal waste to his own facility, the universal waste handler is subject to the transporter requirements for transport of the universal waste, and to the small or large handler requirements of subparts B or C for management at the receiving facility. To determine whether the handler is a small or large quantity handler, universal waste imported from a foreign country is counted toward the quantity of waste accumulated as any other universal waste would be. If the handler is a large quantity handler of universal waste, he must also comply with the tracking requirements for receipt of shipments at 40 CFR 273.39(a). If a person imports the waste into the United States and subsequently transports the universal waste to his own destination facility, he is subject to the destination facility Subpart E requirements for management at the receiving facility.

IV.I. Land Disposal Restrictions

Pursuant to the Land Disposal Restrictions (LDR) provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), all hazardous wastes listed or identified in accordance with RCRA section 3001 require treatment prior to land disposal, on specified timetables, from land disposal. The regulations for the LDR program in 40 CFR part 268 apply to persons who generate or transport

hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities, unless they are specifically excluded from regulation in parts 261 or 268.

To address the LDR program for universal wastes, the proposed universal waste rule required that generators, transporters, and consolidation points managing universal waste comply with all of the substantive land disposal restrictions requirements, but not the administrative requirements. These substantive requirements included: (1) A prohibition on accumulating prohibited wastes directly on the land (land disposal); (2) a requirement to treat wastes to meet treatment standards prior to land disposal; (3) a prohibition on dilution; and (4) a prohibition on waste accumulation except for purposes of accumulating quantities sufficient for proper recovery, treatment or disposal. See Universal Waste proposed rule at 58 FR 812 and 8124 for a detailed discussion of how each of these substantive requirements were to be implemented for universal wastes. Under the proposal, destination facilities remained subject to all of the part 268 land disposal restrictions.

Commenters overwhelmingly supported the proposed approach of requiring collectors of universal waste to comply with the substantive LDR requirements but not the LDR administrative requirements (e.g., notification to all handlers of applicable treatment standards). They agreed that the procedural land disposal restrictions requirements would be a significant disincentive to persons managing universal waste under Part 273. Commenters also agreed that due to the unique nature of universal wastes (i.e., easily identifiable, treatment standards easily identifiable, contained), the substantive requirements proposed would be sufficient to ensure that the goals of the land disposal restrictions program are met for universal waste managed under part 273.

Based on these comments, the final rule generally retains the proposed approach to ensuring that collectors of universal waste (small and large handlers and transporters) manage the waste in compliance with the substantive requirements of the LDR program. Each of the proposed requirements, comments received on the proposed requirements, and any changes made in the final rule are discussed in detail in the sections of this preamble addressing the specific requirements. As in the proposal, under the final rule, destination facilities are required to comply with all of the Part 268 LDR requirements for universal waste, including both the substantive and administrative requirements. Thus, all universal waste will be treated or disposed of in compliance with LDR treatment standards and the appropriate documentation regarding such compliance will be maintained by destination facilities.

A number of commenters did, however, raise specific concerns about the proposed approach to implementing the LDR requirements for universal waste. These comments and changes made to the final rule to address them are discussed in detail in the section IV.E.5 of this preamble, entitled ''accumulation time limits.''

IV.J. Regenerated Batteries

In the proposed rule, the Agency requested comment on whether the existing 40 CFR 261.6(a)(3)(ii) exemption from regulation for used batteries that are returned to a battery manufacturer for regeneration should be retained, or changed to correspond with the changes proposed for management of other batteries (58 FR 81250). Although the Agency expressed concern that having multiple special provisions for batteries would be confusing for regulated parties and implementing agencies, EPA proposed to retain the exemption to avoid disrupting the regeneration of used batteries.

The final rule removes the 40 CFR 261.6 exemption for used batteries that are to be regenerated, and adds a provision at § 273.13(a) and 273.33(a) such that facilities regenerating used batteries are now subject to the part 273 standards for small or large quantity handlers of universal waste, depending on the quantity of batteries they accumulate. In effect, this change results in the management of batteries that are to be regenerated together with all other batteries under part 273 during collection, and subjects the regeneration facility to the same requirements as other facilities receiving batteries but not breaking open battery casings.

40 CFR 266.80(a) and (b) have also been revised to clarify that lead-acid batteries that are regenerated remain exempt from the hazardous waste regulations throughout the management cycle. Since the final rule retains the lead-acid battery provisions of 40 CFR 266.80, it is most appropriate to also include regenerated lead-acid batteries so that all lead-acid batteries may be managed similarly. However, since the activities of a regeneration facility are more similar to a facility that accumulates waste than a facility that processes a waste to recover a usable product, batteries that are regenerated have also been exempted from the requirements for lead-acid battery reclamation facilities.

The Agency decided to include regenerated batteries under part 273 for several reasons. First, although a number of commenters supported retaining the exemption, several commenters documented the confusion that already exists concerning applicability of the current exemption, and several expressed concern about the additional confusion that would be added by having multiple provisions for battery management. Regulating all used batteries under the same provisions will eliminate this confusion, making it easier for the regulated community and regulating agencies to implement the battery management regulations. In addition, regulating all hazardous waste batteries under the same provisions will eliminate the confusion expressed by several commenters about how the exemption applies in situations where those handling the battery do not know whether the battery is regenerable, and thus do not know whether the battery will be regenerated or recycled. The applicable requirements will be the same whether the battery is determined to be regenerable, or is sent on for reclamation at another facility.

Second, because the risks of accumulating and transporting used batteries that are to be regenerated (and particularly those that may or may not be regenerated) are similar to the risks of managing any other used battery, the two should be regulated similarly. Because the Agency believes that the risks are low relative to other hazardous wastes because the battery casings remain intact, both battery types should be subject to the same basic management standards included in Part 273.

Third, the Agency does not believe that compliance with part 273 requirements will be overly burdensome for persons managing batteries that are to be regenerated. As discussed previously, the requirements for generators, transporters, and consolidation points (which would be applicable to regenerators) generally consist of basic good management practices and only require notification or recordkeeping if large quantities of batteries are managed. In addition, these requirements would be applicable in any case if a battery is determined not to be regenerable and thus is otherwise recycled.

Finally, the Agency decided to subject regeneration facilities to the requirements for small or large quantity handlers of universal waste, depending on the quantity accumulated) because

the activities conducted by such facilities are basically the same and thus the risks are basically the same. Both facilities accumulate batteries, but do not damage the integrity of the battery casings. Thus, the Agency believes that the regulations applicable to such facilities should be the same.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated or enacted, the State was obliged to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, the HSWA provisions are implemented by EPA in authorized States in the interim.

B. Effect on State Authorization

Today's amendments to the hazardous waste regulations are not effective in authorized States since the requirements are not being promulgated pursuant to HSWA. Thus, the universal waste standards are applicable as part of the RCRA program upon the effective date only in those States that do not have final RCRA authorization. In authorized States, the amendments will not be applicable until the State revises its program to adopt equivalent requirements under State law and is authorized by EPA for the amendments.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than, or in addition to those in the Federal program. The amendments in today's rule are not considered to be more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's rule.

Even though States are not required to adopt today's rule, EPA strongly encourages them to do so. In addition to the expected benefits of the universal waste program discussed in the proposed and final rules, EPA also believes that the new streamlined approach to management of universal wastes will contribute to more efficient and effective State programs. For these reasons, States are therefore urged to adopt today's rule and submit to EPA the program modification for approval in advance of, or according to, the schedule that applies to mandatory program revisions pursuant to 40 CFR 271.21(e).

C. Comments Regarding the Proposed Rule

A number of commenters disagreed with the Agency's conclusion that the universal waste regulations are based on pre-HSWA authorities in RCRA. Commenters argued that because the universal waste regulations will further many of the broad goals outlined in HSWA, EPA could consider the regulation to be part of HSWA authority. In addition, several commenters stated that the varying effective dates from State to State will make participation in multi-state universal waste collection programs more difficult. These commenters urged the Agency to promulgate the rule as a HSWA rule in order to ease these difficulties and speed realization of the benefits of the rule.

Several commenters suggested specific changes to the proposed universal waste regulations that they argued would be more stringent than the current hazardous waste program and would allow the Agency to require authorized states to adopt the universal waste program. A number of commenters also urged the Agency to promulgate the existing proposed rule as a more stringent rule ensure that authorized States would be required to adopt the rule, thus ensuring that it would be effective in all States. They again noted that having the rule effective in some States but not others would result in implementation difficulties. The commenters also note that the full benefits which could be realized from a national universal waste program may not be achieved if the program is not implemented in all States across the country.

The Agency agrees with the aim of those commenters who wish to achieve the uniform application of the universal waste rule that would be possible if the rule were to be promulgated under HSWA authority. However, EPA believes that the authority to promulgate today's amendments is not sufficiently linked to HSWA provisions to be a rule implementing HSWA. Thus, the Agency believes that the appropriate authority for promulgation of this rule is non-HSWA.

The Agency agrees with the commenters that because the promulgated rule is less stringent than the current RCRA program, difficulties may arise if the universal waste regulations are not adopted by all States. However, the changes necessary to make the universal waste rule more stringent would significantly diminish the benefits to be gained from this rule. Thus, because today's rule is less stringent than the existing requirements for managing hazardous wastes, authorized States are not required to adopt the universal waste regulations.

The Agency is encouraged however, by comments on the proposed rule received from program offices in 28 different States. The overwhelming response from these State agencies demonstrates strong support for the universal waste program. The Agency believes that many States will modify their current State programs to include the provisions of the final rule, and strongly encourages States to adopt the universal waste regulations.

As an incentive to encourage States to adopt the universal waste regulations, and become authorized for them, EPA is planning to use a streamlined application procedure. This procedure will reduce in scope several program revision application components. In addition, EPA will make electronic versions of this rule and its associated authorization checklists available on the State Authorization Bulletin Board system. The Agency believes that these

efforts, together with the aforementioned benefits to be gained from adopting the universal waste regulations, will help encourage most, if not all, States to adopt the universal waste regulations within a reasonable period of time.

D. Universal Waste State Authorization Issues

1. Addition of New Universal Wastes to State Programs

The Agency notes that States, if they so choose, may seek authorization for the portions of § 260.20 that address petitions to add new universal wastes, and for 40 CFR 260.23 and subpart G of part 273, which address the petition process and include the factors to be used to evaluate petitions. The authorization of States for the petition process is similar in many respects to the authorization of States for the delisting program (see 40 CFR 260.20 and 260.22) or the variance from classification as a solid waste (see 40 CFR 260.31).

States authorized for the petition process would use evaluation factors analogous to those in § 273.81 to review petitions and make decisions as to whether to add hazardous wastes to the State universal waste regulations. Management standards for these wastes would also be developed by the State using the criteria in subpart G of part 273. The individual wastes and management standards would not be subject to the authorization revision provisions in 40 CFR 271.21, since the State would already be authorized for the universal waste regulations and the regulation of hazardous wastes. Moreover, the State rulemaking procedures, including those addressing public participation, are equivalent to the rulemaking procedures EPA employs. Of course, a State could not approve a petition for a waste it is not authorized to regulate as hazardous. For example, a State could not approve a petition for a waste that is hazardous due to the Toxicity Characteristic (TC) if the State is not authorized for the TC. Although such a petition would properly be directed to EPA for a decision, the Agency does not expect this situation to occur frequently.

If an authorized State adds new hazardous wastes to its universal waste program, management of that waste under the universal waste regulations would only be allowed within that State or other States that have added the wastes to their universal waste regulations. Thus, the waste could be collected and consolidated within a State that has added a waste, but shipments to a State where the universal waste standards do not apply to that waste would have to comply with the full hazardous waste requirements (e.g., for transportation, manifests, interim storage). It should be noted that States are not required to apply for or obtain authorization to receive and review petitions to add new wastes. If they so choose, States may apply for and obtain authorization to implement the part 273 universal waste regulations other than subpart G. These States would still have the ability to adopt wastes that EPA adds to its universal waste program.

2. Authorization for Individual Universal Wastes

In order to aid expedited adoption and authorization of as much of today's rule as possible, States will not be required to apply for and obtain authorization to implement the universal waste program for all wastes covered under the federal program. For example, a State could choose to include in its authorized program batteries and pesticides, but not thermostats. EPA believes that this approach will aid quick adoption for those States that may need to make statutory changes to be able to implement a universal waste program for a particular wastestream.

To ensure that all the relevant waste management and transportation standards apply to a particular universal waste, to obtain authorization for the universal waste rule, EPA will require States to adopt all the applicable general standards even if they are applying for authorization for only one universal waste. EPA believes that this is a rational approach to this type of adoption, and that it will not be a significant barrier to authorization. This authorization policy will be reflected in EPA's authorization guidance on this rule.

3. Interstate Transportation

Several commenters noted that interstate transportation of universal wastes will be complicated if some States have adopted the universal waste regulations and some have not. Similar complications will arise if some states add new wastes to their universal waste regulations but other states do not add the same wastes. The Agency believes it is important to explain how the regulations will apply because interstate transportation will be necessary for many universal wastes since there may be only a few destination facilities that accept and manage these wastes.

First, a waste which is subject to the universal waste regulations may be sent to a state where it is not a universal waste, but it would be subject to the full hazardous waste regulations in states where it is not regulated as a universal waste. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is a universal waste, a transporter with an EPA identification number per 263.11 (hazardous waste transporter), or a manifest would not be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be a universal waste, a manifest is required, and the waste must be moved by a transporter in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill their requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22, 264.71, 264.72, and 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not a universal waste. The receiving facility would sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is covered under universal waste regulations in the initiating state but not in the receiving facility's state.

Second, a hazardous waste generated in a state which does not regulate it as a universal waste may be sent to a state where it is a universal waste. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state, or any other states where it is not a universal waste. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that regulate the waste as a universal waste would not require a manifest or be conducted by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility. See 40 CFR 262.23 and 262.42. EPA recommends that the generator note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is covered under universal waste regulations in the receiving facility's state but not in the generator's state.

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations

although other portions of the trip may be from, through, and to states in which it is covered under universal waste regulations. Transport through the state must be conducted in a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (subpart B of part 263), the initiating facility would complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not a universal waste. The transporter would deliver the manifest to, and obtain the signature of either the next transporter or the receiving facility.

As noted previously, States are not required to adopt today's rule. However, EPA strongly encourages them to do so. As more states adopt the program, not only will this assist in achieving the most benefits of the universal waste program, it will also reduce the complexity of interstate transport of these universal wastes. In the interim, while states are in the process of adopting today's rule, the Agency plans to discuss with the states, an approach for coordinating an interim implementation strategy.

VI. Executive Order 12866—Regulatory Impacts

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

This section of the preamble summarizes the costs (savings) and the cost analysis of the final universal waste regulations. Based upon the cost analysis, the Agency's best estimate is that the universal waste regulations may result in nationwide annualized savings of approximately $76 million.

For the cost analysis, EPA estimated the incremental cost differences between compliance with the full RCRA Subtitle C requirements (parts 260–272) and the part 273 standards for universal waste management. The universal wastes examined for this analysis are: vented nickel-cadmium batteries, sealed nickel-cadmium batteries, mercuric-oxide batteries, used mercury-containing thermostats, cancelled and/or suspended pesticides that are recalled, and unused pesticide products collected in a waste pesticide collection program.

For recalled pesticides only, EPA assumed that a national pesticide recall producing hazardous waste would occur once every five years. All other universal wastes were assumed to be generated and disposed of annually.

For each of these types of waste, the Agency identified and estimated the costs of all the requirements that should result in an incremental cost difference between the existing full RCRA Subtitle C regulations and the part 273 Rule. EPA reviewed how wastes would move through the RCRA system from the generator to the final treatment or disposal facility under each regulatory structure, and identified the areas where compliance costs would differ from the existing RCRA Subtitle C requirement costs.

The Subtitle C requirements that differ from those required under part 273 (and therefore produce an incremental savings) include: Employee training; maintenance costs for a contingency plan; filing hazardous waste biennial reports; manifest completion and recordkeeping per shipment; and Land Disposal Restriction Notification. In addition, shipping and disposal costs were reduced for some of the universal wastes because common carriers could be used instead hazardous waste transporters, and the one-year storage limit under part 273 would allow handlers to ship less often than under the current Subtitle C and therefore take advantage of economies of scale.

The Agency considered the annual compliance costs that would result from four different compliance options under the part 273 Rule for handlers of each type of battery and for thermostats covered in this analysis: Shipment of wastes by common carriers (trucks) to a collection facility; shipping wastes directly to a reclamation facility via common carriers (trucks); shipment of wastes via a parcel carrier (i.e., UPS); and, for thermostats only, a reverse distribution system where handlers ship their used thermostats to Honeywell Corporation, that then has the mercury-containing component (ampule) of the thermostat reclaimed by a commercial facility.

