decision, Revenue Ruling 79-72, 1979-12 IRB 14, relating to Federal income tax treatment of interest on short-term nonnegotiable time deposit certificates issued by financial institutions where the term of the certificate overlaps the end of the holder's taxable year, would no longer apply to any instrument to which, by reason of this amendment, the ratable inclusion rule of section 1232(a)(3) applied.

Comments—Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the **Federal Register.**

Thirty-Day Period for Public Comment

If the amendment proposed by this document were adopted as a Treasury decision, it would be necessary for issuers of obligations to which the Treasury decision applied to make modifications in their procedures for accounting for, and reporting, original issue discount includable in the gross incomes of holders of the obligations. In order to give these issuers sufficient time in which to make these necessary modifications before the end of 1979, if the proposed amendment is adopted, there is need for certainty at the earliest possible date regarding the treatment of this original issue discount. Therefore, 30 days, rather than the normal 60 days, has been allowed for receipt of public comment on the proposed amendment in order to provide this necessary certainty at the earliest date.

Drafting Information

The principal author of this proposed regulation is William E. Mantle of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed amendments to the regulations

The proposed amendment to 26 CFR Part 1 is as follows:

Section 1.1232-3A(b)(2) is revised to read as follows:

§ 1.1232-3A Inclusion as interest of original issue discount on certain obligations issued after May 27, 1969.

* * * * *

(b) *Exceptions.* * * *

(2) *Exception for certain one-year obligations.* Section 1232(a)(3) shall not apply to any obligation issued before July 1, 1979, in respect of which the period between the date of original issue (as defined in paragraph (b)(3) of § 1.1232-3) and the stated maturity date is one year or less. In such case, gain on the sale or exchange of such obligation shall be included in gross income as interest to the extent the gain does not exceed an amount equal to the ratable monthly portion of original issue discount multiplied by the sum of the number of complete months and any fractional part of a month such taxpayer held such obligation.

* * * * *

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-20580 Filed 6-29-79; 11:22 am]

BILLING CODE 4830-01-M

[26 CFR Part 1]

[LR-43-76]

Treatment of Original Issue Discount on Certain Short-Term Corporate Obligations; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the treatment of original issue discount on corporate obligations that mature in one year or less, which appear in the Proposed Rules section of this issue of the **Federal Register.**

DATES: The public hearing will be held on August 14, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by August 6, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-43-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1232(a)(3) of the Internal Revenue Code of 1954. The proposed regulations appear in the Proposed Rules section of this issue of the **Federal Register** (FR Doc. 79-20580).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by August 6, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-20581 Filed 6-29-79; 11:22 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Water Research and Technology

[41 CFR Part 14R-9]

Patents, Data, and Copyrights; Proposed Policies and Procedures

AGENCY: Department of the Interior.

ACTION: Proposed Regulations.

SUMMARY: This part sets forth the policies, procedures, and practice of the

Office of Water Research and Technology (OWRT) in connection with inventions, patents, technical data, and copyrights. This proposed rulemaking is set forth because of revised policies caused by statutory changes.

DATE: This proposed revision of Part 14R–9 of the Federal Procurement Regulations for the Interior Department is being published for public comment and permissive use. Comments must be received on or before August 6, 1979.

ADDRESS: Comments should be directed to: Assistant Solicitor, Branch of Patents, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. All materials received will be considered and all comments in response to this proposal will be available for public inspection during normal business hours at the Office of the Assistant Solicitor, Branch of Patents, Room 6061, Interior Department Building, 18th and C Streets NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Gersten Sadowsky, Donald A. Gardiner, Telephone: (202) 343–4471.

SUPPLEMENTARY INFORMATION:

Background

I. This Part sets forth the policies, procedures, and practice of the Office of Water Research and Technology (OWRT) in connection with inventions, patents, technical data, and copyrights. OWRT, which was established by Order Number 2966 of the Secretary of the Interior, dated July 26, 1974, and consitutes a reorganization and consolidation of the Office of Saline Water and the Office of Water Resources Research, performs those functions which have been assigned to the Department of the Interior by the Water Resources Research Act of 1964, as amended, (42 U.S.C. 1961 et seq.), and the Saline Water Conversion Act of 1971, as amended, (42 U.S.C. 1951 et seq.). Patent and data policies, procedures, and practices of OWRT following provisions pertaining thereto in Section 303 of the Water Resources Research Act of 1964, and Section 6(d) of the Saline Water Conversion Act of 1971, as implemented by regulations in 41 CFR Part 14R–9, Office of Saline Water, Patents and data, (36 FR 22744, November 20, 1971), require modification for compliance with provisions of section 3 of the Appropriations Authorization Act for the Saline Water Conversion Program for fiscal year 1977, Pub. L. No. 94–316 of June 22, 1976, which provisions were subsequently reenacted in the Water Research and Development Act of 1978, Pub. L. 95–467 of October 17, 1978, the successor to the Water Resources Act of 1964, and the Saline Water Conversion Act of 1971. The Water Research and Development Act of 1978, in section 408, provides that relative to the definition of, title to, and licensing of inventions made or conceived in the course of or under any contract or grant pursuant to the Act, and notwithstanding any other provision or law, the Secretary of the Interior shall be governed by the provisions of sections 9 and 10 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577; 42 U.S.C. 5908, 5909), with the exception of subsections (1) and (n) of said section 9. This Part sets forth those policies, procedures, and practices of OWRT in connection with inventions, patents, technical data, and copyright, which follow the Water Research and Development Act of 1978; and to the extent not inconsistant with the foregoing statutes, the revised Presidential Memorandum and Statement of Government Patent Policy, August 23, 1971 (36 FR 16887–16872).

Policy II

A patent policy change for OWRT is effected by the said Act of June 22, 1976, as followed by the Water Research and Development Act of 1978, and the Federal Nonnuclear Energy Research and Development Act of 1974, made applicable to OWRT thereby. These Acts provide the Government with title to the inventions resulting from OWRT's research and development activities as well as authority in the Secretary of the Interior to waive certain of the Government's rights in such inventions under particular circumstances, whereas OWRT's statutory authority superseded by these Acts has been interpreted as meaning that inventions and resulting patents arising out of research and development under that statutory authority must be made available royalty-free to all so as to preclude any meaningful waiver of the Government's rights. See Solicitor's memorandum M–36637 of May 7, 1962, 69 I.D. 54 (1962).

The primary author of this document is Gersten Sadowsky, Branch of Patents, Office of the Solicitor, Department of the Interior, Telephone (202) 343–4471.

The proposed regulations have been determined not to be significant rule making for purposes of the Department's procedures to implement E.O. 12044.

Dated: June 21, 1979.

William L. Kendig,

Acting Deputy Assistant Secretary—Policy, Budget and Administration, Department of the Interior.

Title 41 CFR is proposed to be amended by revising Part 14R–9 to read as follows:

PART 14R–9—PATENTS, DATA, AND COPYRIGHTS

Sec.
14R–9.000 Scope of part.

Subpart 14R–9.1—Patents

14R–9.100 Scope of subpart.
14R–9.101 Contracting Officer to consult with Solicitor.
14R–9.102 Authorization and consent.
14R–9.102–1 Authorization and consent for supplies or services.
14R–9.102–2 Authorization and consent in contracts for research and development or demonstration.
14R–9.103 Patent idemnification of Government by contractor.
14R–9.103–1 Patent indemnification in formally advertised contracts—commercial status predetermined.
14R–9.103–2 [Reserved.]
14R–9.103–3 Patent indemnification in negotiated contracts.
14R–9.103–4 Waiver of indemnity by the Government.
14R–9.104 Notice and assistance.
14R–9.105 [Reserved.]
14R–9.106 [Reserved.]
14R–9.107 Patent rights under contracts for research, development, and demonstration, and under special contracts.
14R–9.107–1 General.
14R–9.107–2 [Reserved.]
14R–9.107–3 Policy.
14R–9.107–4 Procedures.
14R–9.107–5 Clause for contracts (long form).
14R–9.107–6 Clause for contracts (short form).
14R–9.107–7 Foreign contracts.
14R–9.108 [Reserved.]
14R–9.109 Administration of patent clauses.
14R–9.109–1 Patent rights follow-up.
14R–9.109–2 Follow-up by contractor.
14R–9.109–3 Follow-up by Government.
14R–9.109–4 Remedies.
14R–9.109–5 Conveyance of invention rights acquired by the Government.
14R–9.109–6 Waivers.
14R–9.110 Reporting of royalties.

Supbart 14R–9.2—Technical Data and Copyrights

14R–9.200 Scope of subpart.
14R–9.201 Definitions.
14R–9.202 Acquisition and use of technical data.
14R–9.202–1 General.
14R–9.202–2 Policy.
14R–9.202–3 Procedures.
14R–9.202–4 Procedures (Government-owned, contractor operated facilities).
14R–9.202–5 Negotiations and deviations.

Authority.—5 U.S.C. 1976 ed., sec. 301; sec. 2, Reorganization Plan No. 3 of 1950, 15 FR 3174; 42 U.S.C. sec. 7879.

§ 14R-9.000 Scope of part.

This part sets forth policies, instructions, and contract clauses pertaining to patents, data, and copyrights in connection with the procurement of supplies and services.

Subpart 14R-9.1—Patents

§ 14R-9.100 Scope of subpart.

This subpart sets forth policies, procedures, and contract clauses with respect to inventions made or utilized in connection with any contracts, grants, agreements, understandings, or other arrangements entered into with or for the benefit of OWRT. OWRT's primary mission in its R&D procurement process is not oriented toward procurement for Government use, but rather toward the development and ultimate utilization of methodologies and technologies to assure efficient sources of water and water resources. OWRT must work in cooperation with industry in the development of new water sources and resources and in achieving a goal of widespread commercial use. To this end, Congress has provided OWRT with an array of incentives to secure the adoption of new technology developed for OWRT. An important incentive in commercializing technology is that provided by the patent system. As set forth in these regulations, patent incentives, including the Secretary of the Interior's authority to waive the Government's patent rights to the extent provided for by the statute, will be utilized in appropriate situations to encourage industrial participation, foster commercial utilization and competition, and make the benefits of OWRT's activities widely available to the public. In addition to considering the waiver of patent rights at the time of contracting, OWRT will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by the contractor, or the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for an identified invention will be provided where it is determined that the patent waiver will be a real incentive to achieving the development and ultimate commercial utilization. Where a waiver of Government patent rights is granted, either at the time of contracting or upon request after an invention is made, certain safeguards will be required by OWRT to protect the public interest.

§ 14R-9.101 Contracting Officer to consult with Solicitor.

(a) Except as is otherwise provided in this subpart, all authority of the Secretary of the Department of the Interior with respect to patent policies and procedures has been delegated to the Solicitor of the Department (Departmental Manual, Part 210, Chapter 2, paragraph 210.2.2A(5)). Therefore, any action under any contract provision required of the Contracting Officer (or other official having administrative authority over the contract) which affects the disposition of rights in inventions and in related area of data, shall be taken only after consultation with and approval of the Solicitor of the Department. No modification or alteration of any contract provision in these areas shall be made by the Contracting Officer without the express written authorization of the Solicitor. Requests for deviation shall be submitted to the Solicitor and the reasons for the actions requested set forth.

(b) The Office of the Solicitor shall be consulted for policies, instructions, and contract clauses concerning inventions, patents, and data for use in contracts which are to be performed outside the United States, its possessions, and Puerto Rico.

§ 14R-9.102 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a United States patent based on the manufacture or use by or for the United States of an invention described in and covered by a patent of the United States by a contractor or by a subcontractor (at any tier) can be maintained only against the Government in Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, to insure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as provided below. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by a contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by a contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) In certain contracting situation, such as those involving demonstration projects, consideration must be given to the impact of third party-owned patents covering technology that may be incorporated in the project which may ultimately affect widespread commercial use of the project results. In such situations, the Interior Department's Solicitor (Division of General Law) should be consulted to determine what modifications, if any, should be made to the utilization of the Authorization and Consent and Indemnity provisions or what other action might be deemed appropriate.

(c) An Authorization and Consent clause shall not be used in contracts where both complete performance and delivery are to be outside the United States, its possessions or Puerto Rico.

§ 14R-9.102-1 Authorization and consent in contracts for supplies or services.

The following contract clause shall be included in all contracts for supplies or services except:

(a) When prohibited by § 14R-9.102(c); or

(b) In contracts for research, development, or demonstration work in which the clause in § 14R-9.102-2 is required.

Authorization and Consent

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (a) embodied in the structure of composition of any article the delivery of which is accepted by the Government under this contract or (b) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (i) specifications or written provisions now or hereafter forming a part of this contract, or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including all lower-tier subcontracts), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

§ 14R-9.102-2 Authorization and consent in contracts for research, development, or demonstration.

Greater latitude in the use of patented inventions may be necessary in a

contract for research, development, or demonstration work than in a contract for supplies. Unless prohibited by § 14R–9.102(c), the following clause shall be included in all contracts calling exclusively for research, development, or demonstration work and may be included in contracts calling for both supplies and research, development, or demonstration work where the latter work is a primary purpose of the contract. In all other contracts for both supplies and research, development, or demonstration work, the Authorization and Consent clause § 14R–9.102–1 shall be used. If the following clause is included in a contract, the clause in § 14R–9.102–1 shall not be included.

Authorization and Consent

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts).

§ 14R–9.103 Patent indemnification of Government by contractor.

In order that the Government may be reimbursed for liability for patent infringement arising out of or resulting from the performance of construction contracts or contracts for supplies, including standard parts and components which normally are or have been sold or offered for sale to the public in the commercial open market, or which are the same as such supplies with a relatively minor modification thereof, a clause providing for indemnification of the Government shall be included in such contracts as well as in subcontracts, as appropriate, in accordance with the instructions set forth below. However, a Patent Indemnity clause normally shall not be used in contracts or subcontracts:

(a) When the Authorization and Consent clause in § 14R–9.102–2 applicable to research, development, or demonstration contracts is authorized, except that in contracts calling also for supplies of the kind described above, or for supplying standard parts or components, the Patent Indemnity clause in § 14R–9.103–3(b) may be used with respect to such supplies; in subcontracts thereunder, the Patent Indemnity clause of § 14R–9.103–1 or § 14R–9.103–3(b) shall be used as appropriate;

(b) When the contract is for supplies which clearly are not, or have not, been sold or offered for sale to the public in the commerical open market;

(c) When both performance and delivery are to be outside the United States, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its possessions, or Puerto Rico, in which case the instruction of § 14R–9.103–1 or § 14R–9.103–3 are applicable; or

(d) When the contract is for an amount of § 10,000 or less (as a matter of administrative convenience, however, the clause need not be deleted where it is a part of a standard form being used for such contracts since it is self-deleting).