For each type of waste handler, the Agency identified the least-cost method of compliance with part 273 in order to determine the savings that would result from handlers no longer subject to the requirements of 40 CFR parts 262–270.

The least-cost method of compliance with part 273 yielded annual national cost estimates (of those elements expected to vary between the current RCRA Subtitle C requirements and the part 273 requirements) of $0.3 million for vented nickel-cadmium batteries, $10.3 million for sealed nickel-cadmium batteries, $1.6 million for mercuric-oxide batteries, and $1.2 million for used mercury-containing thermostats, for an annual cost of $13.4 million for battery and thermostat waste. Subtitle C national annual costs (of those elements expected to vary between the current RCRA Subtitle C requirements and the part 273 requirements) for battery and thermostat waste are estimated to be $46.2 million, resulting in an annual savings of $32.9 million per year for battery and thermostat waste.

For recalled pesticides, part 273 costs (of those elements expected to vary between the current RCRA Subtitle C requirements and the part 273 requirements) are estimated to be $15.5 million per recall, while Subtitle C requirement costs (of those elements expected to vary between the full RCRA Subtitle C requirements and the part 273 requirements) are estimated to be $230.0 million per recall, resulting in a savings of $214.5 million per recall. Assuming one recall every five years, and a seven percent discount rate, the annualized savings for recalled pesticides is $42.7 million per year.

For unused pesticide products collected in a waste pesticide collection program, part 273 annual costs (of those elements expected to vary between the current RCRA Subtitle C requirements and the part 273 requirements) are estimated to be $130,000, while Subtitle C requirement costs (of those elements

expected to vary between the full RCRA Subtitle C requirements and the part 273 requirements) are estimated to be $360,000, resulting in an annual savings of $230,000 per year for unused pesticide products collected under waste pesticide collection programs.

Summing up the savings from the various universal wastes, the Agency's best estimate of the total annualized savings of today's rule is $76 million. A complete discussion of the cost analysis is available in the regulatory docket for today's rule.

VII. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0145.

This collection of information has a reporting burden per response of 0 hours for Small Quantity Handlers of Universal Waste, 4 minutes for Large Quantity Handlers of Universal Waste, and 12 hours for Destination Facilities; and an estimated annual recordkeeping burden averaging 1.6 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601 *et seq.,* requires federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

The only entities directly subject to today's final rule are small and large quantity handlers of universal waste batteries, pesticides, and thermostats (who generate more than 100 kilograms of hazardous waste), and transporters and collectors of universal waste batteries, pesticides, and thermostats. Conditionally exempt small quantity generators (who generate less than 100 kilograms of hazardous waste) are not directly subject to today's rule. It is likely that some small and large quantity generators, transporters, and collectors of universal waste would meet the definition of ''small business'' as defined by the RFA. However, the Agency does not have an estimate of the number of such ''small entities.'' However, the universal waste regulations are expected to result in net savings to any regulated entities because it reduces requirements overall for these entities. Thus, since the impacts are positive for all regulated entities, including ''small entities,'' EPA has determined that small regulated entities will not be adversely impacted. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

40 CFR Parts 264 and 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 266

Hazardous waste, Management, Spent lead-acid batteries.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 273

Hazardous materials, Packaging and containers.

Dated: April 25, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. In Part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321,

1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding a new center heading and new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Hazardous Waste Management System:	
General	
260.23	2050–0145
* * * * *	
Standards for Universal Waste Management:	
273.14	2050–0145
273.15	2050–0145
273.18	2050–0145
273.32	2050–0145
273.34	2050–0145
273.35	2050–0145
273.38	2050–0145
273.39	2050–0145
273.61	2050–0145
273.62	2050–0145
273.80	2050–0145
* * * * *	

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by revising the introductory text and adding, in alphabetical order, definitions for ''battery,'' ''destination facility,'' ''pesticide,'' ''thermostat,'' ''universal waste,'' ''universal waste handler,'' and ''universal waste transporter'' to read as follows:

§ 260.10 Definitions.

When used in parts 260 through 266, 268, and 270 through 273 of this chapter, the following terms have the meanings given below:

* * * * *

Battery means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

* * * * *

Destination facility means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33 of this chapter. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

* * * * *

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

* * * * *

Thermostat means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2).

* * * * *

Universal Waste means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273:

(1) Batteries as described in 40 CFR 273.2;

(2) Pesticides as described in 40 CFR 273.3; and

(3) Thermostats as described in 40 CFR 273.4.

* * * * *

Universal Waste Handler:

(1) Means:

(i) A generator (as defined in this section) of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats (except under the provisions of 40 CFR 273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

* * * * *

Universal Waste Transporter means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

* * * * *

Subpart C—Rulemaking Petitions

3. Section 260.20 paragraph (a) is revised to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in parts 260 through 266, 268 and 273 of this chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265 of this chapter. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from § 261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261 of this chapter. Section 260.23 sets forth additional requirements for petitions to amend part 273 of this chapter to include additional hazardous wastes or categories of hazardous waste as universal waste.

* * * * *

4. Section 260.23 is added to read as follows:

§ 260.23 Petitions to amend 40 CFR part 273 to include additional hazardous wastes.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition for a regulatory amendment under this section, 40 CFR 260.20, and subpart G of 40 CFR part 273.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR part 273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve

implementation of the hazardous waste program. The petition must include the information required by 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Administrator will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Administrator may request additional information needed to evaluate the merits of the petition.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (c), (f)(3), and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(c) When making the quantity determinations of this part and 40 CFR part 262, the generator must include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8; or

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10; or

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2); or

(4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279; or

(5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266, subpart G; or

(6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

* * * * *

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

* * * * *

7. Section 261.6 is amended by removing paragraph (a)(3)(ii) and redesignating paragraphs (a)(3)(iii) through (a)(3)(vii) as paragraphs (a)(3)(ii) through (a)(3)(vi).

8. Section 261.9 is added to subpart read as follows:

§ 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under parts 262 through 270 of this chapter except as specified in part 273 of this chapter and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 40 CFR part 273:

(a) Batteries as described in 40 CFR 273.2;

(b) Pesticides as described in 40 CFR 273.3; and

(c) Thermostats as described in 40 CFR 273.4.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

9. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, 6937 and 6938.

Subpart A—General

10. Section 262.10 is amended by redesignating existing paragraphs (b) through (f) as (c) through (g).

11. Section 262.10 is amended by adding a new paragraph (b) to read as follows:

§ 262.10 Purpose, scope and applicability.

* * * * *

(b) 40 CFR 261.5(c) and (d) must be used to determine the applicability of provisions of this part that are dependent on calculations of the quantity of hazardous waste generated per month.

* * * * *

12. Section 262.11 is amended by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

13. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

14. Section 264.1 is amended by adding a new paragraph (g)(11) as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(11) Universal waste handlers and universal waste transporters (as defined in 40 CFR 260.10) handling the wastes listed below. These handlers are subject to regulation under 40 CFR part 273, when handling the below listed universal wastes.

(i) Batteries as described in 40 CFR 273.2;

(ii) Pesticides as described in 40 CFR 273.3; and

(iii) Thermostats as described in 40 CFR 273.4.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

15. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935 and 6936.

Subpart A—General

16. Section 265.1 is amended by adding a new paragraph (c)(14) to read as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(14) Universal waste handlers and universal waste transporters (as defined in 40 CFR 260.10) handling the wastes listed below. These handlers are subject to regulation under 40 CFR part 273, when handling the below listed universal wastes.

(i) Batteries as described in 40 CFR 273.2;

(ii) Pesticides as described in 40 CFR 273.3; and

(iii) Thermostats as described in 40 CFR 273.4.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

17. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart G—Spent Lead Acid Batteries Being Reclaimed

18. Section 266.80 is amended by revising paragraphs (a) and (b) to read as follows:

§ 266.80 Applicability and requirements.

(a) The regulations of this subpart apply to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (''spent batteries''). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated) are not subject to regulation under parts 262 through 266 or part 270 or 124 of this chapter, and also are not subject to the requirements of section 3010 of RCRA.

(b) Owners or operators of facilities that store spent lead acid batteries before reclaiming (other than spent batteries that are to be regenerated) them are subject to the following requirements.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

19. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

20. Section 268.1 is amended by adding paragraph (f) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(f) Universal waste handlers and universal waste transporters (as defined in 40 CFR 260.10) are exempt from 40 CFR 268.7 and 268.50 for the hazardous wastes listed below. These handlers are subject to regulation under 40 CFR part 273.

(1) Batteries as described in 40 CFR 273.2;

(2) Pesticides as described in 40 CFR 273.3; and

(3) Thermostats as described in 40 CFR 273.4.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

21. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

22. Section 270.1 is amended by adding a new paragraph (c)(2)(viii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(viii) Universal waste handlers and universal waste transporters (as defined in 40 CFR 260.10) managing the wastes listed below. These handlers are subject to regulation under 40 part CFR 273.

(A) Batteries as described in 40 CFR 273.2;

(B) Pesticides as described in 40 CFR 273.3; and

(C) Thermostats as described in 40 CFR 273.4.

* * * * *

23. Title 40 of the Code of Federal Regulations is amended by adding part 273 to read as follows:

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Subpart A—General

Subpart B—Standards for Small Quantity Handlers of Universal Waste

Subpart C—Standards for Large Quantity Handlers of Universal Waste

Subpart D—Standards for Universal Waste Transporters

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

§ 273.1 Scope.

(a) This part establishes requirements for managing the following:

(1) Batteries as described in 40 CFR 273.2;

(2) Pesticides as described in 40 CFR 273.3; and

(3) Thermostats as described in 40 CFR 273.4.

(b) This part provides an alternative set of management standards in lieu of regulation under 40 CFR parts 260 through 272.

§ 273.2 Applicability—batteries.

(a) *Batteries covered under 40 CFR part 273.* (1) The requirements of this part apply to persons managing batteries, as described in § 273.6, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, are subject to management under this part.

(b) *Batteries not covered under 40 CFR part 273.* The requirements of this part do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under 40 CFR part 266, subpart G.

(2) Batteries, as described in § 273.6, that are not yet wastes under part 261 of this chapter, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in § 273.6, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(c) *Generation of waste batteries.* (1) A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).

(2) An unused battery becomes a waste on the date the handler decides to discard it.

§ 273.3 Applicability—pesticides.

(a) *Pesticides covered under 40 CFR part 273.* The requirements of this part apply to persons managing pesticides, as described in § 273.6, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or cancelled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) *Pesticides not covered under 40 CFR part 273.* The requirements of this part do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with 40 CFR 262.70. (40 CFR 262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3));

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in 40 CFR parts 260 through 272;

(3) Pesticides that are not wastes under part 261 of this chapter, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in 40 CFR part 261, subpart D or if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(c) *When a pesticide becomes a waste.* (1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) *Pesticides that are not wastes.* The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard (e.g., burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of ''solid waste'' under 40 CFR 261.2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including this part 273. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under 40 CFR 261.2, does not cause the pesticide to be a solid waste (i.e., the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including this part 273. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not decided to discard (e.g., burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

§ 273.4 Applicability—mercury thermostats.

(a) *Thermostats covered under 40 CFR part 273.* The requirements of this part apply to persons managing thermostats, as described in § 273.6, except those listed in paragraph (b) of this section.

(b) *Thermostats not covered under 40 CFR part 273.* The requirements of this part do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under part 261 of this chapter. Paragraph (c) of this section describes when thermostats become wastes.

(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(c) *Generation of waste thermostats.* (1) A used thermostat becomes a waste

on the date it is discarded (e.g., sent for reclamation).

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

§ 273.5 Applicability—household and conditionally exempt small quantity generator waste.

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this part:

(1) Household wastes that are exempt under 40 CFR 261.4(b)(1) and are also of the same type as the universal wastes defined at 40 CFR 273.6; and/or

(2) Conditionally exempt small quantity generator wastes that are exempt under 40 CFR 261.5 and are also of the same type as the universal wastes defined at 40 CFR 273.6.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this part must manage the commingled waste under the requirements of this part.

§ 273.6 Definitions.

Battery means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

Destination facility means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in § 273.13 (a) and (c) and § 273.33 (a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136y).

Generator means any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

On-site means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this section.

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate more than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time.

Thermostat means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2).

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of 40 CFR part 273:

(a) Batteries as described in 40 CFR 273.2;

(b) Pesticides as described in 40 CFR 273.3; and

(c) Thermostats as described in 40 CFR 273.4.

Universal Waste Handler:

(a) Means:

(1) A generator (as defined in this section) of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

(1) A person who treats (except under the provisions of 40 CFR 273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles universal waste; or

(2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

Universal Waste Transfer Facility means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

Universal Waste Transporter means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

Subpart B—Standards for Small Quantity Handlers of Universal Waste

§ 273.10 Applicability.

This subpart applies to small quantity handlers of universal waste (as defined in 40 CFR 273.6).

§ 273.11 Prohibitions.

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in 40 CFR 273.17; or by managing specific wastes as provided in 40 CFR 273.13.

§ 273.12 Notification.

A small quantity handler of universal waste is not required to notify EPA of universal waste handling activities.

§ 273.13 Waste management.

(a) *Universal waste batteries.* A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to 40 CFR part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) *Universal waste pesticides.* A small quantity handler of universal waste must manage universal waste pesticides in a way that prevent releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this Section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this Section; or

(3) A tank that meets the requirements of 40 CFR part 265 subpart J, except for 40 CFR 265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) *Universal waste thermostats.* A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(i) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units).

(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it is subject to 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

§ 273.14 Labeling/marking.

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: ''Universal Waste—Battery(ies), or ''Waste Battery(ies),'' or ''Used Battery(ies);''

(b) A container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words ''Universal Waste-Pesticide(s)'' or ''Waste-Pesticide(s);''

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in 40 CFR 273.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1) (i) and (ii) of this section is not feasible, another label prescribed or designated by the waste

pesticide collection program administered or recognized by a state; and

(2) The words ''Universal Waste-Pesticide(s)'' or ''Waste-Pesticide(s).''

(d) Universal waste thermostats (i.e., each thermostat), or a container in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: ''Universal Waste—Mercury Thermostat(s),'' or ''Waste Mercury Thermostat(s),'' or ''Used Mercury Thermostat(s)''.

§ 273.15 Accumulation time limits.

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

§ 273.16 Employee training.

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

§ 273.17 Response to releases.

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with 40 CFR part 262.

§ 273.18 Off-site shipments.

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subpart D of this part while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The EPA regional office will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

§ 273.19 Tracking universal waste shipments.

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

§ 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination must:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

Subpart C—Standards for Large Quantity Handlers of Universal Waste

§ 273.30 Applicability.

This subpart applies to large quantity handlers of universal waste (as defined in 40 CFR 273.6).

§ 273.31 Prohibitions.

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in 40 CFR 273.37; or by managing specific wastes as provided in 40 CFR 273.33.

§ 273.32 Notification.

(a)(1) Except as provided in paragraphs (a) (2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Regional Administrator, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler (e.g, batteries, pesticides, thermostats);

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g, batteries, pesticides, thermostats) the handler is accumulating above this quantity.

§ 273.33 Waste management.

(a) *Universal waste batteries.* A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to 40 CFR part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) *Universal waste pesticides.* A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of 40 CFR part 265 subpart J, except for 40 CFR 265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) *Universal waste thermostats.* A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(i) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units).

(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

§ 273.34 Labeling/marking.

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with the any one of the following phrases: ''Universal Waste—Battery(ies),'' or ''Waste Battery(ies),'' or ''Used Battery(ies);''

(b) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words ''Universal Waste—Pesticide(s)'' or ''Waste—Pesticide(s);''

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in 40 CFR 273.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c) (1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words ''Universal Waste—Pesticide(s)'' or ''Waste—Pesticide(s).''

(d) Universal waste thermostats (i.e., each thermostat), or a container or tank in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: ''Universal Waste—Mercury Thermostat(s),'' or ''Waste Mercury Thermostat(s),'' or ''Used Mercury Thermostat(s).

§ 273.35 Accumulation time limits.

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

§ 273.36 Employee training.

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

§ 273.37 Response to releases.

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the material resulting from the release, and is subject to 40 CFR part 262.

§ 273.38 Off-site shipments.

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subpart D of this part while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, a large

quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The EPA regional office will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

§ 273.39 Tracking universal waste shipments.

(a) *Receipt of shipments.* A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);

(3) The date of receipt of the shipment of universal waste.

(b) *Shipments off-site.* A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats);

(3) The date the shipment of universal waste left the facility.

(c) *Record retention.* (1) A large quantity handler of universal waste must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste must retain the records described in paragraph (b) of this section for at least three years from the date a shipment of universal waste left the facility.

§ 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination must:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

Subpart D—Standards for Universal Waste Transporters

§ 273.50 Applicability.

This subpart applies to universal waste transporters (as defined in 40 CFR 273.6).

§ 273.51 Prohibitions.

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in 40 CFR 273.54.

§ 273.52 Waste management.

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name ''hazardous waste, (l) or (s), n.o.s.'', nor may the hazardous material's proper shipping name be modified by adding the word ''waste''.

§ 273.53 Storage time limits.

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of subparts B or C of this part while storing the universal waste.

§ 273.54 Response to releases.

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of 40 CFR parts 260 through 272. If the waste is determined to be a hazardous waste, the transporter is subject to 40 CFR part 262.

§ 273.55 Off-site shipments.

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

§ 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

Subpart E—Standards for Destination Facilities

§ 273.60 Applicability.

(a) The owner or operator of a destination facility (as defined in 40 CFR 273.6) is subject to all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under section 3010 of RCRA:

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with 40 CFR 261.6(c)(2).

§ 273.61 Off-site shipments.

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The EPA regional office will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

§ 273.62 Tracking universal waste shipments.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

Subpart F—Import Requirements

§ 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this part, immediately after the waste enters the United States, as indicated below:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subparts B or C, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subpart E of this part.

Subpart G—Petitions to Include Other Wastes Under 40 CFR Part 273

§ 273.80 General.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to this part may petition for a regulatory amendment under this subpart and 40 CFR 260.20 and 260.23.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR part 273 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or waste category addressed in the petition.

(c) The Administrator will evaluate petitions using the factors listed in 40 CFR 273.81. The Administrator will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

§ 273.81 Factors for petitions to include other wastes under 40 CFR part 273.

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in subpart D of part 261 of this chapter, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in subpart C of part 261 of this chapter. (When a characteristic waste is added to the universal waste regulations of 40 CFR part 273 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in 40 CFR 260.10 and 273.6 will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries).) Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of 40 CFR part 273;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly

generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 40 CFR 273.13, 273.33, and 273.52; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under 40 CFR part 273 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA.

(g) Regulation of the waste or category of waste under 40 CFR part 273 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

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Federal Register

Thursday
May 11, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Stage 2 Airplane Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28213; Notice No. 95–6]

RIN 2120–AE83

Stage 2 Airplane Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes revisions to the airplane operating rules to provide reporting requirements for operators of Stage 2 airplanes in Hawaii. These revisions would require any U.S. operator or foreign air carrier that operates Stage 2 airplanes in Hawaii to include certain information in its annual progress reports to the Federal Aviation Administration (FAA). This action also proposes a change to clarify that certain operations of aircraft (otherwise restricted from operation in the contiguous United States) are allowed, and proposes a change to correct an oversight made when the regulations were adopted. These revisions are intended to implement the amendments to the Airport Noise and Capacity Act of 1990 and clarify existing regulations and FAA policy.

DATES: Comments must be submitted on or before August 9, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28213, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28213. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alan V. Trickey, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3496.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28213.'' When the comment is received by the FAA, the postcard will be dated, time-stamped, and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Airport Noise and Capacity Act of 1990 (49 U.S.C. app. 2151 *et seq.*) (ANCA) placed a ban on the operation of Stage 2 airplanes with a maximum weight of more than 75,000 pounds in the contiguous United States after December 31, 1999. To achieve an organized transition to this goal, the FAA was charged with establishing a schedule of phased compliance with that requirement. On September 25, 1991, the FAA amended Subpart I of 14 CFR part 91 (part 91) to add new §§ 91.801(c) and 91.851 through 91.875 that implemented the Stage 2 nonaddition rules of the ANCA and adopted various transition criteria (56 FR 26433). The regulatory scheme established in 1991 requires all operators of Stage 2 airplanes (including foreign air carriers and operators) to establish a starting base level of Stage 2 airplanes from which they will accomplish the required reduction. The regulations give operators a choice of how they will achieve this reduction, and require that each operator report its actions toward compliance on a yearly basis.

Neither the ANCA nor the implementing regulations affected the importation or operation of Stage 2 airplanes in the States of Alaska and Hawaii. On October 21, 1991, Congress amended Section 2157 of the ANCA to add a new subsection (i) that placed limits on the operation of Stage 2 airplanes in Hawaii. The amendment sought to prevent the proliferation of Stage 2 airplane noise in Hawaii by limiting the number of Stage 2 operations allowed between Hawaii and points outside the contiguous United States, and by restricting ''turnaround'' service within the State of Hawaii with Stage 2 airplanes. In effect, this amendment creates a kind of nonaddition rule for the State of Hawaii, although it differs significantly from the nonaddition rule that applies to Stage 2 airplanes eligible to operate in the contiguous United States.

Synopsis of the Proposal

Stage 2 Operations in Hawaii

Since the ANCA was amended after the transition regulations were promulgated, the requirements of § 91.875 do not include the reporting of the information necessary for the FAA to ensure compliance with the statutory restrictions added by the 1991 amendment. This proposed rule would add a new paragraph to § 91.801 and add a new § 91.877 that would contain the reporting requirements for airplanes operated within the State of Hawaii or between the State of Hawaii and points outside the contiguous United States on and since November 5, 1990.

As proposed, each affected operator would need to report the number of Stage 2 airplanes it operated in either described operation on and since November 5, 1990, and any changes in the number since that time. This proposed reporting requirement is needed to ensure compliance with the 1991 amendment to ANCA. The specificity of the amendment and the limited nature of its provisions require more detailed reporting by certain operators than is currently required. Moreover, the applicability of current § 91.875 does not include some of the

operators from which the FAA needs the information described.

Other Stage 2 Operations

As currently written, § 91.857 applies to Stage 2 airplanes imported into a noncontiguous state, territory, or possession of the United States on or after November 5, 1990. That section was promulgated to provide a means by which airplanes purchased after the date of the statutory nonaddition rule could be included on the operations specifications of operators, but restricted from operations in the contiguous United States. Paragraph (b) of that section allows for these same airplanes to obtain a special flight authorization to enter the contiguous United States for maintenance.

Since the regulations were promulgated, the FAA found that the same restricted operations specification arrangement was the most effective means for some operators to comply with the phased compliance regulations. As an example, an operator that operates exclusively in Alaska is, by law, subject to the phased compliance regulations because it is a U.S. operator and could operate into the contiguous United States. However, because the phased transition rules do not apply to operations wholly within the State of Alaska, there is no reason to force such an operator to phase out any of its Stage 2 airplanes. Accordingly, such an operator may comply with the phased transition regulation by restricting the operation of certain airplanes to points outside the contiguous United States only. An airplane restricted in this manner would have a status similar to that of a Stage 2 airplane purchased after the date of the nonaddition rule, in that it would be eligible for operation only outside the contiguous United States. The same operational restriction could easily cover both situations.

Accordingly, the FAA is proposing a change to the introductory text of § 91.857 that would remove the reference to ''imported'' airplanes; the proposed revision would include a reference only to Stage 2 airplanes ''operating between points outside the contiguous United States.'' This language is intended to include both ''imported'' Stage 2 airplanes covered by the nonaddition rule, and Stage 2 airplanes removed from operation in the contiguous United States as a means of complying with the phased transition regulations.

This change is consistent with guidance that the FAA has given operators since § 91.857 was promulgated in 1991. This change does not represent a change in policy toward these airplanes, but seeks only to incorporate current agency practice into the regulations as experience with the phased transition regulations is gained. This clarification and the FAA guidance that has been disseminated is fully compatible with the provisions of ANCA and the phased transition regulations as originally promulgated.

Correction of New Entrant References

As part of the required transition to an all Stage 3 fleet, the Airport Noise and Capacity Act instructed the FAA to consider the impact of any regulations on a ''new entry into the airline industry.'' In adopting the regulations, the FAA made special provisions for new entrant air carriers under § 91.867. In that regulation, and in the definition of new entrant in § 91.851, the FAA inadvertently included operators operating under 14 CFR parts 125 and 135 (part 125, part 135). The inclusion of each of these parts was in error. First, by definition, air carriers operate under 14 CFR parts 121, 129 or 135; there can be no air carriers certificated under part 125. Second, since the noise transition regulations affect only jet airplanes over 75,000 pounds, the aircraft size limitations of part 135 mean that there are no part 135 operators affected by the rules, and thus there can be no part 135 new entrants.

Accordingly, the FAA is proposing to eliminate the references to ''new entrants'' under parts 125 and 135 since, as explained above, such status is not possible given the limitations of the statute and those of parts 125 and 135. This elimination should not be construed as changing the applicability of the transition rules—all jet airplanes over 75,000 pounds remain subject to the transition and nonaddition rules, regardless of the part under which they are operated. The FAA does not anticipate any effect, positive or negative, on any operator as a result of this change since it is impossible for an operator to be a ''new entrant air carrier'' subject to the transition rules under either part 125 or 135.

Airplanes With Nonstandard Certificates

By its terms, the ANCA applies to—and requires the phaseout of—''any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels * * *.'' This definition does not distinguish between airplanes that operate under standard category airworthiness certificates, and those that operate under an experimental or other restricted category certificate. Since the statute did not make the distinction, the regulations in § 91.801(c) apply to all jet airplanes over 75,000 pounds. Since the regulations were promulgated, the FAA has received inquiries concerning this applicability, particularly in the case of the phaseout of experimental airplanes used for research and development, and special purpose airplanes such as those used in firefighting. Accordingly, the FAA is seeking comment and information about the continuing coverage of airplanes that operate under nonstandard airworthiness certificates but are included in the applicability section of the phased transition rules. This same guidance has been given by the FAA since the oversight was brought to the agency's attention.

Paperwork Reduction Act

Information collection requirements currently contained in part 91 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2120–0553. Revised reporting and record keeping provisions resulting from this proposal are being submitted to OMB for approval as an amendment to the existing OMB approval for part 91.

Economic Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has preliminarily determined that this rule: (1) Would generate benefits that justify its costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. Since the impacts of the proposed change are relatively minor, this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

Costs

There are four new provisions of the proposed rule.

1. Stage 2 Operations in Hawaii

The current requirements of the ANCA do not include the reporting necessary for the FAA to ensure compliance with the statutory restrictions added by the 1991 amendment. This proposed rule would add a new paragraph to § 91.801 and add a new § 91.877 that would contain the reporting requirements for aircraft operated within the State of Hawaii or between the State of Hawaii and points outside the contiguous United States on and since November 5, 1990. As proposed, each affected operator would need to report the number of Stage 2 airplanes it operated in either described operation on or since November 5, 1990, and any changes in the number since that time. This proposed reporting requirement is needed to ensure compliance with the 1991 amendment to ANCA.

The FAA estimates that this provision would require for each carrier no more than two hours per year of a Flight Operations Manager's time to collect the necessary information. The FAA further estimates that there will be a one-time agency cost expended in the first year of implementation as a result of this proposed rule change. There are approximately 10 U.S. operators that fly Stage 2 airplanes in and out of Hawaii that are not presently required to report the needed information.

The FAA assumes that reporting the information required by this proposed action would be performed by a Flight Operations Manager at a loaded hourly wage (which includes benefits) of $26.74. Two hours at this rate times 10 carriers yields the total annual cost of $535.00 to affected carriers.

The FAA estimates that it will also take a total of two hours for the FAA to review and approve the initial information submitted. (Time spent in review thereafter will be insignificant because it will be included in regular reviews of reports.) Given a loaded hourly wage rate (which includes benefits) of $38.87 for a government worker, GS–13 step 5, the FAA estimates that this provision will cost the FAA $38.87×10×2=$777 dollars to process this information. The total annual cost of this provision is, therefore, $1,312.

2. Other Stage 2 Operations

Currently § 91.857 applies to Stage 2 airplanes imported into a noncontiguous state, territory, or possession of the United States on or after November 5, 1990. That section was promulgated to provide a means by which airplanes purchased after the date of the statutory nonaddition rule could be included on the operations specifications of operators, but restricted from operations in the contiguous United States. Paragraph (b) of that section allows operators to obtain a special flight authorization to enter these airplanes into the contiguous United States for the purpose of maintenance.

Since § 91.857 was promulgated, the FAA found that the same restricted operations specifications arrangement was the most effective means for some operators to comply with the phased compliance regulations. Accordingly, the FAA is proposing a change to the text of § 91.857 that would remove the reference to ''imported'' airplanes; the proposed revision would include a reference only to Stage 2 airplanes ''operating between points outside the contiguous United States.'' This language is intended to include both Stage 2 airplanes covered by the nonaddition rule and Stage 2 airplanes removed from operations in the contiguous United States as a means of complying with the phased transition regulations.

This changes does not represent a change in policy toward these airplanes, but incorporates current agency practice into the regulations as experience with the phased transitions regulations is gained. There is, therefore, no cost associated with this provision.

3. Correction of New Entrant References

As part of the required transition to an all Stage 3 fleet, the Airport Noise and Capacity Act instructed the FAA to consider the impact of any regulations on a ''new entry into the airline industry.'' In adopting the regulations, the FAA made special provisions for new entrant air carriers under § 91.867. In that regulation, and in the definition of new entrant in § 91.851, the FAA inadvertently included operators operating under parts 125 and 135. The inclusion of each of these parts was in error. As outlined in the synopsis of the proposal, air carriers operate under parts 121, 129 or 135; there can be no air carriers certificated under part 125. Also, since the noise transition regulations affect only jet airplanes over 75,000 pounds, the airplane size limitations of part 135 mean that there are no part 135 operators affected by the rules, and thus there can be no part 135 new entrants.

The FAA is proposing to eliminate the references to ''new entrants'' under part 125 and 135 since, as explained above, such status is not possible given the limitations of the statute and those of parts 125 and 135. This elimination should not be construed as changing the applicability of the transition rules. The FAA does not anticipate any effect on an operator as a result of this change since an operator cannot be a ''new entrant air carrier'' subject to the transition rules under either part 125 or 135. There are no costs associated with this proposed change.

4. Airplanes With Nonstandard Certificates

The current ANCA definition does not distinguish between airplanes that operate under standard category airworthiness certificates, and those that operate under an experimental or other restricted category certificate. Since the regulations were promulgated, the FAA has received inquiries concerning this applicability, the FAA has received inquiries concerning this applicability, particularly in the case of the phaseout of experimental airplanes used for research and development, and special purpose airplanes such as those used in firefighting. The FAA is seeking comment and information about the continuing coverage of airplanes that operate under nonstandard airworthiness certificates but are included in the applicability section of the phased transition rules. This request for information has no consequential costs associated with it.

Benefits

The ANCA, as amended, when properly implemented, will ensure that noise levels in Hawaii from Stage 2 airplanes will not exceed 1990 noise levels. This proposed rule would allow the FAA to obtain the information needed to enforce the ANCA, thereby giving the agency the ability to ensure implementation of the law, which in turn will ensure the ultimate benefit of controlled noise levels to be realized.

Environmental Analysis

This proposal would ensure implementation of the amended ANCA by adding a new § 91.877 that would contain new reporting requirements for Stage 2 operations conducted in the State of Hawaii. The proposed reporting requirement refines existing reporting requirements in part 91, and is not anticipated to have a significant effect on the quality of the human environment. Any environmental impact associated with this regulation is the result of the amendment to the statute made by Congress. This action,

the addition of a reporting requirement, in itself, has no environmental impact.

The other proposed amendments, the change to § 91.857 that acknowledges an acceptable means of compliance with the Stage 3 transition and the elimination of two drafting errors, also are not anticipated to have a significant effect on the quality of the human environment. These proposed changes do not in any way change the substantive effect of the transition regulations, but only reflect the practices of the FAA since the regulations were adopted in 1991.

Prior to issuing a final rule, the FAA will complete a review of the environmental impacts associated with rule compliance in accordance with Department of Transportation ''Policies and Procedures for Considering Environmental Impacts'' (FAA Order 1050.1D). Comments relating to any environmental impacts that might result from adopting this proposed rule are invited.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA; 5 USC 601 et seq.) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have ''a significant economic impact on a substantial number of small entities.'' Small entities are independently owned and operated small businesses and small not-for-profit organizations. According to the FAA's Order on Regulatory Flexibility Criteria and Guidance, a small operator of airplanes for hire is one that owns, but does not necessarily operate, nine or fewer airplanes. The Order also defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. The small entities that will be affected by this rule are the operators of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in Hawaii.