§ 14R–9.103–1 Patent indemnification in formally advertised contracts—commercial status predetermined.

Except as prohibited by § 14R–9.103, the following clause is appropriate in formally advertised construction contracts and shall be included in formally advertised contracts for supplies when it has been determined in advance of issuing the invitation for bids that the supplies (or such supplies apart from relatively minor modification to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commerical open market.

Patent Indemnity

If the amount of this contract is in excess of $10,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

§ 14R–9.103–2 [Reserved.]

§ 14R–9.103–3 Patent indemnity in negotiated contracts.

The fact that a contract is negotiated does not preclude inclusion of a Patent Indemnity clause in such a contract, and such clause may be included in negotiated construction contracts and in contracts for supplies when such supplies normally are or have been sold or offered for sale to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto, or in contracts for supplying standard parts or components.

(a) Subject to the foregoing and to the prohibitions in § 14R–9.103, the clause in § 14R–9.103–1 is approved for use in negotiated contracts for construction work or supplies.

(b) Except as prohibited by § 14R–9.103, the following clause is appropriate in research, development, or demonstration contracts when it has been determined by OWRT in any particular contracting situation that the contract will require standard supplies sold or offered for sale to the public on the commercial open market or utilize the contractor's practices or methods which normally are or have been used in providing goods and services on the commercial open market.

Patent Indemnity

The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) resulting from the Contractor's: (a) furnishing or supplying standard parts or components which have been sold or offered for sale to the public on the commercial open market; or (b) utilizing its normal practices or methods which normally are or have been used in providing goods and services in the commercial open market, in the performance of the contract; or (c) utilizing any parts, components, practices, or methods to the extent to which the Contractor has secured indemnification from liability. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent

jurisdiction or to an infringement resulting from addition to or change in such supplies or components furnished or construction work performed which addition or change was made subsequent to deliver or performance by the Contractor.

§ 14R–9.103–4 Waiver of indemnity by the Government.

If it is desired to exempt one or more specified United States patents from the Patent Indemnity clause in § 14R–9.103–1 and § 14R–9.103–3(b), concurrence for such exemption shall be obtained from the Solicitor, and the following clause shall be included in the contract, in addition to the Patent Indemnity clause.

Waiver of Indemnity

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance of this contract, of any invention covered by the United States patents identified as listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate).

§ 14R–9.104 Notice and assistance.

The Government should be notified by the contractor of all claims of infringement in connection with the performance of a Government contract which come to the contractor's attention. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the performance of the contract. Accordingly, the following clause shall be included in all contracts in excess of $10,000 for supplies, services, construction, research, development, or demonstration work. However, that the clause shall not be included in contracts:

(a) Where both performance and delivery are to be outside the United States, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its possessions, or Puerto Rico; or

(b) Of $10,000 or less (as a matter of administrative convenience, however, the clause need not be deleted when it is part of a standard form being used for such contracts since it is self-deleting).

Notice and Assistance Regarding Patent and Copyright Infringement

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledgement.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work services performed hereunder, the Contractor shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all subcontracts.

§ 14R–9.105 [Reserved.]

§ 14R–9.106 [Reserved.]

§ 14R–9.107 Patent rights under contracts for research, development, and demonstration, and under special contracts.

§ 14R–9.107–1 General.

This section sets forth the policies, procedures, and practices of OWRT in connection with inventions, patents, and related matters based upon Section 408 of the Water Research and Development Act of 1978, Pub. L. 95–467 of October 17, 1978, citing Sections 9 and 10 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908, 5909); and, to the extent not inconsistent with the foregoing statutes, the revised Presidential Memorandum and Statement of Government Patent Policy, August 23, 1971 (36 FR 16887–16892). Pursuant to the foregoing statutes, title to inventions conceived or otherwise made in the course of or under OWRT contracts shall vest in the Government, and that all or part of the rights of the Government in such inventions may be waived if it is determined, in conformity with the provisions of Section 9 of the Federal Nonnuclear Energy Research and Development Act, that the interests of the United States and the general public will best be served by such waiver.

§ 14R–9.107–2 [Reserved.]

§ 14R–9.107–3 Policy.

(a) Whenever any invention is conceived or otherwise made in the course of or under any contract of OWRT, title to such invention shall vest in the United States unless the Secretary of the Interior, or his designee, waives all or any part of the rights of the United States. While waivers are to be granted only in conformity with the specific minimum considerations and under the carefully delineated conditions set forth in § 14R–9.109–6, it is recognized that waivers comprise a necessary part of the commercialization incentives available to OWRT. It is intended, therefore, that waivers will be provided in appropriate situations to encourage industrial participation and foster rapid commercial utilization in the overall best interest of the United States and the general public. With regard to any waivers granted under this Part 14R–9, OWRT shall maintain a publicly available, periodically updated record of such waiver determinations.

(b) In contracts having as a purpose the conduct of research, development, or demonstration work and in other special contracts, the Government shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive, revocable, paid-up license in the invention, and upon written request to OWRT, the right to file and retain title in any foreign country in which the Government does not elect to secure patent rights. The contractor's nonexclusive license retained in the invention may be revoked or modified by OWRT only to the extent necessary to achieve expeditious practical application of the invention pursuant to an application for and the grant of an exclusive license in the invention.

(c) In contracts having as a purpose the conduct of research, development, or demonstration work and in other special contracts the Government may have to acquire the right to require licensing of background patent rights to insure reasonable public availability and accessibility necessary to practice the results of the contract in the field of technology specifically contemplated in the contract effort. The need for background patent rights and the particular rights that should be obtained for either the Government or the public will depend upon the type, purpose, and the scope of the contract effort, and the cost to the Government of obtaining such rights. Accordingly, the background patent rights provision which will be appropriate for many contract situations is included in the Patent Rights clause.

(d) Nothing in this Part 14R–9 shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions under the antitrust laws.

§ 14R-9.107-4 Procedures.

(a) *Selection of Patent Rights clause.* (1) Whenever a contract, subcontract, or other arrangement has as a purpose the conduct of research, development, or demonstration work, the operation of a Government-owned research and production facility, the furninshing of architect-engineer, design or other special services, or the coordination and direction of the work of others, and in other special situations involving the use of Government-owned materials, equipment, or classified technical data and information, the Contracting Officer shall include in the proposed contract either the Patent Rights clause of § 14R-9.107-5(a), or the clause of § 14R-9.107-6. The clause set forth in § 14R-9.107-6 may be used only in contracts calling for basic or applied research work with nonprofit or educational institutions, or in certain consultant contracts as set forth in paragraph (a)(5) of this section.

(2) The Patent rights clause of § 14R-9.107-5(a) and § 14R-9.107-6 provide that the Government shall acquire title to inventions made (i.e. conceived or first actually reduced to practice) in the course of or under the contract. However, the contractor shall retain a nonexclusive, revocable license, and suject to OWRT requirements and regulations, may request the right to file and retain title in any foreign country in which the Government does not elect to secure patent rights. The contractor or the inventor may also retain greater rights than these after an invention has been identified and reported to OWRT if the Secretary or his designee determines that the interests of the United States and the general public will best be served by a waiver of such rights, utilizing the considerations set forth in § 14R-9.109-6.

(3) The primary missions of OWRT may require that certain rights in the contractor's privately developed background patents be acquired for the Government's future production, research, development, and demonstration projects. Similar rights may also be required to enable private parties to utilize the technology developed or demonstrated with Government assistance in the field of technology specifically contemplated in the contract effort. To this end, subject to specified exceptions and negotiations, the Patent Rights clause in OWRT contracts shall normally include provisions obtaining rights of the type specified in § 14R-9.107-5 to such background patents, except that for contracts up to $50,000, a determination may be made by the Solicitor to omit such provisions upon the contractor's request therefor to OWRT. This determination will be particularly concerned with the implications of the contract's potential for technological advances to any intentions or plans which the Govenment may have to additionally fund research and development for such advances. It is recognized that the precise rights to be acquired under the provisions will depend upon the facts of each situation and are a matter for determination by OWRT and for negotiation with the contractor. General guidelines for use by Contracting Officers and contract negotiators are provided in § 14R-9.107-5(b).

(4) The short form Patent Rights clause in § 14R-9.107-6 may be used in contracts calling for basic or applied research where the contractor is a nonprofit or educational institution, and in special situations such as consultant contracts. However, this clause will not be used in contracts calling for the operation of Government-owned facilities, contracts in which an advance waiver or greater rights has been granted, in certain consultant contracts as explained in § 14R-9.107-6, or in other special contracts.

(5) Solicitations and proposed contracts shall provide offerors and prospective contractors with notice of and the right to request, in advance of or within 30 days after the effective date of contracting, a waiver of all or any part of the rights of the United States with respect to subject inventions. In no event will the fact that an offeror has requested such a waiver be a consideration in the evaluation of his offer or the determination of his acceptablity. If an advance waiver is granted, the Patent Rights clause of § 14R-9.107-5(a) shall be utilized and appropriately modified in accordance with the terms of such waiver. To provide adequate notice to prospective contractors or offerors, the following provision will be inserted in all soliciations which may result in contracts calling for research, development, or demonstration:

> Offerors and prospective contractors in accordance with applicable statutes and OWRT Regulations (41 CFR 14R-9.109-6) have the right to request in advance of or within 30 days after the effective date of contracting a waiver of all or any part of the rights of the United States in subject inventions.

(b) *License for the Government, States and domestic municipal governments.* When a waiver is granted or foreign rights are retained by either the contractor or the inventor, the Government shall retain for the United States, and domestic municipal governments at least a paid-up, nonexclusive, irrevocable license in all applicable inventions unless the Secretary or his designee determines that it would not be in the public interest to acquire such rights for the States and domestic municipal governments. Requests by contractors for such determinations, together with a justification therefor shall be submitted to the Contracting Officer. The Contracting Officer shall refer such requests, along with appropriate comments and recommendations, to the Solicitor to serve as a basis for a determination by the Secretary or his designee.

(c) *Right to sublicense foreign governments.* The Patent Rights clause does not provide the Government with the right to grant sublicenses to a foreign government pursuant to any treaty or agreement in subject inventions to which the contractor has been granted greater or foreign rights. The Secretary or his designee may determine at the time of contracting that it would be in the national interest to acquire this right, or he may reserve the right to make this determination after the invention is identified. When such a determination is made or such right is reserved, the Patent Rights clause should be amended as set forth in § 14R-9.107-5(d).

(d) *License rights (upon request) to the contractor.* Paragraph (c) of the Patent Rights (long form) clause of § 14R-9.107-5(a) specifies the license rights retained by the contractor in inventions made in the course of or under the contract. In appropriate circumstances, such as in contracts for the operation of Government-owned facilities or special long term, cost reimbursement Government-funded research, development, or demonstration work, this provision shall be modified to provide a revocable, nonexclusive, royalty-free license in inventions only upon request by the contractor for reservation of such license. In such situations, the paragraph set forth in § 14R-9.107-5(e) shall be substituted for paragraph (c)(1) of the Patent Rights (long form) clause.

(e) *License rights to contractor (irrevocable).* Paragraph (c)(1) of the Patent Rights clauses specifies that the license rights retained by the contractor in such inventions are revocable. In special circumstances, the license may be irrevocable, in which case the paragraph (c)(1) set forth in § 14R-9.107-5(f) shall be substituted for paragraph (c)(1), (c)(2), and (c)(3) of the Patent Rights (long form) clause. Since granting irrevocable licenses may interfere with

OWRT's licensing program, which is intended to promote the commercial utilization of inventions resulting from its research, development, or demonstration programs, contractors desiring irrevocable licenses shall submit a written request with a justification to the Contracting Officer. The Contracting Officer shall refer such requests, along with appropriate comments and recommendations, to the Solicitor to serve as a basis for approval by the Secretary or his designee.

(f) *Contractor sublicensing.* The right of a contractor having a license as set forth in paragraphs (d) and (e) of this section to grant a revocable license to one or more sublicensees may be considered appropriate by the Secretary or his designee in certain circumstances, such as, for example, where the contractor is cost sharing; where the contractor's control or involvement in the technology which is the subject of the contract is substantial; where the reservation of licensing rights in the contractor would best promote commercialization or utilization of the technology, or where substantial segments of the user population already have licenses or would otherwise be licensed. In such situations, the paragraph in § 14R–9.107–5(g)(1) may be substituted for paragraph (c)(1) of § 14R–9.107–5(a), or the paragraphs in § 14R–9.107–5(g)(2) may be substituted for paragraphs (c)(1), (c)(2), and (c)(3) of § 14R–9.107–5(a), as appropriate.

(g) *Facilities license.* Whenever a contract has as a purpose the design, construction, or operation of a Government-owned research, development, demonstration, or production facility, it is necessary that the Government be accorded certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract, including the right to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or actually reduced to practice under or in the course of such a contract. Accordingly, the paragraph of § 14R–9.107–5(h) shall be used in all such contracts in addition to the provision of the "long form" Patent Rights clause.

(h) *Subcontracts.* (1) The policy expressed in § 14R–9.107–3 is applicable to prime contracts and to subcontracts regardless of tier. The Patent Rights clause of § 14R–9.107–5(a) or § 14R–9.107–6 shall be included in all subcontracts having as a purpose the conduct of research, development, or demonstration work. However, the Patent Rights clause contained in the prime contract is not to be deemed automatically appropriate for subcontracts. For example, it would not be appropriate to the extent that waivers have been granted the prime contractor at the time of contracting. A separate waiver, if any, must be obtained by subcontractors. Further, the withholding of payment provision of the prime contract will normally not be included in a subcontract except that upon request of the Contracting Officer in special contracting situations the withholding of payment provision may be flowed down to subcontractor. Whenever either the prime contractor or a proposed subcontractor considers the inclusion of the Patent Rights clause of § 14R–9.107–5(a) or § 14R–9.107–6 to be inappropriate, or the subcontractor refuses to accept such a clause in its subcontract, the matter shall be referred prior to award of the subcontract to the Contracting Officer for resolution in accordance with § 14R–9.107–4(k). Upon such referral, the same considerations and procedures followed in selecting the appropriate Patent Rights clause included in the prime contract shall be used in selecting the subcontract clause.