The costs of this proposed rule are negligible. For this reason the FAA concludes that the proposed rule would not significantly affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

International Trade Impact Assessment

The proposed rule is expected to have little or no impact on trade opportunities of U.S. firms conducting business overseas or for foreign firms conducting business in the United States. The proposed rule would impose the same requirements on both domestic air carriers operating under part 121, 125, or 135 of the regulations and foreign air carriers subject to part 129 of the regulations. The cost of compliance to foreign air carriers flying into the United States and domestic operators are similar and negligible. Therefore, it will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

The provisions in these proposed amendments to part 91 would result in no substantial costs or savings in terms of regulatory evaluation requirements. They would not result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or other significant adverse effects. In addition, this NPRM would have little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States. Accordingly, the FAA has determined that, if adopted, this proposed amendment: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Noise control, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125, 2157, 2158; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et. seq.*; E.O. 11514; 49 U.S.C. 106(g).

2. Section 91.801(c) is amended by removing the reference to ''91.875'' and adding the reference ''91.877'' in its place.

3. Section 91.801 is amended by adding a new paragraph (d) to read as follows:

§ 91.801 Applicability: Relation to part 36.

* * * * *

(d) Section 91.877 prescribes reporting requirements that apply to any civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds operating within the State of Hawaii, or operating between the State of Hawaii and any point outside of the 48 contiguous United States and the District of Columbia, under this part or part 121, 125, 129, or 135 of this chapter on or after November 5, 1990.

4. Section 91.8551 is amended in the definition New entrant by revising the phrase ''part 121, 125, 129, or 135'' to read ''part 121 or 129''.

5. Section 91.857 is amended by revising the heading and introductory text to read as follows:

§ 91.857 Stage 2 operations outside of the 48 contiguous United States and authorizations for maintenance.

An operator of a Stage 2 airplane that is operating only between points outside the contiguous United States on or after November 5, 1990, shall—

* * * * *

6. Section 91.867(a)(1) is amended by revising the phrase ''part 121, 125, or 135'' to read ''part 121''.

7. A new § 91.877 is added to read as follows:

§ 91.877 Annual reporting of Hawaiian operations.

(a) Each operator subject to § 91.865 or § 91.867 that conducts operations within the State of Hawaii, or between the State of Hawaii and a point outside the contiguous United States, on or since November 5, 1990, shall include in its annual report the information described in paragraph (c) of this section.

(b) Each operator not subject to § 91.865 or § 91.867 that conducts operations within the State of Hawaii, or between the State of Hawaii and a point outside the contiguous United States, on or since November 5, 1990, shall submit an annual report to the FAA, Office of Environment and Energy, on its

compliance with the Hawaiian operations provisions of section 2157(i) of the Airport Noise and Capacity Act of 1990, 49 U.S.C. 47528. Such reports shall be submitted no later than 45 days after the end of a calendar year. All progress reports must provide the information through the end of the calendar year, be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001), and include the following information—

(1) The name and address of the operator;

(2) The name, title, and telephone number of the person designated by the operator to be responsible for ensuring the accuracy of the information in the report; and

(3) The information specified in paragraph (c) of this section.

(c) The following information must be included in reports filed pursuant to this section—

(1) For operations conducted within the State of Hawaii—

(i) The number of Stage 2 airplanes used to conduct such operations on November 5, 1990;

(ii) Any change to that number during the calendar year being reported, including the date of such change; and

(iii) An air carrier that provided service within the State of Hawaii (i.e., ''turnaround service'') on November 5, 1990, may include in the number reported under paragraph (c)(1)(i) of this section all Stage 2 airplanes with a maximum certificated weight of more than 75,000 pounds that were owned or leased by the air carrier on November 5, 1990, regardless of whether such airplanes were operated by that carrier on that date.

(2) For operations conducted between the State of Hawaii and a point outside the contiguous United States—

(i) the number of Stage 2 airplanes used to conduct such operations on November 5, 1990; and

(ii) Any change to that number during the calendar year being reported, including the date of such change.

(d) Reports or amended reports for years predating this regulation are required to be filed by 90 days after publication of the final rule.

Issued in Washington, DC on May 2, 1995.

James D. Erickson,

Director, Office of Environment and Energy.

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Federal Register

Thursday
May 11, 1995

Part VI

Department of Labor

Employment and Training Administration

20 CFR Part 625

Disaster Unemployment Assistance Program; Interim Final Rule; Request for Comments

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 625

RIN 1205–AA50

Disaster Unemployment Assistance Program; Interim Final Rule; Request for Comments

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration of the Department of Labor is issuing this interim final rule, effective upon publication, amending 20 CFR 625.6 to remove restrictive provisions, provide a more equitable weekly assistance amount to individuals unemployed as a result of a major disaster, and to clarify and simplify the States' administration of the Disaster Unemployment Assistance Program. To provide an opportunity for public participation in this rulemaking, a comment period is provided, and a final rule will be published after taking into account any comments that are received.

DATES: *Effective date:* The effective date of this interim final rule is May 11, 1995.

Comment date: Written comments on this interim final rule must be received in the Department of Labor on or before July 10, 1995.

ADDRESSES: Written comments on this interim final rule may be mailed or delivered to Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in Room S4231 at the above address.

Copies of this interim final rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

FOR FURTHER INFORMATION CONTACT: Robert Gillham, Group Chief, Federal Programs Group, Division of Program Development and Implementation, Office of Program Management in the Unemployment Insurance Service at the address listed under **ADDRESSES**: Telephone (202) 219–5312 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 410(a) of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereafter the ''Stafford Act'') (42 U.S.C. 5177) sets forth the outlines of the Disaster Unemployment Assistance Program (hereafter the ''DUA Program''). The President is authorized by section 410(a) of the Stafford Act to provide to any individual unemployed as a result of a major disaster declared by the President under the Stafford Act ''such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation * * * or waiting period credit.'' Other terms of section 410(a) provide that disaster unemployment assistance (hereafter ''DUA'') is to be furnished to individuals for no longer than 26 weeks after the major disaster is declared; and that for any week of unemployment of DUA payment is not to exceed the maximum weekly benefit amount (hereafter ''WBA'') authorized under the unemployment compensation (hereafter ''UC'') law of the State in which the disaster occurred.

Pursuant to a delegation of authority (51 FR 4988, Feb. 10, 1986) to the Secretary of Labor from the Director of the Federal Emergency Management Agency (hereafter ''FEMA''), the DUA Program authorized by section 410(a) of the Stafford Act is implemented in regulations promulgated by the Department of Labor (hereafter ''Department'') and published at part 625 of title 20 of the Code of Federal Regulations.

The amendments made by this interim final rule are applicable for all major disasters declared on and after its effective date.

Summary of Major Provisions/ Amendments to § 625.6

First, the amendments retain the current provisions of § 625.6(a)(1) to utilize earnings from employment or self-employment in a base period to compute a DUA WBA. However, new § 625.6(a)(2) provides that for purposes of a DUA WBA computation, the most recent tax year that has ended will be considered as the base period to be utilized in computing a DUA WBA under § 625.6(a)(1). Only in certain circumstances does a tax year coincide with the State law base period, which, under the current provisions, requires the projection of net income by the individual for certain periods, which may not be accurate.

Second, under new § 625.6(a)(3), adult family members employed or self-employed as a family unit or in the same self-employment business or trade will be treated equally in allocating wages from such employment or self-employment where all performed services. Under the current provisions, income may be allocated only to one individual because of the manner in which the family was paid or based on the manner which a tax return was filed even though all adult individuals in the family may have participated in the employment or self-employment. This will permit DUA to be paid to each adult family member who participates in a family business.

Third, the up to four-step process to compute a DUA WBA under §§ 625.6(a)(2) through (5) is eliminated. It is replaced with new § 625.6(b) to pay 50 percent of the average weekly UC amount as the DUA WBA to all individuals who worked full-time but have insufficient wages to compute a weekly amount under § 625.6(a)(1), or are entitled to a DUA WBA less than 50 percent of the average weekly UC amount as computed under the basic computation method in § 625.6(a)(1). The payment of 50 percent of the average weekly UC amount as a minimum DUA WBA (with certain adjustments) is a significant increase in the DUA WBA for many affected workers. Currently, the minimum DUA WBA is generally the minimum UC weekly amount; however, in certain cases where earnings are less than the minimum amount needed to qualify under the State UC law, the DUA WBA may be computed at less than the State UC minimum amount under the current provisions of § 625.6(a)(3). In these cases, individuals are often not eligible for DUA because of the limitation imposed by the application of § 625.6(a)(5) that the DUA WBA may not exceed 70 percent of the individual's average weekly wage.

Fourth, newly added § 625.6(b)(1) provides that adjustments will be made to reduce the minimum DUA WBA determined in accordance with § 625.6(b) for workers employed part-time prior to the date they became unemployed due to the major disaster. However, if the DUA WBA computed under § 625.6(a)(1) is higher than the reduced DUA WBA computed under paragraph (b)(1), the higher amount shall be paid.

Fifth, while the above provisions address the calculation of an individual's DUA WBA based on employment and wages earned *prior* to the disaster, new § 625.6(f)(1) provides that wages earned *after* the disaster may reduce the DUA payments for the weeks in which those wages were earned. If an individual earns wages in a week during which DUA is claimed, the amount

payable for that week is the DUA WBA reduced in accordance with the earnings allowance provisions of the applicable State law. This is the same provision that was previously set forth at § 625.6(d). However, new § 625.6(f)(2) provides that gross earnings received from the self-employment business during a week by a self-employed individual will be deducted only during the week received. No longer will there be a projection of future income to be deducted on a pro rata basis from each week's benefits, which often disqualified individuals from receiving any DUA.

Sixth, newly added § 625.6(e) provides that an immediate determination of a DUA WBA will be made based on the applicant's statement of wages and employment or self-employment, or a combination of the applicant's statement and documentation to support the employment or self-employment and wages, or State agency records. However, if the determination is based on the individual's statement only, the individual must provide evidence of employment or self-employment or wages within 21 calendar days. Failure to do so will result in a denial of DUA. Section 625.6(e) also provides for certain adjustments to the DUA WBA if partial information is submitted by an individual within 21 days and for a later adjustment when necessary documentation to support a redetermination is submitted.

Background—Basis for Amendments

The weekly amount computation methodology set forth in section 625.6, *Disaster Unemployment Assistance: Weekly Amount,* was last revised and published in the **Federal Register** as a final rule on September 16, 1977 (42 FR 46712). The section was amended, however, by an interim final rule published in the **Federal Register** on January 5, 1990 (55 FR 550) and confirmed in a final rule published in the **Federal Register** on May 16, 1991 (56 FR 22800) only to incorporate the amended definition of ''State'' set forth in amended § 625.2(p). At the time of the 1977 final rule, the current section 410 of the Stafford Act was section 407 of the Disaster Relief Act of 1974 (hereafter ''DRA''). The Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–107, November 23, 1988) redesignated section 407 as section 410 and the short title of the DRA was changed to the Stafford Act. Among the amendments to section 407 included in the newly designated section 410 were the deletion of a provision that provided that the weekly DUA amount would be reduced by the amount of any UC available to the individual, and the addition of the provision that if an individual is eligible for UC, such individual is not eligible for DUA. This former provision provided the basis for the methods of the computation of a weekly DUA amount under § 625.6. At the time the interim final rule was confirmed in the May 16, 1991, final rule, the Department was not aware of any problems with the States' administration of § 625.6 or of any inconsistencies in the weekly amounts of DUA paid. Therefore, no amendments were made to the computation methodology provided in the section.

The Department's most recent guidance to the States for administering the provisions of § 625.6 for unemployed self-employed individuals was set forth in Unemployment Insurance Program Letter (hereafter ''UIPL'') No. 35–87, issued August 25, 1987. The UIPL contained several key instructions. First, a self-employed individual did not have to be totally unable to perform customary services in self-employment as a direct result of the disaster in order to be eligible for DUA, but could be determined eligible if he/she were partially unemployed, where there was a substantial reduction in the customary services that could be performed each week as a direct result of the disaster. Second, the DUA WBA for an unemployed self-employed individual would be computed under § 625.6 based on the net earnings shown on the individual's Federal income tax return for the year preceding the beginning date of the disaster. Third, reductions from the DUA WBA for partial or part-total unemployment, as provided in § 625.6(d), would be based on net earnings. Fourth, such net earnings for a week would be determined by the individual filing an affidavit stating what his/her anticipated net earnings would be for the taxable year in which the disaster occurred, and such net earnings would be prorated to a fixed weekly amount and deducted from the DUA WBA in accordance with the earnings allowance applicable under State law. If the individual projected no net earnings, no reduction would occur. If the prorated net earnings equaled or exceeded the weekly amount of DUA payable, application of the State law earnings allowance provisions prevented the individual from being eligible for any DUA payments even where the individual was only partially employed a few hours each week. Fifth, if more than one family member claimed DUA based on the same self-employment business, each individual's self-employment income had to be supported by the previous year's Federal tax return showing separate SE schedules, and if a husband and wife operated the business as a partnership, there would have to exist a form 1065 filed with the IRS and a schedule K–1 to show how the partnership income or loss was to be allocated, in order for both individuals to be eligible for DUA. Simply filing a joint tax return was not sufficient for purposes of determining DUA entitlement for all family members.

The Department's recent experience with the DUA Program pointed out unnecessary complexities, inconsistencies and problems with certain provisions in § 625.6 and the implementing instructions in UIPL No. 35–87. This experience stemmed from several major disasters declared from 1993 to 1994. These major disasters were: the Midwest States which were declared major disaster areas due to flooding occurring during the late spring and summer of 1993; the Northridge, California area earthquake in January, 1994; the March, 1994, major disasters declared in several Southeastern States due to severe storms and flooding; and most recently, the salmon fishing disaster beginning in May, 1994, in California, Oregon and Washington. Principally, these unnecessary complexities, inconsistencies, and problems arose from: the diversity of occupations and unemployment situations for thousands of unemployed individuals, particularly the unemployed self-employed; the unavailability of individuals' tax and business records because they were lost due to the disasters, except for the salmon fishers; and the fact that many thousands of individuals were partially unemployed as a result of the disasters.

The current DUA regulations at § 625.6(a) provide an up to 5-step process to compute a DUA WBA: (1) Determined a WBA based on earnings (net income for the self-employed) during the State's UC base period and then apply the State's UC benefit formula; (2) if the amount determined under (1) is less than the average amount of UC paid in the State, and a higher amount can be determined based on the individual's average weekly wage for the 13-week period immediately preceding the date of the disaster, the higher amount will be the DUA WBA; (3) if an amount cannot be computed under (1), then the weekly wage earned or that would have been earned in employment or self-employment in the 13-week period preceding the date of

the disaster is utilized; (4) if, under (1) or (3), it is impossible to compute a WBA for a self-employed individual because there were not net earnings, the individual is entitled to the minimum UC WBA paid in the State; (5) any amount computed under (2) or (3) may not exceed 70 percent of the individual's average weekly wage, and if the result is a WBA less than the minimum paid in the State, the individual is ineligible for DUA.

For the self-employed, as provided in UIPL No. 35–87, and for some workers, using steps (2) or (3) requires a projection of income. This problem is compounded for the self-employed, in that net income is for a year and has to be divided by 52 to determine net earnings for the 13-week period.

In addition to the complexities of the current computation, there are inconsistencies. One inconsistency arises in computing a DUA WBA for individuals (workers or self-employed) who have minimal wages versus a self-employed individual with no wages (net income). Under § 625.6(a)(4), an unemployed self-employed individual with no net income (and who meets other eligibility requirements) is entitled to the minimum WBA under State law. But § 625.6(a)(5) provides that a weekly amount determined under § 625.6(a) (2) or (3) (which provide for alternate methods of calculation based on earnings in a 13-week period) must not exceed 70 percent of the average weekly earnings of the individual in the 13-week period prior to the individual's unemployment, and if the application of this limitation results in a weekly amount less than the minimum UC weekly amount, the individual is not eligible for DUA. Therefore, if a wage earner or self-employed individual has $1.00 in wages up to the minimum UC qualifying amount during the 13-week period, he/she is usually not entitled to DUA, because the 70 percent limitation imposed by § 625.6(a)(5) often causes the individual to be ineligible for DUA. As a result, an individual with minimal wages may not be eligible for DUA, but a self-employed individual with no wages is entitled to DUA.

Another inconsistency arises under the provisions of §§ 625.6 (b) and (c) (computations for the South Pacific island jurisdictions, which are defined as ''States'' under § 625.2(p)) when compared to the computation methodology under §§ 625.6(a) (3) and (4). Paragraphs (b) and (c) provide for a uniform DUA WBA equal to the average UC weekly amount paid under all State UC laws or another uniform amount that is determined at the time of the disaster. Therefore, the weekly amount paid in the South Pacific island jurisdictions is significantly higher than what is paid to a self-employed individual with no net income or to an individual with minimal earnings in the rest of the States. The amendments made by this interim final rule will not, however, entirely eliminate the inconsistency of paying a higher weekly DUA amount to claimants in the South Pacific island jurisdictions. This problem is further discussed below.

Inconsistencies also arise under § 625.6(d) in computing reductions from the WBA for partial and part-total employment during a week for the self-employed. Section 625.6(d) provides that a reduction will occur for wages earned during the week by applying the wages and earnings allowance for partial and part-total employment prescribed under the State UC law. Under the instructions in UIPL No. 35–87, if a self-employed individual resumes some of his/her customary self-employment activities, a projection must be made of the individual's self-employment net income for the year taking into account any losses due to the disaster which will adversely affect the farmer's future income. This is because the self-employed often perform services for their income year round, but may receive actual income only once or twice a year.

Net income for the self-employed farmer must include any projected or actual payments received for crop insurance proceeds or disaster relief paid by the U.S. Department of Agriculture (hereafter ''USDA'') because such payments are considered income for Federal income tax purposes and are paid in lieu of being able to fully harvest a crop for income. This annualized figure is divided by 52 to determine the weekly income, and this weekly income figure is deducted from the DUA WBA. If the self-employed individual projects no net income, no deduction is made.

In many cases, the computed deductible amount is equal to or greater than the WBA; therefore, no DUA is payable even though the individual may have been able to work only a few hours each week. On the other hand, a wage earner working less than full-time may receive a full or partial DUA weekly payment since all State UC laws permit a certain amount of income to be earned before any deduction is made from the WBA.

The Department realized, as a result of the Midwest floods, the California earthquake, the Southeast floods, the salmon fishing disaster, and the thousands of partially unemployed self-employed individuals affected by them, that the provision in § 625.6(d) requiring a reduction for wages earned and its position (as set forth in UIPL No. 35–87) that a self-employed individual must project net income is overly complex and may contribute to the improper payment or denial of DUA. A self-employed individual's projected net income is often only an ''estimate'' that may or may not be accurate. Such an ''estimate'' may result in an improper payment to a self-employed individual determined eligible or an improper denial of DUA to an individual determined not eligible.

Accordingly, the Department has consulted with FEMA and USDA and solicited comments on proposed changes to the regulations from the States. The majority of the States commented that the simplification of the weekly monetary computation, in order to remove or reduce the inequities described above, should have priority. The Department, FEMA and USDA considered the comments and the Department has incorporated many of the States' specific comments in the amendments to § 625.6 described below, such as the payment of 50 percent of the average UC amount as the minimum DUA amount and elimination of the current provisions in §§ 625.6(a) (2) through (5). The Department concurs that the amendments should have priority and should be implemented as rapidly as possible.

Changes to 20 CFR 625.6

Section 625.6 is amended in its entirety as set forth and discussed below.

The heading of § 625.6 is amended to read, *Weekly Amount; Jurisdictions; Reductions,* which reflects the contents and provisions of the section more accurately than the current heading.

Section 625.6(a) provides that the weekly amount of DUA for all States, except the South Pacific island jurisdictions, shall be the same as computed under the State UC law for regular compensation and the amount so computed shall not exceed the maximum WBA for UC authorized under the applicable State law. This is the same provision as is currently in the first part of § 625.6(a)(1). However, the amendments add three new paragraphs to § 625.6(a) that clarify and simplify the computations made under this section and reduce or eliminate the potential for improper DUA payments or fraudulent applications.

Newly added paragraph (a)(1) reads nearly the same as the *proviso* in current paragraph (a)(1). That is, the amended regulation continues to provide that in computing an individual's DUA WBA, the qualifying employment and wage

requirements of the applicable State UC law and the benefit formula of the applicable State UC law shall be applied, except for computations as provided under new paragraphs (a)(2) or (b) (discussed below). The State UC law base period is no longer applicable.

In addition, the provision, in current paragraph (a)(1), that wages ''shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law'' is retained. For clarification, and as an example of the application of this provision, new paragraph (a)(1) cites section 3304(a)(14)(A) of the Federal Unemployment Tax Act (hereafter ''FUTA'') (26 U.S.C. 3304(a)(14)(A)) as one of the Federal law provisions which is included in this exclusion. The Department's long-standing position on the administration of this FUTA provision as it relates to services performed by an alien is set out in UIPLs No. 1–86 (51 FR 10102, August 20, 1986), 12–87 (54 FR 10102), 12–87, Change 1 (54 FR 10113) and 6–89 (54 FR 10116), all published on March 9, 1989. The Department's position and applicability of section 3304(a)(14)(A), FUTA, to the DUA Program was also set forth in the preamble to the DUA final rule published May 16, 1991 (56 FR 22800).

Newly added paragraph (a)(2) provides that for all individuals, whether they are self-employed, or are individuals with a combination of income from self-employment and remuneration for services performed for another, or are wage earners only, the base period to be utilized to determine the DUA WBA shall be the most recent tax year that has ended for the individual prior to the individual's unemployment that was a direct result of the major disaster. The reasons for this amendment are as follows.

Most State UC laws provide that the base period utilized in determining monetary entitlement for a UC claim is the first four of the five completed calendar quarters preceding the filing quarter. Therefore, if an individual becomes unemployed in April, May, or June, the base period is the prior calendar year, which, for individuals, is also a tax year. If an individual becomes unemployed in a later quarter in the current year, it results in a different base period which, for some individuals, means that a projection of income has to be made for the quarters outside the most recent tax year. This will result in a projection which may or may not be accurate. An individual who became unemployed in the January-March quarter would have to provide information from a tax year prior to the most recent calendar year in order for the State agency to properly compute a DUA WBA. In addition, the tax year for certain self-employed individuals, depending on filing status, is different than a calender year. This causes additional problems when projecting income for a State UC law base period.

Therefore, in order to reduce errors by eliminating income projections and provide a more easily administered provision, the Department has determined that the most recently completed tax year for the individual preceding the individual's unemployment that was a direct result of the major disaster will be the base period to be utilized in computing the DUA WBA, rather than the State UC law base period.

The self-employment income to be considered wages (as defined in § 625.2(u)) shall be all the net income that was reported on the tax return that was dependent on the performance of services in all self-employment. This provision eliminates problems that occurred where the net income reported on the individual's tax year return for the year preceding the beginning date of the disaster under the instructions in UIPL No. 35–87 did not coincide with the State UC law base period. The individual's projection of net income for the periods outside the tax year may not have included all self-employment net income from services performed in two or more businesses, but only the net income from those businesses affected by the disaster. This may have limited State agency use of base period self-employment in computing a DUA WBA. This inconsistency could occur because § 625.2(t) defines ''unemployed self-employed individual'' as an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon that self-employment, and whose unemployment is caused by a major disaster.

Inclusion of all net income derived from the performance of services in all self-employment parallels the inclusion of all wages earned in covered employment by wage earners on a State UC claim and in covered and noncovered employment on a DUA claim by an unemployed worker, and is in accordance with the provisions of § 625.6(a)(1). Using all net income from the performance of all services in self-employment will lessen the burden on State agency personnel to perform analytical activities more associated with income tax auditors in attempting to split out income from one business when reviewing tax returns or other business records. Base period (tax year) income from sources not requiring the performance of services, such as interest, dividends, and capital gains from the sale of investments (or stock portfolios) is not to be included for self-employed individuals, just as it is not included as wages in determining entitlement to UC, since no services are performed. Since these sources of income are reported separately on the tax return, their exclusion from base period income is not difficult.

However, any net income during the tax year base period derived from the business, such as income derived when a self-employed farmer receives crop insurance or disaster relief payments for the loss of a crop, is income that must be included. This is because such payments are made in lieu of income that would have been received from the harvest of the crops.

Inclusion of all net income from the performance of services in self-employment derived from any business carried on by such individual follows the definition of ''net earnings from self-employment'' in section 1402(a) of the Internal Revenue Code of 1986 (26 U.S.C. 1402(a)).

The Department also recognizes that some individuals may not have completed their tax returns at the time of their unemployment due to the major disaster; however, such individuals will be entitled to a DUA WBA determined in accordance with paragraph (e)(3) of this section, discussed below.

In addition, the Department recognizes that to utilize wages in the most recently completed tax year for the individual preceding the individual's unemployment as a direct result of the major disaster as the base period for computing a DUA WBA under § 625.6(a) could result in the use of wages not representative of the income an individual is currently receiving at the time his/her unemployment begins. The most recently completed tax year base period may result in some individuals receiving a lower DUA WBA than if more current wages were used. However, since all individuals who are fully employed or self-employed prior to their unemployment as a direct result of the major disaster will, at a minimum (unless reduced for disqualifying income or because of pre-disaster partial employment or partial self-employment), receive 50 percent of the average State UC weekly amount as their DUA WBA, they will receive a reasonable DUA WBA that will permit them to temporarily provide for their

needs. Therefore, no individual will suffer significant harm. Also, the most recently completed tax year base period provision was established in the interest of simplifying the administration of the DUA Program and reducing or eliminating the potential for determining an incorrect or improper DUA WBA.

The Department, however, invites interested parties to suggest provisions that would use more recent wages in an alternate base period where this would provide a higher DUA WBA than the use of wages in the most recently completed tax year. Specifically, comments are requested on what would be an appropriate alternate base period without having to utilize income projections and in which the wages (net income for the self-employed) could be easily substantiated by the individual and easily verified by the State agency.

Newly added paragraph (a)(3) of this section provides a rule for the allocation of income in cases where several family members work in a business. It provides that, as of the date of filing an initial application for DUA, if family members who are over the age of majority, as defined under the statutes of the applicable State, were customarily or routinely employed or self-employed as a family unit or in the same self-employment business prior to the date the individuals became unemployed as a direct result of the major disaster, the wages from such employment or net income from self-employment shall be allocated equally among such adult family members for purposes of computations of the DUA WBA. There is an exception provided. If the documentation substantiating employment or self-employment and wages from such employment or self-employment, submitted in accordance with new § 625.6(e), justifies a different allocation, it will be used rather than the equal allocation.

The Department recognizes that in many self-employment ventures adult members of a family, particularly husbands and wives, may jointly own the business or trade and share equally in performing services resulting in the success or failure of the business, yet may never have formally entered into a partnership or filed form 1065 or schedule K–1, which reflects the distribution of income, with the Internal Revenue Service as part of their tax return. Therefore, the Department concludes that to restrict the allocation of income only to those situations where a partnership exists, as proven by the schedule K–1, is overly restrictive and has prevented the payment of DUA to individuals otherwise entitled.

In addition, the Department recognizes that in certain occupations, particularly in agriculture, it is common for family members to work as a unit for an employer, yet only one member of the family is paid by the employer. The family member that is paid then divides the wages between the other family members or uses such wages to provide for all the family members' needs and expenses. Paragraph (a)(3) clarifies the Department's position that all adult family members who performed services should be treated equally in the allocation of income for purposes of computing a DUA weekly amount.

The term ''family,'' as used for purposes of determining a DUA WBA, is not limited to the traditional family of husband, wife, and children, but includes any family members related by blood, adoption, or marriage who customarily work as a family unit.

However, the Department also recognizes that members of a family under the age of majority often perform services in employment and self-employment for family units or family businesses, particularly in the agricultural industry. Such employment or self-employment is usually performed during periods such individuals are not attending school and may be full-time during vacation or between term periods, and part-time or not at all during times that school is in session. The fact that such individuals are under the age of majority does not, in itself, mean these individuals are not entitled to DUA. These individuals would be entitled to DUA if they meet the definition of unemployed worker or unemployed self-employed individual at §§ 625.2 (s) and (t) and the eligibility requirements for a week of unemployment in § 625.4.

For these reasons, paragraph (a)(3) also provides that, for purposes of computing a DUA WBA for an individual under the age of majority, the actual wages earned or received during the base period in employment or self-employment are utilized, rather than an equal allocation of the wages as provided for family members over the age of majority.

The Department also recognizes that in many family businesses, particularly in the agricultural industry, individuals under the age of majority may not be paid wages as payment for services that are performed, but may be paid an allowance or receive a percentage of the proceeds resulting from a product or livestock that is sold. Therefore, such individuals may not have any tax returns, bank accounts, or other business records to support their statement of employment and earnings, as would the business owner or employer. Such individuals may provide an affidavit from an adult family member, which is duly certified before an official, such as a notary public, or have the adult family member provide a signed statement, under penalty of perjury, to a State agency representative, substantiating that they performed services and received the amount of the allowance or proceeds as payment. If the individuals have other documentation substantiating their employment, the affidavit or adult family member statement is not necessary. In these cases, the State agency must give careful consideration to whether the individual meets the definitions of ''unemployed worker'' or ''unemployed self-employed individual'' in §§ 625.2 (s) and (t), respectively.

Newly added § 625.6(b) provides that if the DUA weekly amount computed under paragraph (a) for an individual is less than 50 percent of the average weekly payment of regular UC paid in the State, or if an individual has insufficient or no wages in the base period to compute a DUA weekly amount, the individual shall be entitled to a weekly amount equal to 50 percent of the average weekly UC payment in the State. Any individual whose weekly DUA amount is determined under paragraph (b) must submit documentation to substantiate employment or self-employment, or wages paid or earned for such employment or self-employment, or documentation to substantiate that the disaster prevented planned commencement of employment or self-employment. Such documentation must be submitted within 21 calendar days from the date of application for DUA. If such individual fails to provide such documentation, he/she will be denied DUA.

This provision provides a significant increase in the minimum DUA amount payable (in most cases, from the minimum payable under the State UC law to 50 percent of the average payable). In addition, it reduces the inconsistency between the DUA weekly amount established for the South Pacific island jurisdictions (as discussed previously) and the other States. Elimination of the inconsistency is discussed below. A remaining inconsistency is that the South Pacific island jurisdictions use a uniform weekly DUA amount, while the other States treat the proposed DUA minimum as a floor that can be exceeded if justified by prior earnings. In addition, newly added § 625.6(b) also ensures that individuals having minimal

earnings ($1.00 up to the minimum needed to qualify under the State UC law), or no wages (no net income in the case of the self-employed), will be entitled to a weekly DUA amount.

The Department has determined that to set the minimum weekly DUA amount at 50 percent of the average weekly UC amount paid in a State is sufficient to permit unemployed individuals to temporarily provide for the necessities of living. Workers whose prior wages justify a higher weekly DUA amount will receive more, up to the State's maximum weekly amount for regular compensation. Most State UC laws establish the weekly UC amounts based on a percentage of the average weekly wage paid in the State, taking into consideration the labor force, geography and other factors unique to the State. Therefore, the Department has determined that a minimum DUA payment in a State equal to 50 percent of the average UC weekly amount paid in the State is an amount that will allow for the temporary needs of unemployed individuals to provide for certain necessities of living, which, as discussed below, may be reduced for individuals who are customarily or routinely employed or self-employed less than full-time.

Section 625.6(b)(1) provides that if an individual was customarily or routinely employed or self-employed less than full-time prior to his/her unemployment as a direct result of the major disaster, such individual's weekly amount shall be determined based on the percentage of time the individual was employed or self-employed compared to the customary and usual hours per week that would constitute full-time employment or self-employment in the occupation. The State agency will determine what constitutes full-time employment based on information requested from the applicant and State agency records or occupational and labor market information. An exception is provided if an individual employed or self-employed less than full-time has base period earnings that would result in the computation of a DUA WBA under paragraph (a) that is less than 50 percent of the average UC weekly amount but is greater than the DUA WBA computed under paragraph (b)(1). In this case, the individual will be paid the higher weekly amount.

The purpose of this provision is to prevent payment of 50 percent of the average UC weekly amount to an individual who was employed or self-employed less than full-time prior to the major disaster. This provision prevents an individual from receiving a DUA WBA exceeding the wages received for such employment or self-employment. The Department recognizes, and FEMA and the State agencies have also expressed concern, that if the minimum DUA weekly amount is too high, it works as a disincentive for the individual to seek and return to work. For example, assume a college student works 20 hours per week at the hourly wage of $4.25 for a weekly wage of $85.00. This individual becomes unemployed as a direct result of a major disaster, and is dependent upon the employment as his/her principal source of income and livelihood. If the minimum DUA weekly payment (50 percent of the average UC payment) is $90.00 per week in the State, such amount exceeds the weekly wages for his/her employment. Therefore, if 40 hours per week is considered full-time employment for the occupation by the State agency, the individual's DUA weekly amount would be established at $45.00 (20 hours is 50 percent of 40 hours, and 50 percent of $90.00 equals $45.00). That amount is a more equitable income replacement for the services performed and provides an income to the individual in the same kind of relationship to the income received from the job, as a full weekly amount is to the income received by an individual who worked full-time.