(2) Contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the inventions resulting from subcontracts, and a waiver granted to a prime contractor is not normally applicable to inventions of subcontractors. However, in appropriate circumstances, the prime contractor's waiver may be made applicable to the inventions of any or all subcontractors, such as, for example, where there are pre-existing special research and development arrangements between the prime contractor and subcontractor, or where the prime contractor and subcontractor, are partners in a cooperative effort. In addition, in such circumstances the prime contractor may be permitted to acquire nonexclusive licenses in the subcontractor's inventions when a waiver for subcontractor inventions is not applicable.

(i) *Record of decisions.* The Solicitor shall record the basis for the following actions: (1) Waivers at the time of contracting; (2) waivers granted on identified inventions; (3) determinations that no license need be obtained for States or municipal governments; (4) determinations that the right to sublicense foreign governments should be obtained; and (5) the grant of irrevocable licenses.

(j) *Publication of invention disclosures.* The Patent Rights clauses specify that the Government may duplicate and disclose invention disclosures reported under the contract, although it is not OWRT's practice to publish invention disclosures. Since public disclosure before the filing of a U.S. patent application may create a bar to filing certain foreign applications, the clauses also require that patent approval for release or publication of information relating to the contract work be secured from the Solicitor prior to any such release or publication. When the contractor has requested or obtained a waiver, or has advised of its interest in obtaining certain foreign filing rights, provision is made for OWRT to use its best efforts to withhold release or publication of such information for a specified time period in accordance with paragraph (d)(1) or the clause in § 14R–9.107–5(a) to permit the timely filing of a U.S. patent application by the contractor.

(k) *Negotiations and deviations.* Contracting Officers shall contact the Solicitor for assistance in selecting, negotiating, or approving appropriate patent, copyright, and data clauses. Any intended departures or deviations from the policy, procedures, or the clauses specified in this Part § 14R–9 shall be referred to the Solicitor for review and concurrence.

§ 14R–9.107–5 Clause for contracts (long form).

(a) *Patent Rights clause.* When the Contracting Officer has determined that a contract falls within § 14R–9.107–4(a)(1), except where the clause of § 14R–9.107–6 is applicable, the following clause shall be included in the contract.

Patent Rights

(a) *Definitions.* (1) "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, or substitution of parties.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and

any political subdivision and agencies thereof.

(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.

(5) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish reasonably accessible to the public.

(6) "Solicitor" means the Solicitor of the U.S. Department of the Interior or his authorized representative.

(7) "OWRT" means Office of Water Research and Technology in the U.S. Department of the Interior.

(8) "Contractor" means any individual, partnership, public or private corporation, association, institution or other entity which is a party to the contract and includes entities controlled by the Contractor. The Term "controlled" means the direct or indirect ownership of more than 50 percent of the outstanding stock entitled to vote for the election of directors, or a directing influence over such stock: Provided, however, that foreign entities not wholly owned by the Contractor shall not be considered as "controlled" for purposes of this patent clause. For the purposes of the patent clause, grantees are deemed Contractors.

(9) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) *Allocation of principal rights.*—(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraphs (b)(2) and (c) of this clause.

(2) *Greater rights determinations.* The Contractor or the employee-inventor with authorization of the Contractor may request greater rights than the nonexclusive license and the right to request foreign patent rights provided in paragraph (c) of this clause on identified inventions in accordance with 41 CFR 14R-9.109-6. Such requests must be submitted to the Contracting Officer at the time of the first disclosure pursuant to paragraph (e)(2) of this clause, or not later than 6 months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor.

(c) *Minimum rights to the Contractor.*—(1) *Contractor license.* The Contractor reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope, to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Solicitor except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) *Revocation limitations.* The Contractor's nonexclusive license retained pursuant to paragrpah (c)(1) of this clause and sublicenses granted thereunder may be revoked or modified by the Solicitor, either in whole or in part, only to extent necessary to achieve expeditious practical application of the Subject Invention under the published Federal Property Management Licensing Regulations (41 CFR 101-4.1), and only to the extent an exclusive license is actually granted. This license shall not be revoked in that field of use and/or the geographical areas in which the Contractor, or its sublicensee, has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

(3) *Revocation procedures.* Before modification or revocation of the license or sublicense, pursuant to paragraph (c)(2) of this clause, the Solicitor shall furnish the Contractor a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Contractor shall be allowed 30 days, or such longer period as may be authorized by the Solicitor for good cause shown in writing by the Contractor, after such notice to show cause why the license or any sublicense should not be modified or revoked. The conclusion of the Solicitor thereafter shall be final unless, within thirty (30) days from the date such conclusion is rendered, the Contractor submits to the Secretary a written appeal therefrom. The Contractor, upon a request therefor in writing, will be afforded an opportunity to be heard and to offer evidence in support of the appeal. The decision of the Secretary or his duly authorized representative for a determination of such appeal, shall be final and conclusive.

(4) *Foreign patent rights.* Upon written request to the Contracting Officer, in accordance with paragraph (e)(2)(i) of this clause, the Contracting Officer, with the authorization of the Solicitor, may reserve to the Contractor, or the employee-inventor, with authorization of the Contractor, the patent rights to a Subject Invention in any foreign country where the Government has elected not to secure such rights provided:

(i) The recipient of such rights, when specifically requested by the Solicitor and three years after issuance of a foreign patent disclosing such Subject Invention, shall furnish the Solicitor a report setting forth:

(A) The commercial use that is being made, or is intended to be made, or said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least a nonexclusive, irrevocable, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary or his designee determines that it would not be in the public interest to acquire the license for the State and domestic municipal governments.

(iii) Subject to the rights granted in (c) (1), (2), and (3) of this clause, the Secretary or his designee shall have the right to terminate the foreign patent rights granted in this paragraph (c)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary or his designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(iv) Subject to the rights granted in (c) (1), (2), and (3) of this clause, the Secretary or his designee shall have the right, commencing four years after foreign patent rights are accorded under this paragraph (c)(4) to require the granting of a nonexclusive or partially exclusive license to a responsbile applicant or applicants, upon terms reasonable under the circumstances and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary or his designee determines, upon review of such material as he deems relevant, and after the recipitent of such rights, or other interested person, has had the opportunity to provide such relevant and material information as the Secretary or his designee may require that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary or his designee at such hearing that the recipient has taken effective steps, or within a reasaonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(d) *Filing of patent applications.* (1) With respect to each Subject Invention in which the Contractor or the inventor requests foreign patent rights in accordance with paragraph (c)(4) of this clause, a request may also be made for the right to file and prosecute the U.S. application on behalf of the U.S. Government. If such request is granted, the Contractor or inventor shall file a domestic patent application on the invention within 6 months after the request for foreign patent rights is granted, or such longer period of time as may be approved by the Solicitor for good cause shown in writing by the requester. With respect to the invention, the requester shall promptly notify the Solicitor of any decision not to file an application.

(2) For each Subject Invention on which a domestic patent application is filed by the Contractor or inventor, the Contractor or inventor shall:

(i) Within 2 months after the filing or within 2 months after submission of the invention disclosure if the patent application previously

has been filed, deliver to the Solicitor a copy of the application as filed, including the filing date and serial number;

(ii) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Solicitor a duly executed and approved assignment to the Government, on a form specified by the Government;

(iii) Provide the Solicitor with the original patent grant promptly after a patent is issued on the application; and

(iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Solicitor of any decision not to continue prosecution of the application.

(3) With respect to each Subject Invention in which the Contractor or inventor has requested foreign patent rights, the Contractor or inventor shall file a patent application on the invention in each foreign country in which such request is granted in accordance with applicable statutes and regulations and within one of the following periods:

(i) Eight months from the date of filing a corresponding United States application, or if such an application is not filed, six months from the date of the request was granted;

(ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application where such filing has been prohibited by security reasons; or

(iii) Such longer periods as may be approved by the Solicitor for good cause shown in writing by the Contractor or inventor.

(4) Subject to the license specified in paragraph (c)(1), (2), and (3) of this clause, the Contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Contractor or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Contractor or inventor shall not less than 60 days before the expiration period for any action required by any Patent Office, notify the Solicitor of such failure of decision, and deliver to the Solicitor the executed instruments necessary for the conveyance specified in this paragraph.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to ensure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and any other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the invention are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer for consideration by the Solicitor:

(i) A written report on Form DI–1217, or the equivalent, containing full and complete technical information concerning each Subject Invention within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under this contract, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Contractor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c)(4) of this clause and any request to file a domestic patent application under (d)(1) of this clause. However, such requests shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been made in the manner specified in Section 408 of the Water Research and Technology Act of 1978, Pub. L. 95–467, unless the Contractor contends it was not so made in accordance with paragraph (g)(2)(ii) of this clause.

(ii) Upon request, but not more than annually, interim reports on Form DI–1216 listing Subject Inventions and subcontracts awarded containing a Patent Rights clause for that period and certifying that:

(A) The Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (d) have been followed throughout the reporting period;

(B) All Subject Inventions have been disclosed or that there are no such inventions;

(C) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded; and

(iii) A final report on Form DI–1216 within 3 months after completion of the contract work listing all Subject Inventions and all subcontracts awarded containing a Patent Rights clause and certifying that:

(A) All Subject Inventions have been disclosed or that there were not such inventions; and

(B) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in its employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the Contractor is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but in no event shall the Government or its employees be liable for any publication thereof.

(f) *Publication.* It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments made or conceived in the course of or under this contract. In order that public disclosures of such information will not adversely affect the patent interests of the Government, or the Contractor, patent approval for release or publication shall be secured from the Solicitor prior to any such release or publication.

(g) *Forfeitures of rights in unreported Subject Inventions.* (1) The Contractor shall forfeit to the Government, at the request of the Secretary or his designee, all rights in any Subject Invention which the Contractor fails to report to the Contracting Officer within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (g), the Contractor:

(i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and files the same with the Solicitor; or

(ii) Contending that the invention is not a Subject Invention, the contractor nevertheless discloses the invention and all facts pertinent to this contention to the Solicitor; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Secretary or his designee to be forfeited (such determination to be a final decision under the Disputes Clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in thrust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(h) *Examination of records relating to inventions.* (1) The Contracting Officer or his authorized representative, until the expiration of 3 years after final payment under this contract shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer or his authorized representative reasonably deem pertinent to the discovery or identification of Subject

Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to review all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Invention, if the Contractor refuses or fails to:

(i) Establish the procedures of paragraph (e)(1) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(i) *Withholding of payment. (Not applicable to subcontracts).* (1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $10,000 or 10 percent of the amount of this contract, whichever is less, shall have been set aside if in his opinion, the contractor fails to:

(i) Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any Subject Inventions pursuant to paragraph (e)(2)(i) of this clause; or

(iii) Deliver the Interim Reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (j)(5) of this clause; or

(v) Convey to the Government in a Solicitor-approved form the title and/or rights of the Government in each Subject Invention as required by this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined after consultation with the Solicitor that the contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made by the Contracting Officer before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions and other information required by (e)(2)(i) of this clause, the final report required by (e)(2)(iii) of this clause, and the Solicitor has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $10,000 or 5 percent of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(j) *Subcontracts.* (1) For the purpose of this paragraph, the term "Contractor" means the party awarding a subcontract and the term "Subcontractor" means the party being awarded a subcontract, regardless of tier.

(2) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the Patent Rights clause of 41 CFR 14R–9.107–5(a) or 41 CFR 14R–9.107–6 as appropriate, modified to identify the parties in any subcontract hereunder. In the event of refusal by a Subcontractor to accept this clause, or if in the opinion of the Contractor this clause is inconsistent with OWRT's patent policies, the Contractor:

(i) Shall promptly submit written notice to the Contracting Officer setting forth reasons for the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(3) The Contractor shall not, in any subcontract except as may be otherwise provided in this clause, or by using a subcontract as consideration therefor, acquire any rights in its Subcontractor's Subject Invention for the Contractor's own use (as distinguished from such rights as may be required solely to fulfill the Contractor's contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to OWRT or the Solicitor, under the provision of a Patent Rights clause in any subcontract hereunder may, in the discretion of the Contracting Officer, be furnished to the Contractor for transmission to OWRT or the Solicitor.

(5) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the Subcontractor, the work to be performed under the subcontract, and the dates of award, and estimated completion. Upon the request of the Contracting Officer, the Contractor shall furnish a copy of the subcontract.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions and Background Patents, and the Contractor hereby assigns to the Government all rights that the Contractor would have to enforce the Subcontractor's obligations for the benefit of the Government and the public with respect to Subject Inventions and Background Patents. The Contractor shall not be obligated to enforce the agreements of any Subcontractor hereunder relating to the obligations of the Subcontractor to the Government with regard to Subject Inventions and Background Patents.

(k) *Dominating Background Patents.* (1) Definitions. (i) "Background Patent" means a foreign or domestic patent (regardless of its date of issue relative to the date of this contract):

(A) Which the Contractor, but not the Government, has the right to license to others; and

(B) Infringement of which cannot be avoided upon the practice of a Subject Invention or Specified Work Object.

(ii) "Commercial Item" means:

(A) Any machine, manufacture, or composition of matter which, at the time of a request for a license pursuant to this section, is offered for sale or otherwise made available commercially to the public in the regular course of business, at terms reasonable in the circumstances; and

(B) Any process which, at the time of a request for a license, is in commercial use, or is offered for commercial use, so the results of the process or the products produced thereby are or will be accessible to the public at terms reasonable in the circumstances.

(iii) To "practice an invention or patent" means the right of a licensee on his own behalf to make or have made, use or have used, sell or have sold, or otherwise dispose of according to law, any machine, design, manufacture, or composition of matter physically embodying the invention, or to use or have used the process or method comprising the invention.

(iv) "Specified Work Object" means the specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is the subject of the experimental, developmental, or research work performed under this contract.

(2) Contractor agrees that he will make the Background Patent available for use in conjunction with (A) any Subject Invention, and (B) any Specified Work Object, which is in the field of technology where the work of the contract falls. This may be done:

(i) By making available an embodiment of the Subject Invention or the Specified Work Object, which incorporates the invention covered by the Background Patent, as a Commercial Item of reasonable quality, in sufficient quantity and at reasonable prices to satisfy market needs; or

(ii) By the sale of an embodiment of the Background Patent as a Commercial Item in a form which can be employed in the practice of the Subject Invention or the Specified Work Object or can be so employed with relatively minor modifications, or demonstrating to the satisfaction of the Solicitor that a competitive alternative to such an embodiment is offered for sale, or otherwise made available commercially to the public, which is of reasonable quality, in sufficient quantity and at reasonable prices to satisfy market needs; or

(iii) By the licensing of the domestic Background Patent at reasonable terms, including reasonable royalties, to responsible applicants on their request.