Section 625.6(b)(2) provides that if the DUA WBA computed under paragraph (b)(1) is not an even dollar amount, the amount will be rounded in accordance with the rounding provisions for regular UC under the applicable State law.

Sections 625.6 (c) and (d) are redesignated from current paragraphs (b) and (c) and otherwise remain unchanged. These paragraphs provide for determining the DUA WBA for the South Pacific island jurisdictions. The provisions of newly added paragraphs 625.6 (e) and (f) (discussed below) also are applicable to individuals filing for DUA in those South Pacific island jurisdictions.

The Department is considering issuing a notice of proposed rulemaking, which would propose two amendments to § 625.6 to reduce the DUA WBA in the South Pacific island jurisdictions. One amendment would provide that the DUA WBA established under § 625.6(c) for Guam and the Commonwealth of the Northern Mariana Islands would be more akin to the amount determined under paragraph (b) for the remainder of the States (i.e., 50 percent of the average weekly UC amount paid in each State). For the remainder of the jurisdictions at § 625.6(d), the DUA WBA would remain at 50 percent of the area-wide average of weekly wages paid to individuals in those jurisdictions. Amending § 625.6 in accordance with the above proposal would eliminate the inconsistency of unemployed workers in Guam and the Commonwealth of the Northern Mariana Islands receiving a higher DUA WBA than many unemployed workers in the other States.

The second proposed amendment would set forth in § 625.6(b)(1) that an individual in any South Pacific island jurisdiction would be subject to a reduction to his/her determined DUA WBA if he/she were employed or self-employed less than full-time prior to his/her unemployment as a direct result of the major disaster. The reason for including South Pacific islanders under § 625.6(b)(1) is to achieve consistency and uniformity across jurisdictions.

The Department has decided not to provide for the above amendments in this interim final rule because to do so would reduce benefits to some individuals in the South Pacific island jurisdictions, should a major disaster be declared, without notice and an opportunity for comments prior to the effective date of the rule, which is the date of publication.

Newly added § 625.6(e) sets forth that the State agency shall immediately determine a DUA WBA under the provisions of paragraphs (a) through (d) based on the individual's statement of employment or self-employment and the wages earned or paid for each employment or self-employment. In addition, an immediate determination of a DUA WBA will be made if, at the time of filing for DUA, the individual submits documentation substantiating employment or self-employment or wages earned or paid for such employment or self-employment, or if the State agency has records of employment or self-employment and wages earned or paid. An immediate determination shall also be made based on the individual's statement or in conjunction with the submittal of documentation in those cases where the individual was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so as a direct result of the major disaster.

Section § 625.6(e)(1) provides that if entitlement is based only on the individual's statement, the individual must furnish documentation to substantiate such employment or self-employment and/or wages earned or paid for such employment or self-employment. In addition, documentation must be submitted in those cases where the individual was to commence employment or self-employment at the time of the disaster, but was prevented from commencing it

as a direct result of the major disaster. The documentation must be submitted within 21 calendar days of the filing of the DUA initial application.

Section § 625.6(e)(2) provides that if an individual fails to submit, within 21 days, sufficient documentation to establish that he/she was employed or self-employed in the major disaster area prior to his/her unemployment as a direct result of the major disaster, or was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so as a direct result of the disaster, the individual shall be ineligible for the payment of DUA for any week of unemployment due to the major disaster. In addition, if the individual received payments of DUA for any weeks of unemployment prior to the date of the determination of ineligibility, such weeks shall be considered overpaid and a determination will be issued establishing the overpayment. The State agency shall also consider whether the individual should be subject to a disqualification for fraudulently filing an initial application for DUA.

The primary purpose for these provisions (§§ 625.6(e)(1) and (e)(2)) is to provide for the prompt payment of benefits to those affected by a major disaster while also protecting against fraudulent claims for DUA. The Department's position is that, given the disruptions caused by a major disaster, it is important to provide financial relief in affected areas as quickly as possible. It also is necessary to be sure that benefits are being paid only to those who are eligible for them. Thus, the regulations provide for the quick determination and payment of benefits based on the applicant's representation. Once conditions have stabilized, however, it is reasonable to require documentation substantiating that an individual meets the eligibility conditions, *i.e.,* was employed or self-employed or was to commence employment or self-employment in the disaster area at the time he/she became unemployed as a direct result of the major disaster. The documentation to prove employment or self-employment would not have to consist of detailed income data, such as income tax records or W–2 forms, which may have been lost or destroyed because of the disaster, but could, for example, simply consist of a statement from a bank that the individual had a business account or an account with payroll deposit, or a copy of a title or deed to property, or any other simple evidence that could easily be obtained within 21 days. In those cases where an individual was to commence employment or self-employment, the documentation could simply consist of a statement from the employer indicating the date employment was to start or when a self-employment contract for services was to start.

Section 625.6(e)(3) provides that, for purposes of DUA WBA computed under paragraph (a), if an individual submits documentation to verify his/her employment or self-employment within 21 calendar days of the filing of the initial application for DUA, but not documentation to support his/her statement of wages earned or paid during the base period, the DUA WBA shall be immediately redetermined in accordance with the provisions in paragraph 625.6(b). This includes those instances where an individual has not filed a tax return for the most recent tax year that has ended.

The purpose of paragraph (e)(3) is to ensure that if an individual has stated that he/she has earnings that result in a computation of a weekly DUA amount higher than 50 percent of the average UC amount paid in the State, the individual must support the statement by providing documentation of his/her earnings within a reasonable time. This rule will prevent a significant amount of incorrect or improper payments from occurring and prevent a large overpayment from being established against the individual. The Department views 21 calendar days as a reasonable time frame for the individual to contact sources and obtain acceptable proof of income. Examples of acceptable forms of proof are bank records, employer statements of earnings, income tax preparer copies of documents, and State and/or Federal income tax returns.

An individual who planned to commence employment or self-employment but was prevented because of the major disaster would have to produce the same forms of proof as other individuals if the individual had base period employment. However, the Department recognizes that many individuals who were about to commence employment or self-employment may not have had any employment prior to the date of unemployment. Such individuals could only be determined entitled to a weekly amount under the provisions of paragraph (b) of this section. The Department also recognizes that these individuals may have expected to have had earnings that would have resulted in a DUA WBA higher than 50 percent of the average UC weekly amount, had they been included in a base period. However, the Department's position is that there is no basis to project what the individual might have received in future earnings and apply such amount to the base period utilized for computations under § 625.6(a). There is no assurance the individual would have the earnings projected for various reasons such as closure of the business or termination from employment, or, in the case of the self-employed, business expenses may exceed projections, or income may not result as planned. In other words, individuals who were prevented from commencing employment or self-employment have not proven the same attachment to the workforce as have individuals who were employed or self-employed prior to their unemployment as a direct result of the major disaster. Therefore, the payment of 50 percent of the average UC weekly amount to an individual who had no income prior to the employment or self-employment he/she was to commence is reasonable.

If an individual fails to submit proof within 21 days, the State agency generally would not have processed more than three weeks of payments of DUA at the higher amount; hence, any overpayment established as a result of the recomputation would be minimal and could be more readily offset against future amounts payable, causing minimal hardship to the individual. Conversely, the applicant's records submitted within 21 calendar days may result in the individual being entitled to a higher DUA WBA and an adjustment must be made for the underpaid weeks. This rule will also provide such individuals with a steadier income stream.

Section 625.6(e)(4) provides that if an individual has had his/her DUA WBA redetermined in accordance with paragraph (e)(3) because the required wage documentation was not submitted within 21 calendar days, such individual may have his/her DUA WBA redetermined upon submittal of documentation prior to the end of the disaster assistance period to substantiate that the wages earned or paid during the base period would be sufficient to compute a DUA WBA higher than was redetermined under paragraph (b). This provision will benefit all individuals who were unable to obtain and submit base period wage documentation with 21 days. This provision will particularly accommodate those individuals who had not filed a tax return at the time of application for DUA by allowing such individuals up to 26 weeks to submit a copy of a tax return filed for the most recent tax year. Any higher weekly amount determined would be applicable to all weeks for which the individual was eligible for the payment of DUA.

Newly added § 625.6(f)(1) sets forth, for partial and part-total unemployed workers and unemployed self-employed individuals, the current methodology that is prescribed in § 625.6(d) for reducing the weekly amount of DUA payable. It requires that the weekly amount of DUA payable shall be reduced (but not below zero) by the amount of wages earned in that week as determined by applying to such wages the earnings allowance for partial or part-total employment prescribed in the applicable State UC law for partial or part-total employment by individuals received regular UC.

Newly added § 625.6(f)(2) provides that the weekly DUA amount payable to an unemployed self-employed individual shall also be reduced (but not below zero) by the full amount of any income received during the week that was based on the performance of services in self-employment by applying the earnings reduction allowance provided in paragraph (f)(1). Paragraph (f)(2) also provides that, notwithstanding the definition of ''wages'' at § 625.2(u), the term ''any income'' for purposes of this paragraph means gross income.

The basis for the reductions in paragraph (f)(2) of this section derive from the fact that the definition of a ''week of employment'' for an unemployed self-employed individual at § 625.2(w)(2) does not take into consideration that in the case of many self-employed, particularly farmers, all income for year round performance of services may be paid in one or two weeks. The instructions in UIPL No. 35–87 attempted to reconcile the problem by having the individual project his/her net income for the year, then prorate such amount to each week and deduct the amount from the DUA WBA for each week claimed. The result of this, as discussed previously, was that, in many cases, the projected prorated weekly amount exceeded the DUA WBA and the individual received no DUA, even though such individual was unemployed and had no income from any source.

The Department believes it is far more equitable, and will provide weekly DUA payments to a greater number of individuals, to deduct from the DUA WBA the gross earnings received during a week that were or are derived from the performance of services in self-employment, than to attempt to have the individual determine or project net earnings for a year from the income and then prorate such annual figure to each week.

Application of this new provision means, for example, in the case of a farmer, that if the farmer sold some product(s) during a week and received $30,000.00 in gross income, the individual would be ineligible for DUA for that week only, and then he/she could continue to receive DUA in subsequent weeks provided the eligibility requirements of § 625.4 are met. However, if the net income for tax purposes to be derived from the $30,000.00, plus any additional projected net income to be received during the tax year, were prorated to 52 weeks and deducted from the amount of DUA payable, it may mean the individual is not entitled to any DUA for any week because of excessive earnings each week. Likewise, if a self-employed individual performed services prior to becoming unemployed due to the major disaster and is receiving monthly installment payments of, for example, $50.00, such amount would be deducted from the DUA WBA during the week received.

The Department recognizes that application of the reduction provisions in paragraph (f)(2) of § 625.6 will result in no reduction being made for weeks of unemployment after the individual's unemployment as a direct result of the major disaster where the individual performs less than full-time self-employment but has no income during the week. Therefore, the Department is considering issuing a notice of proposed rulemaking, which would amend § 625.6 to reduce the DUA WBA based on the hours an individual performed less than full-time services in self-employment during the week compared to the individual's usual or customary full-time hours performing services. This amendment is not being made in this interim final rule because self-employed individuals affected by such an amendment would receive less benefits without opportunity for comment prior to the effective date of this rule should a major disaster be declared.

Publication in Interim Final; Effective Date

The Department has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for publishing the amendments to 20 CFR 625.6 as an interim final rule with a post-publication comment period, because a pre-publication comment period is impracticable and contrary to the public interest. It is impractical because major disasters continue to occur, which means that thousands of individuals will again be unemployed and applying for DUA if areas in the States or entire States are declared major disaster areas by the President. To not have the regulations in place at that time would be contrary to the public interest because of the inconsistencies and unduly restrictive provisions in the current regulations. In addition, there is little likelihood that the majority of any potential beneficiaries will object to the changes since they provide more equitable and, in most cases, greater benefits.

For all of the reasons stated above, the Department has determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists for making the amendments to 20 CFR 625.6 effective upon publication in the **Federal Register**. Such amendments are applicable to all major disasters declared by the President on or after the date of publication and will, therefore, cover any major disaster in the spring or summer. Historically, these are the seasons of the year when most major disasters occur because of the prevalence of severe storms, floods, tornadoes, and hurricanes.

Drafting Information

This document was prepared under the direction and control of the Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210: Telephone (202) 219–7831 (this is not a toll-free number).

Classification—Executive Order 12866

The interim final rule in this document is classified as a ''significant regulatory action'' under Executive Order 12866 on Federal Regulations. It may: (1) Materially alter the budgetary impact of entitlements or the rights and obligations of recipients thereof; or (2) raise novel legal or policy issues arising out of legal mandates and the President's priorities. It is not likely to result: (3) in having an annual effect on the economy of $100 million or more; or (4) create a serious inconsistency or interfere with action taken or planned by another agency.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, approval has been obtained from the Office of Management and Budget (OMB) for the recordkeeping and reporting requirements under 20 CFR 625.16(a) for the DUA forms ETA 90–2, 81, 81A, 82, 83, and 84. The OMB control number for the 90–2 is 1205–0234, and for the 81, 81A, 82, 83, and 84 it is 1205–0051. OMB approval has also been obtained for the recordkeeping and reporting required under 20 CFR

625.19(b) under OMB control number 1205–0051.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule ''will not * * * have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 605(b)). The definition of the term ''small entity'' under 5 U.S.C. 601(6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17. 225, ''Disaster Unemployment Assistance (DUA).''

Lists of Subjects in 20 CFR Part 625

Disaster Unemployment Assistance, Labor, Reemployment services, Unemployment compensation.

Signed at Washington, DC, on May 4, 1995.

Doug Ross,

Assistant Secretary of Labor.

For the reasons set out in the preamble, part 625 of title 20, Code of Federal Regulations, is amended as set forth below.

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority for part 625 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4–75 (40 FR 18515).

2. Section 625.6 is revised to read as follows:

§ 625.6 Weekly amount; jurisdictions; reductions.

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

(1) Except as provided in paragraph (a)(2) or (b) of this section, in computing an individual's weekly amount of DUA, qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied; and for purposes of this section, employment, wages, and self-employment which are not covered by the applicable State law shall be treated in the same manner and with the same effect as covered employment and wages, but shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law, such as, but not limited to, section 3304(a)(14)(A) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(14)(A)).

(2) For purposes of paragraph (a)(1) of this section, the base period to be utilized in computing the DUA weekly amount shall be the most recent tax year that has ended for the individual (whether an employee or self-employed) prior to the individual's unemployment that was a direct result of the major disaster. The self-employment income to be treated as wages for purposes of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual. If an individual has not filed a tax return for the most recent tax year that has ended at the time of such individual's initial application for DUA, such individual shall have a weekly amount determined in accordance with paragraph (e)(3) of this section.

(3) As of the date of filing an initial application for DUA, family members over the age of majority, as defined under the statutes of the applicable State, who were customarily or routinely employed or self-employed as a family unit or in the same self-employment business prior to the individuals' unemployment that was a direct result of the major disaster, shall have the wages from such employment or net income from the self-employment allocated equally among such adult family members for purposes of computing a weekly amount under this paragraph (a), unless the documentation to substantiate employment or self-employment and wages earned or paid for such employment or self-employment submitted as required by paragraph (e) of this section supports a different allocation. Family members under the age of majority as of the date of filing an initial application for DUA shall have a weekly amount computed under this paragraph (a) based on the actual wages earned or paid for employment or self-employment rather than an equal allocation.

(b) If the weekly amount computed under paragraph (a) of this section is less than 50 percent of the average weekly payment of regular compensation in the State, as provided quarterly by the Department, or, if the individual has insufficient wages from employment or insufficient or no net income from self-employment (which includes individuals falling within paragraphs (a)(3) and (b)(3) of § 625.5) in the applicable base period to compute a weekly amount under paragraph (a) of this section, the individual shall be determined entitled to a weekly amount equal to 50 percent of the average weekly payment of regular compensation in the State.

(1) If an individual was customarily or routinely employed or self-employed less than full-time prior to the individual's unemployment as a direct result of the major disaster, such individual's weekly amount under this paragraph (b)(1) shall be determined by calculating the percent of time the individual was employed or self-employed compared to the customary and usual hours per week that would constitute the average per week hours for year-round full-time employment or self-employment for the occupation, then applying the percentage to the determined 50 percent of the average weekly amount of regular compensation paid in the State. The State agency shall utilize information furnished by the applicant at the time of filing an initial application for DUA and any labor market or occupational information available within the State agency to determine the average per week hours for full-time employment or self-employment for the occupation. If the weekly amount computed for an individual under this paragraph (b)(1) is less than the weekly amount computed under paragraph (a) of this section for the individual, the individual shall be entitled to the higher weekly amount.

(2) The weekly amount so determined under paragraph (b)(1) of this section, if not an even dollar amount, shall be rounded in accordance with the applicable State law.

(c) In the Territory of Guam and the Commonwealth of the Northern Mariana Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the average of the payments of regular compensation made under all State laws referred to in § 625.2(r)(1)(i) for weeks of total unemployment in the first four of

the last five completed calendar quarters immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(d) In American Samoa, Federated States of Micronesia, Republic of the Marshall Islands and the Trust Territory of the Pacific Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the amount agreed upon by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the Federal Coordinating Officer, which shall approximate 50 percent of the area-wide average of the weekly wages paid to individuals in the major disaster area in the quarter immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(e) The State agency shall immediately determine, upon the filing of an initial application for DUA, a weekly amount under the provisions of paragraphs (a) through (d) of this section, as the case may be, based on the individual's statement of employment or self-employment preceding the individual's unemployment that was a direct result of the major disaster, and wages earned or paid for such employment or self-employment. An immediate determination of a weekly amount shall also be made where, in conjunction with the filing of an initial application for DUA, the individual submits documentation substantiating employment or self-employment and wages earned or paid for such employment or self-employment, or, in the absence of documentation, where any State agency records of employment or self-employment and wages earned or paid for such employment or self-employment, justify the determination of a weekly amount. An immediate determination shall also be made based on the individual's statement or in conjunction with the submittal of documentation in those cases where the individual was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so as a direct result of the disaster.

(1) In the case of a weekly amount determined in accordance with paragraph (e) of this section, based only on the individual's statement of earnings, the individual shall furnish documentation to substantiate the employment or self-employment or wages earned from or paid for such employment or self-employment or documentation to support that the individual was to commence employment or self-employment on or after the date the major disaster began. In either case, documentation shall be submitted within 21 calendar days of the filing of the initial application for DUA.

(2) Any individual who fails to submit documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment in accordance with paragraph (e)(1) of this section, shall be determined ineligible for the payment of DUA for any week of unemployment due to the disaster. Any weeks for which DUA was already paid on the application prior to the date of the determination of ineligibility under this paragraph (e)(2) are overpaid and a determination shall be issued in accordance with § 625.14(a). In addition, the State agency shall consider whether the individual is subject to a disqualification for fraud in accordance with the provisions set forth in § 625.14(i).

(3) For purposes of a computation of a weekly amount under paragraph (a) of this section, if an individual submits documentation to substantiate employment or self-employment in accordance with paragraph (e)(1), but not documentation of wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, the State agency shall immediately redetermine the weekly amount of DUA payable to the individual in accordance with paragraph (b) of this section.

(4) Any individual determined eligible for a weekly amount of DUA under the provisions of paragraph (e)(3) of this section may submit necessary documentation to substantiate wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, at any time prior to the end of the disaster assistance period. A redetermination of the weekly amount payable, as previously determined under paragraph (b) of this section, shall immediately be made if the wages earned or paid for services performed in employment or self-employment reflected in such documentation is sufficient to permit a computation under paragraph (a) of this section of a weekly amount higher than was determined under paragraph (b) of this section. Any higher amount so determined shall be applicable to all weeks during the disaster assistance period for which the individual was eligible for the payment of DUA.

(f)(1) The weekly amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of partial or part-total unemployment shall be the weekly amount determined under paragraph (a), (b), (c) or (d) of this section, as the case may be, reduced (but not below zero) by the amount of wages that the individual earned in that week as determined by applying to such wages the earnings allowance for partial or part-total employment prescribed by the applicable State law.

(2) The weekly amount of DUA payable to an unemployed self-employed individual for a week of unemployment shall be the weekly amount determined under paragraph (a), (b), (c) or (d) of this section, as the case may be, reduced (but not below zero) by the full amount of any income received during the week for the performance of services in self-employment, regardless of whether or not any services were performed during the week, by applying the earnings allowance as set forth in paragraph (f)(1) of this section. Notwithstanding the definition of ''wages'' for a self-employed individual under § 625.2(u), the term ''any income'' for purposes of this paragraph (f)(2) means gross income.

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Federal Register

Thursday
May 11, 1995

Part VII

Department of Education

Regional Technical Support and Professional Development Consortia for Technology Transfer; Applications for New Awards for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.302A]

Regional Technical Support and Professional Development Consortia for Technology (later referenced as Regional Technology Consortia), Notice Inviting Applications for New Awards for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a cooperative agreement under this competition.

Purpose of Program: To help States, local educational agencies, teachers, school library and media personnel, administrators and other education entities successfully integrate advanced technologies into kindergarten through 12th grade classrooms, library media centers, and other educational settings (including adult literacy centers). In providing such help, consortia receiving funds under this program shall: (a) Establish and conduct regional activities that address professional development, technical assistance, and information resource dissemination to promote the effective use of technology in education, with special emphasis on meeting the documented needs of educators and learners in the region they serve; and (b) foster regional cooperation and resource and coursework sharing.

Eligible Applicants: Recipients of cooperative agreement awards under this notice shall be regional entities or consortia (later referenced simply as consortium). Each Regional Technology Consortium shall be composed of State educational agencies, institutions of higher education, nonprofit organizations, or a combination thereof. For example, for the purposes of this program, a consortium may include:

(a) An already defined ''regional entity'' such as the Eisenhower Mathematics and Science Regional Consortia, the Regional Educational Laboratories, the Comprehensive Regional Assistance Centers, or a similar regional entity whether designated and funded by the Department or by another agency;

(b) A combination of two or more of these already defined regional entities;

(c) A combination of one or more of these regional entities in addition to any State educational agencies, institutions of higher education, or nonprofit organizations; or

(d) State educational agencies, institutions of higher education, nonprofit organizations, or a combination thereof.

Furthermore, each applicant must show that it can serve all geographic areas under one of the six regions identified below:

Northwest Region: Alaska, Idaho, Montana, Oregon, Washington State, and Wyoming

Southwest and Pacific Region: Arizona, California, Colorado, Nevada, New Mexico, and Utah; American Samoa, Commonwealth of Northern Mariana Islands, Federal States of Micronesia, Guam, Hawaii, Republic of Palau, and Republic of Marshall Islands

North Central Region: Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin

South Central Region: Kansas, Missouri, Nebraska, Oklahoma, and Texas

Northeast: Delaware, Connecticut, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Washington, D.C.

Southeast & Islands Region: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia; Puerto Rico, and the Virgin Islands

One award will be made for each geographic region.

Deadline for Transmittal of Applications: June 30, 1995.

Deadline for Intergovernmental Review: August 30, 1995.

Available Funds: $9,900,000—Subsequent funding of $10 million per year is anticipated.

Estimated Range of Awards: $1,200,000–$2,100,000.

Estimated Average Size of Awards: $1,650,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: 12 months.

The Secretary will initially approve a cooperative agreement with a budget period of 12 months. The Secretary will make continuation awards for additional 12-month periods, subject to the requirements of 34 CFR 75.253(a). In determining whether to continue the cooperative agreement for each additional budget period, the Secretary will consider whether continuation is in the best interest of the Government.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) as follows:

(a) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(b) 34 CFR Part 75 (Direct Grant Programs).

(c) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(d) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(e) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(f) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(g) 34 CFR Part 82 (New Restrictions on Lobbying).

(h) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(i) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Description of Program: Consortia receiving funds under this program shall use these funds to: (a) establish and conduct regional activities that address professional development, technical assistance, and information resource dissemination to promote the effective use of technology in education, with special emphasis on meeting the documented needs of educators and learners in the region they serve; and (b) foster regional cooperation and resource and coursework sharing. The statutes emphasize collaboration and coordination with other entities; Department-funded activities the consortia shall closely coordinate their activities with include, but are not limited to: the Comprehensive Technical Assistance Centers, the Regional Educational Laboratories, the National Diffusion Network, and the Eisenhower Mathematics and Science Regional Consortia. This program is authorized by Title III, Part A, Section 3141 of the Elementary and Secondary Education Act of 1965 as amended (20 U.S.C. 6861). Title III of the ESEA is also known as the Technology for Education Act of 1994.

Special Provisions

1. *Cooperative Agreement Provision:* In conformance with 34 CFR 75.200(b)(4), the Secretary will award cooperative agreements under this competition. Applicants can expect direct involvement by the government

Project Officer in all matters which require extensive regional and national collaboration and coordination.

2. *Equipment.* The Federal Government maintains an interest in all equipment purchased through projects funded under this program for the useful life of the equipment. Therefore, grantees are required to maintain an annual inventory of equipment and the use of such equipment. Any items of equipment authorized for purchase will be subject to Title 34 CFR Parts 74.31 through 74.37 and 34 CFR Parts 80.3 and 80.32.

Definitions: The following definitions apply to the terms used in this notice:

''Local educational agency'' has the same meaning given the term under section 14101(18) of the Elementary and Secondary Education Act of 1965 as amended (20 U.S.C. 8801(18)).

''State'' means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands.

''State educational agency'' has the same meaning given that term under section 14101(28) of the Elementary and Secondary Education Act of 1965 as amended (20 U.S.C. 8801(28)) and includes the Bureau of Indian Affairs for purposes of serving schools funded by the Bureau of Indian Affairs in accordance with part A of Title III of the ESEA as amended.

''Secretary'' means the Secretary of Education.

''Adult education'' has the same meaning given such term by section 312 of the Adult Education Act;

''All students'' means students from a broad range of backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, and cultural backgrounds, students with disabilities, students with limited English proficiency, students who have dropped out of school, and academically talented students.

''State library administrative agency'' has the same meaning given to such term in section 3 of the Library Services and Construction Act.

''Technology'' means state-of-the-art technology products and services, such as, but not limited to closed circuit television systems, educational television and radio programs and services, cable television, satellite, copper and fiber optic transmission, computer hardware and software, video and audio laser and CD–ROM discs, and video and audio tapes.

Requirements

The legislation authorizing the Regional Technology Consortia Program requires that all applications address each of the following requirements:

I. In general. Each consortium receiving a cooperative agreement award under this program shall:

(A) In cooperation with State and local education agencies, develop a regional program that addresses professional development, technical assistance, and information resource dissemination, with special emphasis on meeting the documented needs of educators and learners in the region; and

(B) Foster regional cooperation and resource and coursework sharing.

II. Technical assistance. Each consortium shall, to the extent practicable:

(A) Collaborate with State educational agencies and local educational agencies requesting collaboration, particularly in the development of strategies for assisting those schools with the highest numbers or percentages of disadvantaged students with little or no access to technology in the classroom;

(B) Provide information, in coordination with information available from the Secretary, to State educational agencies, local educational agencies, schools, and adult education programs on the types and features of various educational technology equipment and software available; evaluate and make recommendations on equipment and software that support the National Education Goals and are suited for a school's particular needs; and compile and share information regarding creative and effective applications of technology in the classroom and school library media centers in order to support the purposes of this program;

(C) Collaborate with such State educational agencies, local educational agencies, or schools requesting to participate in the tailoring of software programs and other supporting materials to meet challenging State content standards or challenging State student performance standards that may be developed;

(D) Provide technical assistance to facilitate use of the electronic dissemination networks by State and local educational agencies and schools throughout the region;

III. Professional development Each consortium shall, to the extent practicable:

(A) Assist colleges and universities within the region to develop and implement preservice training programs for students enrolled in teacher education programs; and

(B) Develop and implement, in collaboration with State educational agencies and institutions of higher education, technology-specific, ongoing professional development; examples of possible project development activities are:

(1) Intensive school year and summer workshops that use teachers, school librarians, and school library personnel to train other teachers, school librarians, and other school library media personnel;

(2) Distance professional development, including—

(a) interactive training telecourses using researchers, educators, and telecommunications personnel who have experience in developing, implementing, or operating educational and instructional technology as a learning tool;

(b) Onsite courses teaching teachers to use educational and instructional technology and to develop their own instructional materials for effectively incorporating technology and programming in their own classrooms;

(c) Methods for successful integration of instructional technology into the curriculum in order to improve student learning and achievement;

(d) Video conferences and seminars which offer professional development through peer interaction with experts as well as other teachers using technologies in their classrooms;

(e) Mobile education technology and training resources;

(C) Develop training resources that—

(1) Are relevant to the needs of the region and schools in the region;

(2) Are relevant to the needs of adult literacy staff and volunteers, including onsite courses on how to:

(a) Use instructional technology; and

(b) Develop instructional materials for adult learning; and

(3) Are aligned with the needs of teachers and administrators in the region;

(D) Ensure that training, professional development, and technical assistance meet the needs of educators, parents, and students served by the region.

IV. *Information and resource dissemination; collaboration and coordination.* Each consortium shall work collaboratively, and coordinate the services the consortium provides, with appropriate regional and other entities assisted in whole or in part by the Department, and shall also, to the extent practicable:

(A) Coordinate activities and establish partnerships with institutions of higher education and other organizations that represent the interests of the region as such interests pertain to the application

of technology in teaching, learning, instructional management, dissemination, collection and distribution of educational statistics, and the transfer of student information; and

(B) Assist State and local educational agencies in the identification and procurement of financial, technological and human resources needed to implement technology plans; and

(C) Assist local educational agencies and schools in working with community members and parents to develop support from communities and parents for educational technology programs and projects; and

(D) Identify and link technical assistance providers to State and local educational agencies, as needed; and

(E) Establish a repository of professional development and technical assistance resources;

(F) Provide outreach and, at the request of a State or local educational agency, work with such agency to assist in the development and validation of instructionally based technology education resources.

Priorities

Competitive Priority—Eisenhower Mathematics and Science Regional Consortia Preference

Pursuant to 20 U.S.C. 6861(a)(1) and 34 CFR 75.105(c)(2)(ii), the Secretary gives priority to applicants that include an Eisenhower Mathematics and Science Regional Consortium (funded under 20 U.S.C. 8671–8677) as one of the Regional Technology Consortia members.

The Eisenhower Mathematics and Science Regional Consortia was recently reauthorized under 20 U.S.C. 8671–8677. The Secretary intends to hold a fiscal year 1995 competition to make new Eisenhower Consortia awards. Only those Eisenhower Consortia that receive awards under the fiscal year 1995 competition will be eligible to receive priority under the Regional Technology Consortia program.

The Secretary will award three (3) points if the applicant is comprised of only one or more Eisenhower Consortia.

The Secretary will award five (5) points if the applicant is comprised of one or more Eisenhower Consortia, along with at least two other entities, one of which is of a regional scope.

These points will be in addition to any points the application earns under the selection criteria for the program.

Invitational Priorities

Within the overall project requirements outlined above, and under 34 CFR 75.105(c)(1), the Secretary is particularly interested in supporting projects that meet the following invitational priorities. However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Particularly Effective Strategies to Secure Cooperation from Other Federal and Non-federal Sources

The Secretary encourages the development of project strategies that are likely to be effective in engaging the expertise and resources of community members (e.g. Federal, State and local government agencies and their funded projects; schools, higher education institutions and other education entities; parents and families; non-profit organizations; businesses; and individual citizens) as the consortium assists State and local educational agencies and education communities in the identification and procurement of financial, technological and human resources needed to implement advanced technologies.

Invitational Priority 2—Internet-based Repositories, Dissemination, and Communication

The Secretary invites projects which propose creative uses of the Internet/National Information Infrastructure (NII) to disseminate information to their constituents, and to foster local, regional and national collaboration. The Secretary particularly encourages: (a) strategies to facilitate use of the electronic dissemination networks established by State and local educational agencies and schools throughout the region and which establish a repository of professional development and technical assistance resources; and (b) repository development and electronic linkages which build on the combined strength of all six Regional Technology Consortia, as well as of other technology and education projects whether these are funded by the Department or otherwise.

Invitational Priority 3—Innovative, High-Quality Preservice and Inservice Development Strategies for Teachers and Other Educators

The Secretary invites projects which propose particularly innovative high-quality, intensive professional development strategies, in order to meet the following challenges: (a) to consistently provide training to ensure a technologically-sophisticated educator workforce, and to ensure that educators can use advanced technologies with competence and creativity immediately upon entering service: and (b) to enhance the skills of all staff within the existing educator workforce in the creative uses of advanced technologies.