(3)(i) When a license to practice a domestic Background Patent in conjunction with any Subject Invention or any Specified Work Object for the technology where the work of

the contract falls is requested, in writing, by a responsible applicant, and such Background Patent is not available as set forth in subparagraphs (k)(2) (i) or (ii) of this clause, the Contractor shall have six (6) months from the date of his receipt of such request to decide whether to make such Background Patent so available. The Contractor shall promptly notify the Contracting Officer, in writing within the said six months, of any such request for a licnese to practice a Background Patent in conjunction with a Subject Invention or Specified Work Object, which the Contractor or his licensee wishes to attempt to make available as set forth in subparagraphs (k)(2) (i) or (ii) of this clause. The Secretary or his designee shall then designate the reasonable time within which the Contractor must make such Background Patent available in reasonable quantity and quality, and at a reasonable price. If the Contractor or his licensee decides not to make such Background Patent so available, or fails to make it available within the time designated by the Secretary or his designee, the Background Patent shall be licensed to a responsible applicant at reasonable terms, including a reasonable royalty, in conjunction with (A) the Specified Work Object, or (B) the Subject Invention; and may be limited by the licensor for practice in the field of technology where the work of the contract falls.

(ii) The Contractor agrees to grant or have granted to a designated applicant, upon the written request of the Government, a nonexclusive license at reasonable terms, including reasonable royalties, under any foreign Background Patent in furtherance of any treaty or agreement between the Government of the United States and a foreign government for governmental purposes of such foreign government if an embodiment of the Background Patent is not commercially available in that country. Such license may be limited by the licensor to the practice of such Background Patent in conjunction with the Subject Inventions or Specified Work Objects in the field of technology where the work of the contract falls.

(iii) The Contractor agrees it will not seek injunctive relief or other prohibition of the use of the invention in enforcing its rights against any responsible applicant for such license and that it will not join with others in any such action. It is understood and agreed that the foregoing shall not affect the Contractor's right to injunctive relief or other prohibition of the use of Background Patents in areas not connected with the practice of Subject Inventions or Specified Work Objects in the field of technology where the work of the contract falls, or where the Contractor has made available the Commercial Item as set out in Subparagraphs (k)(2) (i) or (ii) of this clause.

(4) For use in the field of technology where the work of the contract falls in conjunction with (A) any Specified Work Object, or (B) any Subject Invention, the Contractor agrees to grant to the Government a license under any Background Patent. Such license shall be nonexclusive, nontransferable, royalty-free and worldwide to practice such Patent which is not available as a Commercial Item as specified in subparagraphs (k)(2) (i) or (ii) of this clause for use of the Government in connection with research, development, and demonstration work only. Subject to the royalty-free license provided for in this paragraph and to any license provisions set forth elsewhere in this patent clause, or in other contracts or agreements, any royalty charged the Government under such license shall be reasonable and shall give due credit and allowance for the Government's contribution, if any, toward the making, commercial development or enhancement of the invention(s) covered by the Background Patent.

(5) Any license granted under a process Background Patent for use with a Specified Work Object may be additionally limited by the Contractor to employment of the Background Patent under conditions and parameters reasonably equivalent to those called for or employed under the contract.

(6) It is understood and agreed that the Contractor's obligation to grant licenses under Background Patents shall be limited to the extent of the Contractor's right to grant the same without breaching any unexpired contract it had entered into prior to this contract or prior to the identification of a Background Patent, or without incurring any obligation to another solely on account of said grant. However, where such obligation is the payment of royalties or other compensations, the Contractor's obligation to license his Background Patent shall continue and the reasonable license terms shall include such payments by the applicant as will at least fully compensate the Contractor under said obligation to another.

(7) On the request of the Contracting Officer, the Contractor shall identify and describe any license agreement which would limit his right to grant a license under any Background Patent.

(8) In the event the Contractor has a parent or an affiliated company, which has the right to license a patent which would be a Background Patent if owned by the Contractor, but which is not available as a Commercial Item as specified in subparagraphs (k)(2) (i) or (ii) of this clause, and a qualified applicant requests a license under such patent for practice in the field of technology where the work of the contract falls in connection with the use of any Subject Invention or any Specified Work Object, the Contractor shall, at the written request of the Government, recommend to his parent company, or affiliated company, as the case may be, the granting of the requested license on reasonable terms, including reasonable royalties, and actively assist and participate with the Government and such applicant, as to technical matters and in liaison functions between the parties, as may reasonably be required in connection with any negotiations for issuance of such license. For the purpose of this paragraph:

(i) a parent company is one which owns or controls, through direct or indirect ownership of more than 50 percent of the outstanding stock entitled to vote for the election of directors, another company or other entity; and

(ii) affiliated companies are companies or other entities owned or controlled by the same parent company.

(l) *Effectuating agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.

(b) *Background Patents.* (1) It will normally be the case that a contractor qualified to perform work under an OWRT contract will have developed a degree of expertise in the general field of activity to which the contract relates. Accordingly, it will not be unusual for a prospective contractor to have an established patent position relating to the general field of work to be performed under an OWRT contract and to have ongoing research and development programs in that general field which could result in patentable inventions. Since the contractor is obligated to apply its best efforts to accomplishing the objectives of the contract work, it is to be expected that inventions owned or controlled by the contractor at any time during the contract period may be utilized in connection with the work performed under the contract. If such inventions are or become the subject of a patent, such patented inventions may control a subject of the contract or the contract results.

(2) It is usually the case that at the time an OWRT contract is negotiated, such inventions, if any, of the contractor are not known to the Government and may not be known to the contractor either. Use by the contractor of such inventions in connection with the contract work does not necessarily result in a need for rights in those inventions by the Government or others. However, failure of OWRT to obtain limited rights on behalf of the Government and/or third parties in a narrow class of those inventions, defined as "Background Patents" could frustrate the objectives of OWRT to promptly make the benefits of its programs widely available to the public and to promote the commercial utilization of the technology developed or demonstrated under OWRT programs. Therefore, it is OWRT's policy to obtain limited license rights in Background Patents on a basis that is reasonble under the circumstances of the particular contract and takes into account the relative equties of the contractor, the Government, and the general public.

(3) Paragraph (k) of the Patent Rights clause of § 14R–9.107–5(a) sets out the Background Patent provision that will be appropriate for OWRT contracting situations by balancing the needs of OWRT programs with the equities of the contractor. This clause obtains a nonexclusive, royalty-free license for the Government for research, development, and demonstration work only. Also in the absence of an available commercial alternative for the invention of a Background Patent, or where there is a failure on the part of the contractor itself or with its licensees in action to supply the market in sufficient quantities and reasonable prices, the contractor is required to license responsible parties on reasonable terms for use of the background invention with Subject Inventions and Specified Work Object in the field of technology specifically contemplated in the contract effort. The Background Patent provisions, however, are only applicable insofar as infringement of the Background Patent cannot be avoided in order to effectively utilize the results of the contract work. Additionally, the clause is not effective if the contractor can demonstrate to the satisfaction of the Secretary or his designee that commercial alternatives are available, or that the contractor or its licensees are supplying the market in sufficient quantities and at reasonable prices or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the market. In determining whether to request such licensing, OWRT will recognize the need, where appropriate, to limit licensing to preserve the commercialization incentives provided by the patent, and also to meet the needs of the public for early availability of the technology.

(4) Subparagraph (k)(1) provides a definition of those inventions which will fall within the area of what constitutes a Background Patent, while subparagraphs (k)(2) and (k)(3) define Contractor's alternatives to licensing, as well as the scope or field of use of any license granted. Although OWRT as explained in subparagraph (3) of this paragraph (b) may control the requesting of licenses to responsible parties, the final resolution of questions regarding the scope of such licenses, the terms thereof including reasonable royalties are then left to the negotiation of the parties with final resolution of the issues being made by a court of competent jurisdiction if necessary. Any decision not to apply the licensing requirement of subparagraphs (k)(2) and (k)(3), however, is subject to the final decision of the Secretary or his designee because the determinations are dependent in substantial part on the requirements of OWRT's statutory mission.

(5) Balancing of the respective equities in particular contracting situations, however, may require that paragraph (k) be modified. Paragraph (k) may be deleted for contracts up to $50,000 with the advice of the Solicitor. For example, paragraph (k) may not be appropriate in study contracts, planning contracts, and contracts for specialized equipment not intended for use by the public.

(6) On the other hand, there will be situations where the equities between the Government and the contractor, or anticipated Government needs, would require that rights be obtained for either the Government or for the public greater than those set forth in paragraph (k). For example, where (i) the contribution of the Government towards the development and/or commercialization of the Background Patent is substantially greater than that of the contractor, (ii) it is expected that the agency may be involved in special long-term projects, or (iii) the Government may require substantial production or procurement for purposes outside of research, development, or demonstration, it may be necessary to obtain greater rights. In such situations, consideration should be given to extending the Government's rights beyond research, development, and demonstration work, or to adjust royalties that may be due by the Government to reflect the Government's contribution. Such adjustment could take the form of (i) credit to be given the Government based upon its contribution through the contract, or (ii) a royalty based upon the relative contributions of the contractor and the Government. Consideration could also be given to utilizing the relative contributions in determining reasonable royalties to be charged to others.

(7) Similarly, it may be necessary to obtain greater rights for the public in the contractor's background patents where, for example, the contractor's background patents cover the basic technology intended to be developed under the contract effort, rather than subcomponents or products or processes which are ancillary to the contract effort, or where the future market for the contract results will be very large and there are presently only a few suppliers available.

(8) It may also be appropriate to modify the rights acquired by paragraph (k) where the contractor's background patent rights were of primary importance in granting the contractor a waiver. For example, if the contractor was permitted to retain exclusive rights to Subject Inventions based upon the consideration that both foreground and background inventions would be licensed at reasonable royalties, then paragraph (k) should be modified. In such cases, the definition of "Backgtound Patent" should be broadened to include all patents useful in the practice of the contract results in additional fields of technology or other aspects of the contract.

(9) The application of paragraph (k) is extended to the practice of any specific process, method, or machine, manufacture, or composition of matter which is a subject of the research, development, or demonstration work performed under the contract, otherwise referred to as "Specified Work Object," and normally intended to provide the rights covered in paragraph (k) limited to the same fields of use or intended uses of the contract results as generally contemplated by the program involved. During negotiations, when the subject matter of the contract and the intended uses of the results thereof are known, a more specific statement of the field of technology intended to be covered may be substituted for the expression "the field of technology where the work of the contract falls." For example, the application of paragraph (k) may be limited to specified fields of use which cover the anticipated use of the technology being developed under the contract.

(10) The considerations and statements in the foregoing subparagraphs (1)–(9) of this paragraph also apply to the negotiation, application, and inclusion of background patent rights provisions in subcontracts.

(c) *License for the States and domestic municipal governments.* When the Secretary or his designee determines at the time of contracting that it would not be in the public interest to acquire a paid-up license in Subject Inventions for States and domestic municipal governments, paragraph (c)(4)(ii) of the Patent Rights clause in § 14R–9.107–5(a) shall be replaced with the following paragraph (c)(4)(ii):

(ii) The Government shall retain at least a nonexclusive, irrevocable, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(d) *Right to sublicense foreign governments.* (1) When the Secretary or his designee determines at the time of contracting that it would be in the national interest to acquire the right to

sublicense foreign governments pursuant to any treaty or agreement, a sentence shall be added to the end of paragraph (c)(4)(ii) of the Patent Rights clause in § 14R–9.107–5(a) as follows:

This license shall include the right of the Government to sublicense foreign governments pursuant to any treaty or agreement with such foreign governments.

(2) When the Secretary or his designee wishes to reserve the right to make the determination to sublicense foreign governments pursuant to any treaty or agreement until after the invention has been identified, a sentence shall be added to the end of paragraph (c)(4)(ii) of the Patent Rights clause in § 14R–9.107–5(a) as follows:

This license shall include the right of the Government to sublicense foreign governments pursuant to any treaty or agreement if the Secretary or his designee determines after the invention has been indentified that it would be in the national interest to acquire this right.

(e) *License rights (upon request) to contractor (revocable).* When the Solicitor or his designee determines that the contractor may reserve a revocable, nonexclusive, paid-up license in Subject Inventions, only upon a request by the contractor for the retention of such a license, paragraph (c)(1) of the clause in § 14R–9.107–5(a) shall be replaced with the following paragraph (c)(1):

(c)(1) The Contractor may reserve upon request a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires the title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded and revocable under the same terms and conditions as set forth herein. The license shall be assignable only with approval of OWRT except to the successor of the part of the Contractor's business to which the invention pertains.

(f) *License rights to contractor (irrevocable).* When the Solicitor or his designee determines that the contractor may reserve a nonexclusive, irrevocable, paid-up license in the inventions resulting from the contract, paragraph (c)(1) of the Patent Rights clause of § 14R–9.107–5(a) shall be replaced with the following paragraph (c)(1) and paragraphs (c)(2) and (c)(3) and references thereto shall be cancelled:

(c)(1) The contractor reserves a nonexclusive, irrevocable, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires the title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with the approval of OWRT except when transferred to the successor of the part of the Contractor's business to which the invention pertains.

(g) *Contractor sublicense (revocable).* When the Secretary or his designee determines at the time of contracting that, as indicated in § 14R–9.107–4(f), it would be in the interests of the Government to permit a contractor having the right to retain a revocable, nonexclusive license in a Subject Invention to have the further right to grant to one or more sublicensees a revocable license of the same scope, the following paragraph may be substituted for paragraph (c)(1) of the Patent Rights clause in § 14R–9.107–5(a):

(c)(1) The Contractor reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires the title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant revocable, nonexclusive sublicenses of the same scope. The license shall be transferable only with the approval of OWRT except when transferred to the successor of the part of the Contractor's business to which the invention pertains.