Invitational Priority 4—Evaluation and Documentation of Needs and Outcomes

The Secretary encourages applicants to propose evaluation activities which will permit the development of reliable baseline information, and subsequent progress data regarding (a) each State within the region served, with respect to its evolving successes and needs when implementing advanced technologies in education; and (b) the activities assisted through this program, their results, and their impact on the school communities served, in order to evaluate the effectiveness of these activities and make informed adjustments over time.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition for FY 1995.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Section 3141 of the Technology for Education Act of 1994, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Regional Technology Consortia Program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Technology for Education Act of 1994, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (A) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary review each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation Plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on March 13, 1995 (60 FR 16713–16715).

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.302A, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W., Washington, D.C. 20202–0125.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a cooperative agreement, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA #84.302A), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.302A), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The application Control Center will accept deliveries between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

Individuals delivering applications must use the D Street Entrance. Proper identification is necessary to enter the building.

In order for an application sent through a Courier Service to be considered timely, the Courier Service must be in receipt of the application on or before the closing date.

Note: Applicants are encouraged to voluntarily submit six (6) additional copies of their application to expedite the review process. The absence of these extra copies will not influence the selection process.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner in which the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524) and instructions.

Special Budget Instructions

The Department is participating in the Administration's Reinventing Government Initiative. As part of that initiative, the National Performance Review urged the Department to ''eliminate the continuation application process for budget years within the project period'' and replace it with ''yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery.'' The Department is implementing this recommendation for as many programs as possible beginning in fiscal year 1995. This will require all applicants for multi-year awards to provide detailed budget information for the total cooperative agreement period. The Department will negotiate at the time of the initial award the funding levels for each year of the cooperative agreement award. A new generic budget form, included in this package, requests the information needed to implement this initiative.

By requesting detailed budget information in the initial application for the total project period, the need for formal noncompeting continuation applications in the remaining years will be eliminated. An annual report will be used in place of the continuation application to determine progress, thereby relieving grantees of the burden to resubmit assurances, certifications, etc.

Please also note that Section 3115 of the Technology for Education Act stipulates that not more than five (5) percent of the funds made available to a recipient under this program for any fiscal year may be used by such recipient for administrative costs or for technical assistance (i.e. technical assistance to be received by the recipient).

Part III: Application Narrative.

Additional Materials.

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Mozer, U.S. Department of Education, Office of Educational Research and Improvement, Room 506a, 555 New Jersey Ave. N.W., Washington, D.C. 20208. Telephone 202–219–8070. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program authority: 20 U.S.C. 6861.

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

BILLING CODE 4000–01–P

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 0 2

TITLE: Regional Technical Support & Professional Development Consortia for Technology

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1875-0102 Expiration Date: 9/30/95
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the project requirements and the invitational priorities, as well as the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract that is a summary of the proposed project; and

2. Describe how the proposed project will meet the statutory requirements, and the invitational priorities if appropriate, in the light of each of the selection criteria in the order in which the criteria are listed in this application package.

3. The applicant may include other pertinent information that may assist the Secretary in reviewing the application.

4. Justifications and specifications for equipment purchases should be clearly related to existing facilities and to proposed activities.

5. Generally, the application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and services delivered.

6. The Secretary strongly requests the applicant to limit the Application Narrative to no more than 200 double-spaced, typed 8½'' × 11'' pages (one inch margins on all four sides, 26 lines per page and no smaller than 10 characters per inch or the equivalent), although the Secretary will consider applications of greater length. The 200 page recommended limit is exclusive of bibliography, budget tables, resumes, letters of support, and other supplements.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 160 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0716, Washington, D.C. 20503.

Information collection approved under OMB control number 1850–0716. Expiration date: 4/30/98.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

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2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

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3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:
Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. **Individuals Performing Services** *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 95–11668 Filed 5–10–95; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Thursday
May 11, 1995

Part VIII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Parts 3200 and 3411

National Competitive Research Initiative Grants Program; Administrative Provisions; Requirements for Agricultural Research Enhancement Awards; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Parts 3200 and 3411

National Competitive Research Initiative Grants Program (also known as the National Research Initiative Competitive Grants Program); Administrative Provisions; Requirements for Agricultural Research Enhancement Awards

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to amend its regulations relating to the administration of the National Research Initiative Grants Competitive Program (NRICGP) (referred to in 7 CFR Part 3200 as the National Competitive Research Initiative Grants Program) that prescribe the procedures to be followed annually in the solicitation of competitive grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program. This action amends those regulations to redesignate 7 CFR Part 3200 as Part 3411, to change the legal name of the program to the National Research Initiative Competitive Grants Program, to clarify certain aspects of the program, and to add eligibility requirements for the Agricultural Research Enhancement Awards.

DATES: Comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before June 12, 1995.

ADDRESSES: Comments should be sent to Colien Hefferan, Acting Deputy Administrator, CSREES, USDA, AG Box 2240, Washington, D.C. 20250–2240.

FOR FURTHER INFORMATION CONTACT: Colien Hefferan at (202) 401–1761.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12866 and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*).

Executive Order 12778

The following information is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*).

Catalog of Federal Domestic Assistance

The NRICGP is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 2(b) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(b)) (the Act), the Secretary of Agriculture is authorized to make competitive grants to State Agricultural Experiment Stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals to further the programs of the Department of Agriculture and to improve research capabilities in agricultural, food, and environmental sciences. Section 2(b) of the Act also authorizes the Secretary of Agriculture to make a variety of competitive grants to improve research capabilities in the agricultural, food, and environmental sciences.

The NRICGP was created pursuant to this authority. Pursuant to 7 CFR 2.107(a)(7), the Secretary delegated this authority to the Administrator of the Cooperative State Research Service. The Secretary of Agriculture's memorandum 1010–1 of October 20, 1994, implementing the reorganization authorities contained in the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, redelegated this authority to the Administrator of the CSREES.

This proposed rule moves this part from 7 CFR Chapter XXXII to 7 CFR Chapter XXXIV, changes the name of the program, adds additional definitions for ''fundamental research,'' ''mission-linked research,'' and ''multidisciplinary research'' to the NRICGP administrative provisions, and establishes eligibility requirements for the Agricultural Research Enhancement Awards program. The planned effective date for this proposed rule is October 1, 1995, or 30 days from the date of publication of the final rule, whichever comes later.

List of Subjects in 7 CFR Part 3411

Grant Programs—Agriculture, Grants administration.

For the reasons set forth in the preamble, CSREES proposes to amend 7 CFR Chapters XXXII and XXXIV as follows:

PART 3200—[REDESIGNATED AS PART 3411]

1. Part 3200 redesignated as Part 3411 and moved from Chapter XXXII to Chapter XXXIV.

2. The authority citation for newly redesignated part 3411 is revised to read as follows:

Authority: Sec. 2(i) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(i)).

3. In newly redesignated part 3411, all references to ''National Competitive Research Initiative Grants Program'' are revised to read ''National Research Initiative Competitive Grants Program'', and all references to ''NCRIGP'' are revised to read ''NRICGP''.

4. In newly redesignated part 3411, all references to ''Grant Application Kit'' are revised to read ''NRICGP Application Kit''.

5. Newly redesignated section 3411.2 is amended by revising the first sentence, adding new paragraphs (l)(1),

(l)(2), and (l)(3) and adding new paragraphs (n) and (o) to read as follows:

§ 3411.2 Definitions.

As used in this part and in annual program solicitations issued pursuant to this part:

* * * * *

(l) * * *

(1) *Fundamental research,* as referred to annually in the program solicitation, means research that tests scientific hypotheses and provides basic knowledge which allows advances in applied research and from which major conceptual breakthroughs are expected to occur.

(2) *Mission-linked research,* as referred to annually in the program solicitation, means research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product, practice, or process.

(3) *Multidisciplinary research,* as referred to annually in the program solicitation, means research in which investigators from two or more disciplines are collaborating closely. These collaborations, where appropriate, may integrate the biological, physical, chemical, or social sciences.

* * * * *

(n) *Small and mid-sized institution* means an academic institution with a total enrollment of 15,000 or less. An institution in this instance is an organization that possesses a significant degree of academic and administrative autonomy, as determined by reference to the most recent issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. 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 Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814. Copies may be inspected at USDA, CSREES, NRICGP, 901 D. St., SW., Suite 323, Washington, DC.

(o) *USDA–EPSCoR States (Experimental Program for Stimulating Competitive Research)* means States which have had a funding level from the USDA NRICGP no higher than the 38th percentile of all States, based on a three-year rolling average, and all United States territories and possessions. A list of eligible states is published annually in the program solicitation.

6. Newly redesignated § 3411.3 is amended by adding paragraph (d) as follows:

§ 3411.3 Eligibility requirements.

* * * * *

(d) *Agricultural Research Enhancement Awards.* In addition to paragraphs (a), (b), and (c) of this section, the following eligibility requirements apply to Agricultural Research Enhancement Awards (Program reserves the right to specify funding limitations and administrative requirements each year in the program solicitation):

(1) *Postdoctoral Fellowships.* In accordance with Section 2(b)(3)(D) of the Act of August 4, 1965, as amended, individuals who have recently received or will soon receive their doctoral degree may submit proposals for postdoctoral fellowships. The following eligibility requirements apply:

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the fiscal year three years prior to the submission of the proposal and not later than June 15 of the fiscal year during which the proposal is submitted;

(ii) The individual must be a citizen of the United States; and

(iii) The proposal must contain:

(A) Documentation that arrangements have been made with an established investigator to serve as mentor;

(B) Documentation that arrangements have been made for the necessary facilities, space, and materials for conduct of the research; and

(C) Documentation from the host institution's authorized organizational representative indicating that the host institution concurs with these arrangements.

(2) *New Investigator Awards.* Pursuant to Section 2(b)(3)(E) of the Act of August 4, 1965, as amended, investigators or co-investigators who are beginning their research careers, do not have an extensive research publication record, and have less than 5 years of post-graduate, career-track research experience may submit proposals as new investigators. Applicants may not have received competitively-awarded Federal research funds beyond the level of pre-or postdoctoral research awards.

(3) *Strengthening Awards.* Applicants that are eligible for any grant under this part may also be eligible for Equipment Grants, Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards pursuant to Sections 2(b)(3)(D) and (F) of the Act of August 4, 1965, as amended, subject to the following limitations on such eligibility:

(i) Equipment Grants. The following organizations are ineligible to apply for Equipment grants:

(A) Institutions which are among the top 100 universities for receiving Federal funds for science and engineering research as listed in the most recent release of Selected Data on Federal Support to Universities and Colleges (National Science Foundation); or

(B) non-degree granting institutions. 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 Division of Science Resource Studies, National Science Foundation, Arlington, VA 22230. Copies may be inspected at USDA, CSREES, NRICGP, 901 D St., SW., Suite 323, Washington, DC.

(ii) Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards. The following eligibility requirements apply to Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards:

(A) No investigator listed on the Application For Funding (Form CSRS–661) may have received a USDA competitive research grant within the last five years as evidenced by an investigator listing on a prior Form CSRS–661;

(B) All investigators listed on the Application For Funding (Form CSRS–661) must be from a small or mid-sized institution that is not among the top 100 universities for receiving Federal funds for science and engineering research (as listed in the most recent release of Selected Data on Federal Support to Universities and Colleges (National Science Foundation)) or must be from an institution located in a USDA–EPSCoR state; and

(C) Every investigator listed on the Application For Funding (Form CSRS–661) must have a full-time appointment at a degree granting institution. This incorporation by reference was approved by the Director of the Federal Register with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Division of Science Resource Studies, National Science Foundation, Arlington, VA 22230. Copies may be inspected at USDA, CSREES, NRICGP, 901 D. St., SW., Suite 323, Washington, DC.

7. Paragraph (c)(1) of newly redesignated § 3411.4 is amended by revising all references to ''Grant Application Cover Page'' to read ''Application for Funding form''.

8. Newly redesignated § 3411.4 is further amended by revising the last sentence of paragraph (c)(4), adding three new sentences at the end of paragraph (c)(8), adding a new last sentence to paragraph (c)(9)(i), and adding a new last sentence to paragraph (c)(9)(ii), by replacing ''Institutional Review Board'' with ''Institutional Committee'' in paragraph (c)(9)(ii), by adding a new last sentence to paragraph (c)(9)(iii), and adding a new paragraph (c)(13) to read as follows:

§ 3411.4 How to apply for a grant.

* * * * *

(c) * * *

(4) Facilities and equipment. * * * In addition, requested items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed (including dollar amounts), and, if funds are requested for their acquisition, justified on a separate sheet of paper and attached to the budget.

* * * * *

(8) Budget. * * * Equipment grants may not exceed 50 percent of the cost of the equipment to be acquired. Equipment grant funds also may not be used for installation, maintenance, warranty, or insurance expenses. Indirect costs are not permitted on Equipment grants.

(9) Research involving special considerations. * * *

(i) Recombinant DNA and RNA molecules. * * * In the event a project involving recombinant DNA and RNA molecules results in a grant award, a qualified Institutional Biosafety Committee must approve the research before CSREES funds will be released.

(ii) Human subjects at risk. * * * In the event a project involving human subjects results in a grant award, funds will be released only after a qualified Institutional Committee has approved the project.

(iii) Experimental vertebrate animal. * * * In the event a project involving the use of living vertebrate animals results in a grant award, funds will be released only after a qualified Institutional Animal Care and Use Committee has approved the project.

* * * * *

(13) National Environmental Policy Act. As outlined in CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR Part 3407, environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR Part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form (Form CSRS–1234) provided in the NRICGP Application Kit. Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

9. Newly redesignated § 3411.6 is amended by adding paragraph (f) as follows:

§ 3411.6 Grant awards.

* * * * *

(f) Current Research Information Service (CRIS). For each project funded, CRIS Form AD–416, ''Research Work Unit/Project Description-Research Resume'' and CRIS Form AD–417, ''Research Work Unit/Project Description-Classification of Research'' and specific instructions for their completion will be sent to the grantee for completion and return. Grant funds will not be released until the completed forms are received in CSREES.

10. Newly redesignated § 3411.8 is amended by adding the following additional applicable regulation:

§ 3411.8 Other Federal statutes and regulations that apply.

* * * * *

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions

11. Newly redesignated section 3411.12 is amended by redesignating the current paragraph as paragraph (a) and by adding a new paragraph (b) as follows:

§ 3411.12 Conflicts of interest.

* * * * *

(b) Reviewers may not review proposals submitted by institutions or other entities with which they have an affiliation or in which they have an interest. For the purposes of determining whether such a conflict exists, an institution shall be considered as an organization if it possesses a significant degree of academic and administrative autonomy, as determined by reference to the most recent issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation. This incorporation by reference will be submitted for approval by the Director of the Federal Register prior to publication of the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814. Copies may be inspected at USDA, CSREES, NRICGP, 901 D. St., SW., Suite 323, Washington, DC.

Done at Washington, DC, this 5th day of May.

William D. Carlson,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–11577 Filed 5–10–95; 8:45 am]

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Federal Register

Thursday
May 11, 1995

Part IX

The President

Notice of May 10, 1995—Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs

Federal Register
Vol. 60, No. 91
Thursday, May 11, 1995

Presidential Documents

Title 3—

The President

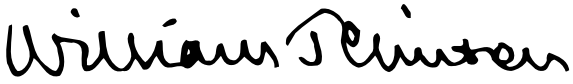
Notice of May 10, 1995

Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs

On May 30, 1992, by Executive Order No. 12808, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Governments of Serbia and Montenegro, blocking all property and interests in property of those Governments. President Bush took additional measures to prohibit trade and other transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro) by Executive Orders Nos. 12810 and 12831, issued on June 5, 1992, and January 15, 1993, respectively. On April 25, 1993, I issued Executive Order No. 12846, blocking the property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), and prohibiting trade-related transactions by United States persons involving those areas of the Republic of Bosnia and Herzegovina controlled by Bosnian Serb forces and the United Nations Protected Areas in the Republic of Croatia. On October 25, 1994, because of the actions and policies of the Bosnian Serbs, I expanded the scope of the national emergency to block the property of the Bosnian Serb forces and the authorities in the territory that they control within the Republic of Bosnia and Herzegovina, as well as the property of any entity organized or located in, or controlled by any person in, or resident in, those areas.

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) has continued its actions and policies in support of groups seizing and attempting to seize territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence, and because the Bosnian Serbs have continued their actions and policies, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina, the national emergency declared on May 30, 1992, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond May 30, 1995. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb forces and those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 10, 1995.

[FR Doc. 95–11867
Filed 5–10–95; 11:50 am]
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