(2) Where the contractor has been granted the right to retain a nonexclusive, irrevocable, license in a Subject Invention, and it is determined as in (g)(1) of this section to leave in the contractor the right to grant one or more revocable sublicenses thereunder, the following three paragraphs willl be substituted for paragraphs (c)(1), (c)(2), and (c)(3) of the Patent Rights clause in § 14R–9.107–5(a):

(c)(1) Contractor license. The Contractor reserves a nonexclusive, irrevocable, paid-up license in each patent application filed in any country on a Subject invention and any resulting patent in which the Government acquires the title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant revocable, nonexclusive sublicenses which are revocable under the same terms and conditions as set forth in paragraphs (c) (2) and (3) of this clause. The license shall be transferable only with the approval of OWRT except when transferred to the successor of the part of the Contractor's business to which the invention pertains.

(c)(2) Revocation limitations. Any sublicense granted by the Contractor may be revoked or modified by OWRT, either in whole or in part, only to the extent necessary to achieve expeditious practical application of the Subject Invention, and only to the extent an exclusive license is actually granted by the Government. This sublicense shall not be revoked in that field of use and/or the geographical areas in which the Contractor, or its sublicense, has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

(c)(3) Revocation procedures. Before modification or revocation of any sublicense pursuant to paragraph (c)(2) of this clause, OWRT shall furnish the Contractor and the sublicensee written notice of its intention to modify or revoke the sublicense, and the Contractor and the sublicensee shall be allowed 30 days, or such longer period as may be allowed by the Solicitor for good cause shown in writing by the Contractor or the sublicensee, after such notice to show cause why the sublicense should not be modified or revoked by a determination of the Solicitor or his authorized representative. The Contractor or the sublicensee shall have the right to appeal to the Secretary or his designee any decision concerning the modification or revocation of the sublicense.

(h) *Facilities license.* The following paragraph will be included as paragraph (1) of the Patent Rights (long form) clause in each contract having as a purpose the design, construction, or operation of a Government-owned research, development, demonstration, or production facility. The scope of the license in the following paragraph may, in appropriate situations, be expanded to cover similar facilities.

(1) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government a nonexlcusive, irrevocable, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor, which are owned or controlled by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the

enforceability, validity or scope of, or title to, any rights or patents herein licensed.

§ 14R-9.107-6 Clause for contracts (short form).

The following clause may be used instead of the clause of § 14R-9.107-5(a) in contracts for basic or applied research where the contractor is a nonprofit or educational institution, except in contracts calling for the operation of Government-owned facilities, or contract in which an advance waiver has been granted, or other special contracts such as those for the conduct of major long-term continuing programs or basic overall agreements providing for the assignment of new tasks from time to time by mutual agreement.

Patents Rights (Short Form)

(a) *Definitions.* (1) "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the Patent Laws of the United States of America or any foreign country.

(2) "Solicitor" means the Solicitor of the U.S. Department of the Interior.

(b) *Invention disclosures and reports.* (1) The Contractor shall furnish the Contracting Officer:

(i) A written report (on Form DI-1217 or an equivalent) containing full and complete technical information concerning each Subject Invention which in 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this contract, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Contractor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention.

(ii) Upon request, but not more than annually, interim reports (on Form DI 1216 or an equivalent) listing Subject Inventions for that period and certifying that all Subject Invention have been disclosed or that there were no such inventions; and

(iii) A final report (on Form DI-1216 or equivalent) within 3 months after completion of the contract work listing all Subject Inventions and certifying that all Subject Invention have been disclosed or that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the contract.

(c) *Allocation of principal rights.*—(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraph (c)(2) and (d) of this clause.

(2) *Greater rights determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may request greater rights than the nonexclusive license and the right to request foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the procedure and criteria of 41 CFR 14R-9.109-6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause or not later than 6 months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 14R-9.109-6(e).

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. Rovocation shall be in accordance with the procedures of paragraphs (c)(2) and (3) of the clause in 41 CFR 14R-9.107-5(a). The Contractor also has the right to request foreign rights in accordance with the procedures of paragraph (c)(4) of the clause in 41 CFR 14R-9.107-5(a).

(e) *Employee and Subcontractor agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(1) Obtain patent agreements to effectuate the provisions of the Patent Rights clause from all persons in its employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(2) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the Patent Rights clause of 41 CFR 14R-9.107-5(a) or 41 CFR 14R-9.107-6, as appropriate, modified to identify the parties in any subcontract hereunder having as a purpose the conduct of research, development, or demonstration work; and

(3) Promptly notify the Contracting Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the subcontractor, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the request of the Contracting Officer, the Contractor shall furnish a copy of the subcontract to such requester.

(f) *Publication.* In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the contract is not prematurely published so as to adversely affect patent interest of the parties to the contract, the Contractor agrees to submit to the Solicitor for patent review a copy of each paper 60 days prior to its intended publication date. The Contractor may publish such information after expiration of a 60-day period following such submission or prior thereto if specifically approved by the Solicitor, unless the Contractor is informed that in order to protect patentable subject matter, publication must be further delayed.

(g) *Dominating Background Patents.* (1) Definitions.

(i) "Background Patents" means a foreign or domestic patent (regardless of its date of issue relative to the date of this contract)

(A) Which the Contractor, but not the Government, has the right to license to others; and

(B) Infringement of which cannot be avoided upon the practice of a Subject Invention or Specified Work Object.

(ii) "Commercial Item" means:

(A) Any machine, manufacture, or composition of matter which, at the time of a request for a license pursuant to this section, is offered for sale or otherwise made available commercially to the public in the regular course of business, at terms reasonable in the circumstances; and

(B) Any process which, at the time of a request for a license, is in commercial use, or is offered for commercial use, so the results of the process or the products produced thereby are or will be accessible to the public at terms reasonable in the circumstances.

(iii) To "practice an invention or patent" means the right of a licensee on his own behalf to make or have made, use or have used, sell or have sold, or otherwise dispose of according to law, any machine, design, manufacture, or composition of matter physically embodying the invention, or to use or have used the process or method comprising the invention.

(iv) "Specified Work Object" means the specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is the subject of the experimental, developmental, or research work performed under this contract.

(2) Contractor agrees that he will make the Background Patent available for use in conjuction with (A) any Subject Invention and (B) any Specified Work Object which is in the field of technology where the work of the contract falls. This may be done:

(i) By making available an embodiment of the Subject Invention or Specified Work Object, which incorporates the invention covered by the Background Patent, as a Commerical Item of reasonable quality, in sufficient quantity, and at resonable prices to satisfy market needs; or

(ii) By the sale of an embodiment of the Background Patent as a Commercial Item in a form which can be employed in the practice of the Subject Invention or the Specified Work Object or can be so employed with relatively minor modifications or demonstrating to the satisfaction of the Solicitor that a competitive alternative to such an embodiment is offered for sale, or otherwise made available commercially to

the public, which is of reasonable quality, in sufficient quantity, and at reasonable prices to satisfy market needs; or

(iii) By the licensing of the domestic Background Patent at reasonable terms, including reasonable royalties to responsible applicants on their request.

(3) (i) When a license to practice a domestic Background Patent in conjunction with any Subject Invention or any Specified Work Object for the technology where the work of the contract falls is requested, in writing, by a responsible applicant, and such Background Patent is not available as set forth in subparagraphs (g)(2)(i) or (ii) of this clause, the Contractor shall have six (6) months from the date of his receipt of such request to decide whether to make such Background Patent so available. The Contractor shall promptly notify the Contracting Officer, in writing within the said six months, of any such request for a license to practice a Background Patent in conjunction with a Subject Invention or Specified Work Object, which the Contractor or his licensee wishes to attempt to make available as set forth in subparagraphs (g)(2)(i) or (ii) of this clause. The Secretary shall then designate the reasonable time within which the Contractor must make such Background Patent available in reasonable quantity and quality, and at a reasonable price. If the Contractor or his licensee decides not to make such Background Patent so available, or fails to make it available within the time designated by the Secretary or his designee, the Background Patent shall be licensed to a a responsible applicant at reasonable terms, including a reasonable royalty, in conjunction with (A) the Specified Work Object, or (B) the Subject Invention; and may be limited by the licensor for practice in the field of technology where the work of the contract falls.

(ii) The Contractor agrees to grant or have granted to a designated applicant, upon the written request of the Government, a nonexclusive license at reasonable terms, including reasonable royalties, under any foreign Background Patent in furtherance of any treaty or agreement between the Government of the United States and a foreign government for the governmental purposes of such foreign government if an embodiment of the Background Patent is not commercially available in that country. Such license may be limited by the licensor to the practice of such Background Patent in conjunction with the Subject Inventions or Specified Work Objects in the field of technology where the work of the contract falls.

(iii) The Contractor agrees it will not seek injunctive relief or other prohibition of the use of the invention in enforcing its rights against any responsible applicant for such license and that it will not join with others in any such action. It is understood and agreed that the foregoing shall not affect the Contractor's right to injunctive relief or other prohibition of the use of Background Patents in areas not connected with the practice of a Subject Invention or Specified Work Object in the field of technology where the work of the contract falls, or where the Contractor has made available the Commerical Item as set out in subparagraphs (g)(2)(i) or (ii) of this clause.

(4) For use in the field of technology where the work of the contract falls in conjunction with (A) any Specified Work Object, or (B) and Subject Invention, the Contractor agrees to grant to the Government a license under any Background Patent. Such license shall be nonexclusive, nontransferable, royalty-free, and worldwide to practice such patent which is not available as a Commerical Item as specified in subparagraphs (g)(2)(i) or (ii) of this clause for use of the Government in connection with research, development, or demonstration work only. Subject to the royalty-free license provided for in this subparagraph and to any license provisions set forth elsewhere in this patent clause, or in other contracts or agreements, any royalty charged the Government under such license shall be reasonable and shall give due credit and allowance for the Government's contribution, if any, toward the making, commercial development or enhancement of the invention(s) covered by the Background Patent.

(5) Any license granted under a process Background Patent for use with a Specified Work Object may be additionally limited by the Contractor to employment of the Background Patent under conditions and parameters reasonably equivalent to those called for or employed under the contract.

(6) It is understood and agreed that the Contractor's obligation to grant licenses under Background Patent shall be limited to the extent of the Contractor's right to grant the same without breaching any unexpired contract it had entered into prior to this contract or prior to the identification of a Background Patent, or without incurring any obligation to another solely on account of said grant. However, where such obligation is the payment of royalties or other compensations, the Contractor's obligation to license his Background Patent shall continue and the reasonable license terms shall include such payments by the applicant as will at least fully compensate the Contractor under said obligation to another.

(7) On the request of the Contracting Officer, the Contractor shall identify and describe any license agreement which would limit his right to grant a license under any Background Patent.

(8) In the event the Contractor has a parent or an affiliated company, which has the right to license a patent which would be a Background Patent if owned by the Contractor, but which is not available as the Commerical Item as specified in subparagraphs (g)(2)(i) or (ii) of this clause, and a qualified applicant requests a license under such patent for practice in the field of technology where the work of the contract falls in connection with the use of any Subject Invention or any Specified Work Object, the Contractor shall, at the written request of the Government, recommend to his parent company, or affiliated company, as the case may be, the granting of the requested license on reasonable terms, including reasonable royalties, and actively assist and participate with the Government and such applicant, as to technical matters and in liaison functions between the parties, as may reasonably be required in connection with any negotiations for issuance of such license. For the purpose of this paragraph:

(i) A parent company is one which owns or controls, through direct or indirect ownership of more than 50 percent of the outstanding stock entitled to vote for the election of directors, another company or other entity; and

(ii) Affiliated companies are companies or other entities owned or controlled by the same parent company.

§ 14R-9.107-7 Foreign contracts.

The clause authorized for contracts in §§ 14R-9.107-5 and 14R-9.107-6 may be modified by the Contracting Officer in consultation with the Solicitor or his designee to meet the requirements peculiar to foreign procurement.

§ 14R-9.108 [Reserved].

§ 14R-9.109 Administration of patent clauses.

§ 14R-9.109-1 Patent rights follow-up.

It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public, to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having Patent Rights clauses should be so administered that:

(a) Inventions are identified, disclosed, and reported as required by the contract clauses;

(b) The rights of the Government in such inventions are established;

(c) When appropriate, patent applications are timely filed and prosecuted by the contractor, the inventor, or by the Government as appropriate;

(d) The filing of patent applications is documented by formal instruments such as licenses or assignments; and

(e) Expeditious commercial utilization of such inventions is achieved.

§ 14R-9.109-2 Follow-up by contractor.

(a) The Patent Rights clause requires contractors to establish and maintain effective procedures to ensure that inventions made under the contract are identified, disclosed, and when appropriate, patent applications filed, and that the Government's rights therein are established and protected. When it is determined after the award of a contract that the contractor or subcontractor may not have a clear

understanding of the rights and obligations of the parties under a Patent Rights clause, a post-award orientation conference or letter should be used by OWRT to explain these rights and obligations. When reviewing a contractor's procedures, particular attention shall be given to ascertain their effectiveness for identifying and disclosing inventions.

(b) A qualified representative of the contractor shall furnish to the contracting officer interim reports upon request, and upon completion of the contract work, a final report setting forth:

(1) A list of all Subject Inventions made during the reporting period;

(2) A certification that all Subject Inventions have been disclosed or that there were no such inventions, and that the contractor's procedures for identifying and disclosing inventions have been followed throughout the period; and

(3) A list of all subcontracts entered into during the reporting period which contain a Patent Rights clause, together with copies of such subcontracts (if not earlier furnished to OWRT), or a statement that there were no such subcontracts.

(c) Ordinarily, inventions and discoveries will be reported on Form DI-1217 (copies of which shall be made available by OWRT) or on such other form that has been approved by OWRT. Reporting of inventions promptly and before the completion of the work under the respective contracts will aid patent clearance. Submission of annual interim reports, where contracts cover an extended period, will also facilitate the disposition of patent matters and expedite the issuance of final patent clearance.

§ 14R-9.109-3 Follow-up by Government.

(a) With respect to each contract, subcontract, or other agreement under their jurisdictions, the heads of OWRT's procuring activities are responsible:

(1) For assuring compliance with the provisions of this Part 14R-9 in executing or approving any contracts, subcontracts, other agreement, understandings, or other arrangements, or any supplements thereto. The Solicitor should be consulted to ensure that only authorized departure is made from the requirements set forth in these regulations and that all substantive and procedural rights required by Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, as cited in Section 408 of the Water Research and Development Act of 1978 are obtained;

(2) For transmitting the information furnished by the contractor as requested by the Solicitor;

(3) For reviewing, in consultation with the contractor, subcontractor, or vendor, arrangements for obtaining adequate patent agreements from employees and others performing work under any contract, subcontract, or other agreements containing patent provisions in favor of the Government. (The form of such patent agreement actually in use or proposed for use shall be forwarded for approval to the Solicitor.);

(4) For forwarding a notice of completion or termination of the work and a request for patent clearance to the Solicitor for each contract, subcontract, or other agreement containing patent provisions giving rise to rights in the Government; and

(5) For withholding payments due to contractors in accordance with paragraph (i) of the clause § 14R-9.107-5(a) until, in the case of interim reports, a determination has been made in consultation with the Solicitor that existing deficiencies have been corrected or that delivery of all reports, disclosures, and other information have been made, or, in the case of final reports, receipt of written patent clearance certification from the Solicitor.

(b) Upon receipt of the notice of completion or termination as provided in paragraph (a)(4) of this section, a notice of patent clearance will be issued by the Solicitor when there has been to his best knowledge and belief compliance with the patent provisions.

(c) The Solicitor will assist contracting officers in selecting and negotiating patent provisions, and otherwise assist heads of OWRT's procuring activities, contractors, contracting officer, subcontractors, and vendors in: Reporting of inventions and discoveries; reviewing and providing patent clearance prior to publication or release of reports and proposed technical articles, and prior to public release or disclosure of information regarding scientific and technical developments made in the course of or under the contract; handling claims for patent and copyright infringement; the preparation of certificates to initiate patent clearances; and the handling of other patent matters.

(d) Patent application filing and determination of rights to inventions and discoveries. The Solicitor shall:

(1) Determine whether and where patent protection will be obtained on inventions;

(2) Represent OWRT before domestic and foreign patent offices;

(3) Accept assignments and instruments confirmatory of the Government's rights to inventions; and

(4) Represent OWRT in patent matters not specifically reserved to the Secretary or his designee under these regulations.

§ 14R-9.109-4 Remedies.

If a contractor operating under a Patent Rights clause fails to establish, maintain, or follow effective procedures of identifying and disclosing inventions as required by the Patent Rights clause, or fails to correct any deficiency after notice thereof, the contracting officer may require the contractor to make available for examination books, records, and documents relating to inventions in the same field of technology as the contract to enable an agency determination of whether there are such inventions, and may invoke the withholding of payments provision. Further, the contracting officer may invoke the withholding of payments provision if a contractor fails to disclose an invention deemed by OWRT to be a Subject Invention.

§ 14R-9.109-5 Conveyance of invention rights acquired by the Government.

Whether the Government acquires the entire right, title, and interest in an invention pursuant to a contract or by operation of law, assignments shall be obtained from the inventor to the Government with the consent of the contractor, to perfect or confirm the Government's rights. The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government.

§ 14R-9.109-6 Waivers.

(a) *General.* The Secretary or his designee may waive all or any part of the rights of the United States (other than certain rights prescribed in paragraph (i) of this section) with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of OWRT, if it is determined that the interest of the United States and the general public as set forth in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), and made applicable to OWRT in Section 408 of the Water Research and Development Act of 1978, Pub. L. 95-467, will best be served by such waivers. In making such determinations, the Secretary or his designee shall have the following objectives:

(1) Making the benefits of water research, development, and demonstration programs widely available to the public in the shortest practicable time.

(2) Promoting the commercial utilization of such inventions.

(3) Encouraging participation by private persons in OWRT's water research, development, and demonstration program.

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

If it is not possible to attain each of these objectives immediately and simultaneously for any one waiver determination, the Secretary or his designee will seek to reconcile these objectives in light of the overall purposes of the patent policy sections of the Federal Nonnuclear Energy Research and Development Act of 1974, as made applicable to OWRT in Section 408 of the Water Research and Development Act of 1978. Over time, however, the application of this waiver policy is expected to attain each of these objectives. In addition to the patent policies provided by legislation, and where not inconsistent therewith, the Solicitor's waiver determinations will also be guided by the revised Presidential Memorandum and Statement of Government Patent Policy issued August 23, 1971 (36 FR 16887–16892).

(b) *Advance waiver.* In determining whether a waiver to the contractor at the time of contracting will best serve the interests of the United States and the general public, the Secretary or his designee shall, as a minimum, specifically include as considerations the following:

(1) The extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(2) The extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(3) The extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration program results;

(4) The extent to which the Government has contributed to the field of technology to be funded under the contract;

(5) The purpose and nature of the contract, including the intended use of the results developed thereunder;

(6) The extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the work to be performed under the contract;

(7) The extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(8) The extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(9) The extent to which the contract objectives are concerned with the public health, public safety, or public welfare;

(10) The likely effect of the waiver on competition and market concentration;

(11) In the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the Secretary or his designee as being consistent with the applicable policies of this section; and

(12) The small business status of the contractor.

(c) *Waiver of identified inventions.* In determining whether a waiver to the contractor or inventor of rights to an identified invention will best serve the interests of the United States and the general public, the Secretary or his designee shall, as a minimum, specifically include as considerations the following:

(1) The extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of such invention;

(2) The extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention;

(3) The extent to which the Government has contributed to the field of technology of the invention;

(4) The purpose and nature of the invention, including the anticipated use thereof;

(5) The extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the commercialization of the invention;

(6) The extent to which the field of technology of the invention has been developed at the contractor's expense;

(7) The extent to which Government intends to further deyelop the invention to the point of commercial utilization;

(8) The extent to which the invention is concerned with the public health, public safety, or public welfare;

(9) The likely effect of the waiver on competition and market concentration;

(10) In the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the Secretary or his designee as being consistent with the applicable policies of this section; and

(11) The small business status of the contractor.

(d) *Procedures.* (1) All waiver determinations shall be initiated by a written request. Such requests may be submitted by existing or potential contractors in the case of requests for an advance waiver and by contractors or employee-inventors in the case of requests for waiver for identified inventions. A request for an advance waiver may also be made for an identified invention which has already been conceived and which reasonably may be first actually reduced to practice in the course of or under an OWRT contract. Such waiver requests must include a copy of the patent or patent application covering the identified invention.

(2) A request for an advance waiver shall be submitted to the contracting officer or to contractors for their subcontractors at any time prior to execution of the contract or within thirty (30) days thereafter, but should normally be submitted as part of the contract proposal. Advance waivers may also be requested where the purpose or scope of work of an existing contract is to be substantially altered. When advance waivers are granted, the rights set forth in paragraphs (b), (c), and (d) of the clause of § 14R–9.107–5(a) should be modified, to conform to the waiver granted.

(3) A request for waiver (other than advance waivers for an identified invention shall be submitted to the contracting officer at the time the invention is reported to OWRT, or not later than six (6) months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by the contracting officer for good cause shown in writing by the contractor or inventor.

(4) All requests for waiver received by OWRT or its contractors will be forwarded promptly to the Solicitor, together with any reference or supporting documents provided by the staff of the activity. If the request for waiver appears to contain insufficient information, the Solicitor may seek

additional information from the requestor to supplement the request, and may also seek additional information from other sources. The Solicitor will thoroughly analyze the request in view of each of the objectives and considerations set forth in this § 14R–9.109–6, and shall also consider the overall rights obtained by the Government in the patent, copyright, and data clauses of the contract. Where it appears that a lesser part of the rights of the United States than requested would be more appropriate in view of the policies set forth in this § 14R–9.109–6, the Solicitor should attempt to negotiate a compromise acceptable to both the requestor and OWRT.

(5) The Solicitor will prepare and recommend a Statement of Considerations setting forth the rationale for eiher accepting or rejecting the waiver request. While the Statement need not make specific findings as to each and every consideration of paragraph (b) or (c) of this section, it will cover those that raise significant issues and those that are decisive, and it will explain the basis for the recommended determination. There may be occasions when the application of the various considerations in paragraphs (b) or (c) of this section to a particular case could cause conflicting results, and in those instances the differences will be reconciled giving due regard to the overall policies set forth in this § 14R–9.109–6.

(6) The Statement shall serve as a recommended basis for the waiver determination. The Solicitor will also obtain comments from the appropriate OWRT program division to assist the Secretary or his designee in the waiver determination.

(7) In making waiver determinations, the Secretary or his designee shall objectively review all requests for waiver in views of the objectives and considerations set forth in this § 14R–9.109–6. If this determination and the rationale therefor is not accurately reflected in the recommended Statement of Consideration, a new Statement shall be prepared.

(8) Where the request for advance wiaver has not been approved prior to the effective date of the contract and the terms and conditions of the waiver has thus not been made a part of the contract, the contracting officer shall promptly notify the requestor by letter of the determination of the Secretary or his designee, and the basis therefor. If the advance waiver is approved, the letter shall state the scope, terms, and conditions of such waiver. Where the terms and conditions of an approved advance waiver have not been made a part of the contract, the letter shall inform the requestor that the advance waiver shall be effective (i) as of the effective date of the contract for an advance waiver of inventions identified, i.e., conceived prior to the effective date of the contract, or (ii) as of the date the invention is reported with an election by the contractor to retain rights therein, i.e., for an invention conceived or first actually reduced to practice after the effective date of the contract; provided a copy of the letter is signed and promptly returned to the contracting officer by the requestor acknowledging the acceptance of the scope, terms, and conditions of the advance waiver. After the acceptance by the contractor of an advance waiver, the contracting officer shall cause a unilateral no-cost modification to be made to the contract incorporating the terms and conditions of the waiver in lieu of previous patent provisions. Whenever a requested determination has been denied, the requestor may, within thirty (30) days, request reconsideration. Such a request shall include any additional facts and rationale not previously submitted which support the request. Requests for reconsideration shall be submitted and processed in accordance with the procedures set forth in paragraph (d) of this section.

(e) *Content of waiver requests.* (1) All requests for waiver shall include the following information:

(i) The requestor's identification, business address, and, if represented by counsel, the counsel's name and address.

(ii) An identificaiton of the pertinent contract or proposed contract and a copy of the contract statement of work or a nonproprietary statement which fully describes the proposed work to be performed.

(iii) The nature and extent of waiver requested.

(iv) A full and detailed statement of facts, to the extent known by or available to the requestor, directed to each of the considerations set forth in paragraph (b) or (c) of this section, as applicable, and a statement applying such facts and considerations to the policies set forth in paragraph (a) of this section. It is important that this submission be tailored to the unique aspects of each request for waiver, and be as complete as feasible; and

(v) The signature of the requestor or his authorized representative with the following statement:

The facts set forth in this request for waiver are within the knowledge of the requestor and are submitted with the intention that the Secretary or his designee rely on them in reaching the waiver determination.

(2) Requests for waiver for identified inventions shall, in addition to paragraph (e)(1)(i)–(v) of this section, include:

(i) The full names of all inventors;

(ii) A statement of whether a patent application has been filed on the invention, together with a copy of such application if filed, or, if not filed, a complete description of the invention;

(iii) If a patent application has not been filed, any information which may indicate a potential statutory bar to the patenting of the invention under 35 U.S.C. 102, or a statement that no bar or potential bar is known to exist; and

(iv) Where the requestor is the inventor, written authorization from the applicable contractor or subcontractor permitting the inventor to request a waiver.

(3) Subject to Department of the Interior regulations, requirements, and restrictions on the treatment of proprietary and classified information, all material submitted in requests for waiver or in support thereof will be made available to the public after a determination on the waiver request has been made, regardless of whether a waiver is granted. Accordingly, requests for waiver should not contain information or data that the requestor is not willing to have made public. If proprietary or classified information is needed to make the waiver determination, such information shall not be submitted unless specifically requested by the Solicitor.

(f) *Record waiver determinations.* The Solicitor shall maintain and periodically update a publicly available record of waiver determinations.

(g) *Waiver situations and types of waivers.* (1) The various factual situations which are appropriate for waivers cannot be categorized precisely inasmuch as the appropriateness of a waiver will depend upon the manner in which the considerations set forth in paragraph (b) or paragraph (c) of this section relates to the facts and circumstances surrounding the particularing contracting situation or the particular invention in order to best achieve the objectives set forth in paragraph (a) of this section. However, some examples of factors bearing on where waivers might be appropriate are the following:

(i) Cost sharing contracts;

(ii) Situations in which OWRT is providing increased funding to a specific on-going privately sponsored research, development, or demonstration project;

(iii) Situations involving the private use of Government facilities and the contractor is funding all or a part of such costs; and

(iv) Situations in which the equities of the contractor are so substantial in relation to that of the Government that the waiver is necessary to obtain the participation of the contractor.

(2) As stated in paragraph (a) of this section, waivers may be granted as to all or any part of the rights of the United States to an invention except for certain rights set forth in paragraph (i) of this section. Accordingly, the waiver of all patent rights that are inherent to an invention, rather than part of the rights, will not necessarily be appropriate. The scope of the waiver will depend upon the relationship of the contractual situation or identified invention to the considerations set forth in paragraph (b) or (c) of this section in order to best achieve the objectives set forth in paragraph (a) of this section. For example, waivers may be restricted to a particular field of use in which the contractor has substantial equities or a commercial position, or restricted to those uses that are not the primary object of the contract effort. Waivers may also be limited to particular geographical locations, may be made effective only for a specified duration of time, or may require the contractor to license others at reduced royalties in consideration of the Government's contribution to the research, development, or demonstration effort.

(3) In advance waivers of identified inventions, the invention will be deemed to be a Subject Invention and the waiver will be considered as being effective as of the effective date of the contract. This will be true regardless of whether the identified invention had been first reduced to practice under the contract. A purpose of such waivers is to clarify and definitize the rights of the parties to such inventions when the facts surrounding the first actual reduction to practice prior to or during the contract are or will be difficult to establish.

(h) *Waivers to educational institutions.* (1) Except to the extent that a nonprofit educational institution may be engaged as a contractor operating a Government-owned facility or undertaking other special contracts, the following considerations apply to the granting of advance and identified waivers to educational institutions having an approved technology transfer program and capability. To obtain approval of its technology transfer program, educational institutions shall forward their requests to OWRT as provided in paragraph (h)(2) of this section.

(2) A nonprofit educational institution desiring to obtain approval of its technology transfer program and capability shall provide OWRT at the time of contracting with the following information:

(i) General information concerning the institution, including:

(A) A copy of its Articles of Incorporation;

(B) A statement of the institution's purposes and aims; and

(C) A statement indicating the source of the institution's funds.

(ii) A copy of the institution's established patent policy, together with the date and manner of its adoption;

(iii) The name, title, address, and telephone number of the officer responsible for administration of patent and invention matters and a description of staffing in this area, including all offices which contribute to the institution's patent management capabilities;

(iv) A description of the institution's procedures for identifying and reporting inventions and a description of the procedures for evaluation of such inventions for inclusion in the institution's promotional program;

(v) A copy of the agreement signed by employees engaged in research and development, indicating their obligation in regard to inventions conceived or first actually reduced to practice in the course of their assigned duties;

(vi) A copy of the invention report form or outline utilized for preparation of invention reports;

(vii) A statement of whether the institution has an agreement with any patent management organizations or consultants and a copy of any such agreements;

(viii) A description of the plans and intentions of the institution to bring to the marketplace inventions to which it retains title including a description of the efforts typically undertaken by the institution to license its inventions together with copies of earnest offers or proposals to the institution from identified prospective licensee(s) to commit funds, facilities, proprietary background technology and know-how, and the services of personnel, to bring to the marketplace an invention or inventions to which the institution retains title;

(ix) A description of the institution's past patent application and patent licensing activities, including the following:

(A) Number of inventions reported to the institution during each of the past ten (10) years;

(B) Number of patent applications filed during each of the past ten (10) years;

(C) Number of patents obtained during each of the past ten (10) years;

(D) Number of exclusive licenses issued during each of the past ten (10) years;

(E) Number of nonexclusive licenses, other than those to sponsor Government agencies, issued during each of the past ten (10) years;

(F) Gross royalty income during each of the past ten (10) years;

(G) A general description of royalties charged, including minimum and maximum royalty rates;

(x) A list of subsidiary or affiliate institutions which would be covered by an agreement signed by the institution;

(xi) If the institution is a subsidiary or affiliate organization, the name of the other related organization and a description of the relationship;

(xii) The amount of Government support for research and development activities currently being administered by the institution, giving Government agency and breakdown;

(xiii) A statement of the institution's policies with respect to the sharing of royalties with employees; and

(xvi) A description of the uses made of any net income generated by the institution's patent management program.

(3) Before an institution's technology transfer program and capabilities are approved for the contracting, the institution shall have a technology transfer program which, as a minimum shall include the five (5) criteria listed below:

(i) An established patent policy which is consistent with the four policy objectives in § 14R–9.109–6(a) and is administered on a continuous basis by an officer or organization responsible to the institution.

(ii) Agreements with employees requiring them to assign to the institution or its designee or the Government any invention conceived or first actually reduced to practice by them in the course of or under Government contracts and awards or assurance that such agreements are obtained prior to the assignment of personnel to Government-supported research and development projects;

(iii) Procedures for insuring that inventions are promptly identified and timely disclosed to the officer or organization administering the patent policy of the institution;

(iv) Procedures for insuring that inventions disclosed to the institutions are evaluated for inclusion in the institution's promotional program for the licensing and marketing of inventions.

(4) In considering approval of technology transfer programs and capabilities in connection with requests for waivers, such approval shall be considered in lieu of commercial, manufacturing, and marketing capabilities which normally reside in industry. Such approval shall not be considered sufficient in and of itself as justifying the granting of a waiver to an institution. Approval of the grant of a waiver must be viewed in light of the considerations of § 14R–9.106(b) or (c) above, as applicable, and the four objectives set forth in § 14R–9.109–6(a), above.

(i) *Terms and conditions of waivers.* Each waiver shall contain, as a minimum, provisions covering each of the following:

(1) Advance waivers shall apply only to inventions reported in accordance with paragraph (e)(2)(i) of the clause of § 14R–9.107–5(a) and with which is included an election as to whether the contractor will retain the rights waived in the invention, and specifying those countries in which rights will be retained.

(2) Subject to the rights granted in paragraphs (a)(1), (2), and (3) of the clause of § 14R–9.107–5(a), the contractor or inventor shall agree to convey to the Government, upon request, the entire domestic right, title, and interest in any Subject Invention when the contractor or inventor as appropriate:

(i) Does not elect, in accordance with (i)(1) of this section to retain such rights; or

(ii) Fails to have a United States patent application filed on the invention in accordance with paragraph (i)(5) of this section, or decides not to continue prosecution of such application; or

(iii) At any time, no longer desires to retain title.

(3) Subject to the rights granted in paragraph (c) (1), (2), and (3) of the clause of § 14R–9.107–5(a), the contractor or inventor shall agree to convey to the Government, upon request, the entire right, title, and interest in any Subject Invention in any foreign country if the contractor or inventor, as appropriate:

(i) Does not elect, in accordance with paragraph (i)(1) of this section to retain such rights in the country; or

(ii) Fails to have a patent application filed in the country on the invention in accordance with paragraph (i)(6) of this section, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall notify the contracting officer or patent counsel not less than 60 days before the expiration period for any action required by the foreign patent office.

(4) Conveyances requested pursuant to paragraph (i) (2) or (3) of this section shall be made by delivering to the Solicitor duly executed instruments and such other papers as are deemed necessary to vest in the Government the entire right, title, and interest in the invention to enable the Government to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of the invention.

(5)(i) With respect to each invention in which the contractor has an advance waiver and elects to retain domestic rights pursuant to paragraph (i)(1) of this section, the contractor shall have a domestic patent application filed within 6 months after submission of the invention disclosure pursuant to paragraph (e)(2)(i) of the clause of § 14R–9.107–5(a) or such longer period as may be approved by the Solicitor for good cause shown in writing by the contractor or inventor. For identified inventions waived to the contractor or inventor, the contractor or inventor shall have a domestic patent application filed within 6 months after the waiver has become effective. With respect to such inventions, the contractor or inventor shall promptly notify the Solicitor of any decision not to file an application.

(ii) For each Subject Invention on which a patent application is filed by the contractor or inventor, the contractor or inventor shall:

(A) Within 2 months after the filing or within 2 months after submission of the invention disclosure if the patent application previously has been filed, deliver to the Solicitor a copy of the application as filed, including the filing date and serial number;

(B) Include the following statement in the second paragraph of the specification of the application and any patents issued on a Subject Invention, "The Government has rights in this invention pursuant to Contract No. ———— [or Grant No. ————] awarded by the Office of Water Research and Technology of the United States Department of the Interior."

(C) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Solicitor a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and provide the Solicitor an irrevocable power to inspect and make copies of the patent application filed;

(D) Provide the Solicitor with a copy of the patent within 2 months after a patent is issued on the application; and

(E) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Solicitor of any decision not to continue prosecution of the application and deliver to the Solicitor executed instruments granting the Government a power of attorney.

(iii) For each invention in which the contractor initially elects pursuant to paragraph (i)(1) of this section not to retain the rights waiver, the contractor shall inform the Solicitor promptly in writing of the date and identity of any on sale, public use, or public disclosure of the invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the contractor, or any contemplated action of this nature.

(6)(i) With respect to each invention in which the contractor elects pursuant to paragraph (i)(1) of this section to retain the rights waived in a foreign country, or in which the contractor or inventor has obtained a waiver of foreign rights on an identified invention, the contractor or inventor shall have a patent application filed on the invention in that country, in accordance with applicable statutes and regulations, and within one of the following periods:

(A) Eight (8) months from the date of a corresponding United States patent application filed by the contractor or inventor, of if such an application is not filed, 6 months from the date the invention is submitted in a disclosure pursuant to paragraph (e)(2)(i) of the clause of § 14R–9.107.5(a);

(B) Six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications where such filing has been prohibited by security reasons; or

(C) Such longer period as may be approved by the Solicitor.

(7) The contractor or inventor shall, three years after a waiver is effective as to an invention, and at three-year intervals thereafter, and when specifically requested by the Solicitor, furnish the Solicitor a report setting forth:

(i) The commercial use that is being made, or is intended to be made, of said invention, and

(ii) The steps taken to bring the invention to the point of practical application or to make invention available for licensing.

(8) The Government's retention of at least a nonexclusive, irrevocable, paid-up license to make, use, and sale the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary or his designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(9) The right of the Secretary or his designee to require the granting of nonexclusive, exclusive, or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances:

(i) To the extent that the invention is required for public use by Government regulations;

(ii) As may be necessary to fulfill health, safety, or energy needs; or

(iii) For such other purposes as may be stipulated in the applicable agreement.

(10) The right of the Secretary or his designee to terminate such waiver in whole or in part unless the recipient of such waiver demonstrates to the satisfaction of the Secretary or his designee that effective steps have been taken, or within a reasonable time thereafter are expected to be taken, necessary to accomplish substantial utilization of the invention.

(11) The right of the Secretary, or his designee, commencing four years after a waiver is effective as to an invention, to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate the waiver in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing;

(i) If the Secretary or his designee determines upon review of such material as he deems relevant, and after the recipient of the waiver, or other interested person, has had the opportunity to provide such relevant and material information as the Secretary or his designee may require, that such waiver has tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(ii) Unless the recipient of the waiver demonstrates to the satisfaction of the Secretary or his designee at such hearing that he has taken effective steps, or within a reasonable time thereafter is expected to take such steps necessary to accomplish substantial utilization of the invention.

(j) *Terminations.* (1) Any waiver may be terminated at the discretion of the Secretary, or his designee, in whole or in part, if the request for waiver is found to contain false material statements or nondisclosure of material facts, and such were specifically relied upon in reaching the waiver determination.

(2) Any waiver, as applied to particular invention, may be terminated at the discretion of the Secretary, or his designee, in whole or in part, if the requirements set forth in paragraph (i) of this section (Terms and conditions of waivers) have not been fulfilled, and such failure is determined by the Secretary or his designee to be material and detrimental to the interests of the United States and the general public.

(3) Prior to terminating a waiver under paragraph (j)(1) or (j)(2) of this section, the recipient of the waiver will be given written notice of the intention to terminate the waiver, the extent of such proposed termination and the reason therefor, and a period of 30 days, or such longer period as the Secretary or his designee shall determine for good cause shown in writing, to show cause why the waiver should not be so terminated.

(4) All terminations of waivers shall be subject to the rights granted in paragraph (c)(1) of the clause of § 14R–9.107–5(a), and when justified by equitable considerations termination shall normally be partial in nature, requiring the waiver recipient to grant nonexclusive or partially exclusive licenses to responsible applicants upon terms reasonable under the circumstances.

(k) *Effective date.* Waivers shall be effective on the following dates:

(1) For advance waivers of identified invention, i.e., inventions conceived prior to the effective date of the contract, on the effective date of contract, even through the advance waiver may have been requested after this date;

(2) For identified inventions under advance waivers, i.e., invention conceived or first actually reduced to practice after the effective date of the contract, on the date the invention is reported with the election to retain rights as to that invention; and

(3) For waivers of identified inventions (other than under an advance waiver), on the date of the letter notifying the requestor that the waiver has been granted.

§ 14R–9.110 Reporting of royalties.

In order that OWRT may be informed regarding royalty payments to be made by a contractor in connection with any procurement, construction, or operation where the amount of the royalty payments is reflected in the contract price, or is to be reimbursed by the Government, the negotiator shall (a) obtain from the offeror information concerning any royalty payments expected to be made in connection with the proposed procurement, construction, or operation, together with the names of the licensors and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid, or (b) obtain from the offeror a certificate that the contract price includes no amount representing the payment of any royalty by the offeror directly to others in connection with the performance of the contract, or (c) insert in the contract the clause set forth below:

Reporting of Royalties

If this contract is in an amount which exceed $10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Government, the Contractor agrees to report in writing to the Contracting Officer during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of OWRT of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

Subpart 14R–9.2—Technical Data and Copyrights

§ 14R–9.200 Scope of subpart.

This subpart sets forth OWRT's policy, procedures, and contract clauses with respect to the acquisition and use of technical data and copyrights in contracts or subcontracts entered into, with or for the benefit of the Government. The policy, as implemented by the procedures and contract clauses, is promulgated to comply with section 408, of the Water Research and Development Act of 1978, Public Law 95–467, which in a concluding proviso states:

That, subject to the patent policy of section 408, all research or development contracted

for, sponsored, cosponsored, or authorized under authority of this Act, shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public consonant with the purpose of this Act.

Thus, the statutorily mandated availability for practical utility of the contract's resulting informational products is carried out by this Subpart with provisions requiring acquisition by the Government of unlimited rights in all technical data produced in the performance of the contract, which are supplemented with further provisions ensuring compliance with the mandate by requiring where essential for use in connection with the practice of the informational products, the availability of contractor's proprietary data in the form of results obtained by their use through marketing in sufficient quantity and at reasonable price, or by licensing that proprietary data on suitable terms to the Government and third parties applying for such licensing.

§ 14R-9.201 Definitions.

For the purpose of this subpart, the following terms have the meanings set forth below:

(a) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used in this Subpart does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) "Proprietary Data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, manufacturing methods, process, or treatments, including minor modifications thereof, or computer formatting, provided that such data are protectable and accordingly:

(1) Are not generally known or available from other sources without obligation concerning their confidentiality,

(2) Have not been made available by the owner to others without obligation concerning their confidentiality, and

(3) Are not already available to the Government without obligation concerning their confidentiality.

(c) "Contract Data" means technical data first produced in the performance of the contract, technical data which are specified to be delivered in the contract, technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(d) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

§ 14R-9.202 Acquisition and use of technical data.

§ 14R-9.202-1 General.

(a) The provisions herein pertain to contracts other than those for the operation of a Government-owned facility and special contracts covered by § 14R-9.202.4. Under OWRT's broad charter to perform research, development, and demonstration work in water fields, and in operating Government-owned facilities, OWRT has extensive needs for technical data. The satisfaction of these needs and the achievement of OWRT's objectives through a sound data policy are found in the balancing of the needs and equities of the Government, industry, and the general public.

(b) It is important to keep a clear distinction between contract requirements for the furnishing of technical data on the one hand, and rights in the technical data furnished on the other. The legal rights which the Government acquires in technical data are set forth in a "Rights in Technical Data" clause of § 14R-9.202-3(e)(2). However, this clause does not obtain for the Government the delivery of any data whatsoever. Rather, known requirements for specific technical data to be furnished by the contractor shall be set forth as part of the contract (e.g., in the Statement of Work). An "Additional Technical Data Requirements" clause is included in this subpart to enable the Contracting Officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation of the kind of technical data which a contractor may be required to deliver under either the contract Statement of Work or the "Additional Technical Data Requirements" clause. This limitation is found in the withholding procedure of paragraph (e) of the "Rights in Technical Data" (long form) clause which provides that the contractor need not furnish "proprietary data." It is specifically intended that the contractor may withhold "proprietary data" even though a requirement for technical data specified in the Statement of Work or called for pursuant to the "Additional Technical Data Requirements" clause would seemingly require the furnishing of proprietary data. This withholding of proprietary data is the primary means by which the contractor may protect its proprietary position. However, in no event is withholding of data first produced in the performance of the contract to be sanctioned since not having been developed at private expense it cannot be proprietary for the purposes of withholding.

(c) There are, however, two situations where the Government, or its representatives, may need to have limited access to a contractor's proprietary data. First, paragraph (f) of the "Rights in Technical Data" (long form) clause gives the Contracting Officer's representatives the limited right to inspect at the contractor's facility the contractor's proprietary data which was withheld from delivery under paragraph (e) for the purpose of verifying that such data was properly withheld or to evaluate work performance. In carrying out the inspection, normally the Contracting Officer's representative is a Government employee, although he may be an employee of a Government contractor acting under an agreement to treat in confidence the proprietary data to be inspected. However, where the contractor whose data are to be inspected demonstrates that there would be a possible conflict of interest if the inspection were made by such a contractor employee, the Contracting Officer's representative may be limited to a Government employee. Paragraph (f) has a built-in exclusion from these inspection rights for "specific items of proprietary data" when they are so specified in the contract schedule. Such exclusions limit even OWRT's minimum rights of evaluating contract work performance and verifying that technical

data withheld by the contractor is proprietary in fact. Such exclusions should be sparingly used, and only in situations where program personnel stipulate to the fact that OWRT has no need for access to the specified items to be excluded from paragraph (f), i.e., that the nondisclosure and nonaccessibility will not adversely affect the OWRT program involved. It should also be noted that paragraph (f) permits exclusion of "specific items" of proprietary data and, accordingly, should not be used to exclude classes of technical data or all technical data pertaining to specific items or process or classes of items or processes. The second situation, where the Government may have limited access to a contractor's proprietary data, is provided in paragraph (h) of the Rights in Technical Data (long form) clause. When used, paragraph (h) provides the Government the right to require the contractor to furnish with limited rights the proprietary data previously withheld under paragraph (e). In this situation, the limited rights in proprietary data and the Government's obligation for limited use and disclosure of such data as set forth in the Rights in Technical Data (long form) clause provides the means by which the contractor protects its proprietary position. Paragraph (h) will be used only where it is determined by OWRT that for programmatic reasons there is a need for the delivery of proprietary data to the Government. Where proprietary data is to be delivered under paragraph (h) and subparagraph (a) or (b) of the Limited Rights Legend is to be applied to the data, the contractor may, if he can show the possibility of a conflict of interest regarding disclosure of such data to other contractors, limit or modify subparagraphs (a) or (b) as set forth in § 14R–9.202–3(e)(3), to exclude or include certain contractors.

(d) The contractor licensing provisions of paragraph (g) of the Rights in Technical Data (long form) clause enable OWRT to require limited licenses in proprietary contract data to be granted to the Government and responsible parties in certain circumstances. Such a license may parallel or supplement a license obtained in Background Patents under the provisions of paragraph (k) of the Patent Rights clause of Subpart 14R–9.1. Paragraph (g) is included in contracts for research, development, or demonstration where the limited license afforded therein may be necessary to ensure widespread commercial use or practical utilization of a subject of the contract including any Subject Invention. As explained in § 14R–9.202–3(e)(1), paragraph (g) provides that upon request by the Government or responsible third parties the contractor will grant to the Government and such responsible third parties a license in proprietary data only where such data in the form of results obtained by its use, i.e., essential equipment, articles, products, and the like which were the subject of the contract or are necessary for the practice of a Subject Invention, are not otherwise available or cannot be made available in a reasonable time as set forth in paragraph (g).

(e) It is the responsibility of prime contractors and higher-tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractors the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in these regulations, and subject to the approval of the Contracting Officer where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractor or higher-tier subcontractor. In many, but not all, instances, inclusion in a subcontract of the Rights in Technical Data (long form) clause of § 14R–9.202–3(e)(2) will suffice to obtain for the benefit of the Government the rights in and, if appropriate, access to technical data. Access by OWRT to technical data, i.e., the inspection rights afforded in paragraph (f) of the Rights in Technical Data (long form) clause, § 14R–9.202–3(e)(2) normally should be obtained only in first tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract. If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the Contracting Officer in writing and not proceed with the subcontract without written authorization of the Contracting Officer. In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause, it is the further reponsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract). As is the case for OWRT in its determination of technical data requirements, the Additional Technical Data Requirements clause should not be used at any subcontracting tier where the technical data requirements are fully known, and normally the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration. Prime contractors and higher-tier subcontractor shall not use their power to award subcontracts as economic leverage to inequitably acquire rights in the subcontractor's proprietary data for their private use, and they shall not acquire rights on behalf of the Government to proprietary data for standard commercial items unless required by the prime contract.

(f) Related to the acquisition and use of technical data are the contractor's rights in contract data as well as technical data furnished to the contractor by OWRT or its contractors. These rights are set forth in paragraph (b)(2) of each Rights in Technical Data clause of this Subpart and provide that the contractor may, subject to patent, security, and other provisions of the contract, use for its private purposes contract data it first produces in the performance of the contract provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress or status reports specified to be delivered) as of the date of the private use of such data. It is not necessary that a "Final Report" be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(g) An additional clause in this subpart includes that of paragraph § 14R–9.202–3(f)(2) entitled Rights in Data—Special Works which is to be used in place of or in addition to the Rights in Technical Data clause in contracts where a purpose of the contract is the production of copyrightable material, a substantial portion of which is to be first produced in the performance of the contract, such as motion pictures, television recordings, books, histories, fine art, etc. Where, during contract negotiations, it may be determined to purchase, i.e., "specifically acquire," unlimited rights in technical data, or to lease or obtain a license therein, or to obtain rights in existing data, an appropriate clause therefor should be obtained from the Solicitor. In situations where technical data including computer software are to

be leased or licensed, the terms of any agreement restricting the Government's rights will be included in the contract as either a special provision or an agreement annexed thereto. Another clause, the Rights in Technical Data (short form) clause of § 14R–9.202–3(g)(2) is provided for use in research contracts with educational institutions and consultants. Such contracts may, for example, include those for conducting symposia, training or education, or other contracts not involving possible use of proprietary data.

§ 14R–9.202–2 Policy.

The technical data policy is directed toward achieving the following objectives:

(a) Making the benefits of the water research, development, and demonstration programs of OWRT widely available to the public for practical use in the shortest practicable time;

(b) Promoting the commercial utilization of the technology developed under OWRT programs;

(c) Encouraging participation by private persons in OWRT water research, development, and demonstration programs; and

(d) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

§ 14R–9.202–3 Procedures (Supply, Research, Development, or Demonstrations Contracts).

(a) *Known requirements for technical data.* Technical data requirements are determined in relation to the intended use of that data, which in turn depends upon the intended use of the contract end item. In many contracts for research, the end item may often be a technical report or series of such reports, while in contracts beyond research the subject of the contract may be a feasibility model, an engineering or advance development model, or a prototype. The extent to which required technical data may be needed often depends on the level of maturity of design and perfection of the end item, and, for a demonstration plant or prototype may include data pertaining to performance, operational, and environmental testing, repair, maintenance, operation, quality assurance, detailed design, logistics, training, etc. Known technical data requirements shall be programmatically ascertained prior to contracting and shall be included in requests for proposals or disclosed during contract negotiations for incorporation as data requirements in the contract Statement of Work. In any event, the technical data actually delivered consonant with the requirements shall include, in addition to any progress or interim reports specified for delivery, a final report providing full coverage of the work done under the contract in the form specified by a paragraph to be added to the Statement of Work or Specification as follows:

A complete technical report shall be submitted to the Contracting Officer summarizing the state of the art and covering all work accomplished and results achieved under this contract, and including conclusions and recommendations derived therefrom. The final report shall include a complete disclosure of all materials, processes, and equipment employed, and shall be in such full, clear, concise, and exact detail, including data such as mathematical, graphic, and written descriptive materials and other means of disclosure appropriate in the circumstances, to enable any person skilled in the art to achieve the results of the work performed under the contract to the extent that is commensurate with the scope of the work. The Contractor shall furnish, to the extent applicable, drawings, specifications, and necessary operating and maintenance instructions concerning any equipment, item, or process developed under the contract to enable any person skilled in the art to make and use such equipment and perform such process by application of the most advanced state of the art achieved in the performance of this contract. Where appropriate, the report shall include recommendations for further improvements which would advance the future state of the art based on knowledge acquired in the performance of this contract. If this contract is with an individual or an educational institution and the right to publish has not been reserved by the Government, the Contracting Officer may at his option accept as the final technical report a publication describing the results accomplished in the research under the contract together with a report setting forth such additional information as may be necessary to complete the information specified hereinabove; provided, however, that a copy of the manuscript for such publication must have been submitted to the Contracting Officer for informational purposes at least 90 days prior to the date of publication or such shorter period as may be agreed to by the Contracting Officer.

(b) *Additional requirements for technical data.* In contracts for research, development, or demonstration, it is not normally possible or appropriate for the Government to ascertain all actual needs for technical data in advance of contracting. Accordingly, the Additional Technical Data Requirements clause in paragraph (c) of this section shall normally be used in such contracts (and, if appropriate, in subcontracts) to enable the ordering of technical data as the actual need and requirement therefor became known during the course of the contract. If all technical data requirements are known in advance of contracting and are set forth in the contract Statement of Work, this clause need not be used. The Additional Technical Data Requirements clause should not normally be used in supply contracts because the required technical data therefor are ordinarily known in advance and thus are specified in the contract Statement of Work or Specification.

(c) *Additional technical date requirement clause.*

Additional Technical Data Requirements

(a) In addition to the technical data specified elsewhere in this contract to be delivered, the Contracting Officer may at any time during the contract performance, or within one year after final payment, call for the Contractor to deliver any technical data first produced or specifically used in the performance of this contract except technical data pertaining to items of standard commercial design.

(b) The provisions of the "Rights in Technical Data" clause included in this contract are applicable to all technical data called for under this "Additional Technical Data Requirements" clause. Accordingly, nothing contained in this clause shall require the Contractor to actually deliver any technical data, the delivery of which is excused by paragraph (e) of the "Rights in Technical Data" clause.

(c) When technical data are to be delivered under this clause, the Contractor will be compensated for appropriate costs for converting such data into the prescribed form, for reproduction, and for delivery.

(d) *Proposals.* The policy and procedures for treatment of proposal information solicited and unsolicited proposals are contained in § 14–4.5101 of these Regulations in which it is provided that proposals may be marked with the Notice set forth in § 14–4.5101–3. It is OWRT policy, in consideration of the contract award, to obtain unlimited rights in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which he asserts as being proprietary data. If a contract is to be awarded based on a proposal even though it is marked with the Notice in § 14–4.5101–3, the prospective contractor is obliged under § 14–4.5101–3(a)(1) and (2) to identify the portions thereof which contain proprietary data. Data identified as proprietary data does not constitute a stipulation by the Government that it is in fact proprietary data.

(e) *Rights in technical data.* (1) The Rights in Technical Data (long form) clause set forth in paragraph (2) below

will be used in all contracts having as a purpose the conduct of research, development, or demonstration or in contracts for supplies, or in any other contract where technical data are expected to be first produced under the contract, e.g., technical or architectural specifications, and computer software (including computer programs, computer software data bases, and computer software documentation), or where technical data are specified to be delivered in the contract or where the contract contains the Additional Data Requirements clause. In many contracting situations, the achievement of OWRT's objectives would be frustrated if the Government at the time of contracting did not obtain on behalf of responsible third parties and itself limited license rights in and to proprietary contract data. Where, for example, the contractor is required to license Background Patents, consideration should be given to securing coextensive license rights to the Government and responsible third parties at reasonable royalties, and under appropriate restrictions, for contract data which are proprietary data in order to practice the technology which is a subject of the contract, including Subject Inventions. The Rights in Technical Data (long form) clause is therefore provided with paragraph (g), except when no need therefor is demonstrated. Paragraph (g) will normally be sufficient to cover proprietary contract data for items and processes that were used in the contract and are necessary in order to insure widespread commercial use of a subject of the contract including Subject Inventions. The expression "subject of the contract" is intended to limit the license required in clause (g) to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in § 14R–9.107–5(b)(9) of Subpart § 14R–9.1 of these Regulations pertaining to "Background Patents." Where, however, proprietary contract data cover the main purpose of basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products, or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (1)–(4) of paragraph (g) should be modified or deleted. Paragraph (g) further provides that technical data may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (g) to only those classes or categories of proprietary data determined as being essential for licensing. Although contractor licensing may be required under paragraph (g), the final resolution of questions regarding the scope of such licenses, the terms thereof, including provisions for confidentiality and reasonable royalties, is then left to the negotiation of the parties with resolution of the issues being made, if necessary, by a court of competent jurisdiction. Accordingly, all OWRT contracts for research, development, or demonstration will contain the Rights in Technical Data (long form) clause of paragraph (2) except as noted in § 14R–9.202–4 and § 14R–9.202–3(f) and (g) and except contracts for standard commercial "off-the-shelf" supplies where technical data such as operating or repair manuals are routinely furnished with the supplies.

(2) *Rights in technical data clause.*

Rights in Technical Data—Long Form

(a) *Definitions.* (1) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not mean financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary Data" means technical data which are trade secrets developed at private expense, such as may be included in design procedures or techniques, chemical composition of materials, or manufacturing methods, process, or treatments, including minor modifications thereof, or computer formatting, provided that such data are protectable as trade secret and accordingly:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality,

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality, and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Contract Data" means technical data first produced in the performance of the contract, technical data which are specified to be delivered in the contract, technical data that may be called for under the "Additional Technical Data Requirements" clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.* (1) The Government shall have:

(i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data.

(ii) The right to remove, cancel, correct, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if upon delivery of the data the propriety of such markings is not substantiated by the Contractor, in writing, to the satisfaction of the Contracting Officer. The Contractor will be notified of any such action contemplated under this subparagraph (b)(ii), and which will be taken if the Contractor fails to respond thereto so as to substantiate the propriety of the markings within 60 days.

(2) The Contractor shall have:

(i) The right to withhold proprietary data in accordance with the provisions of this clause.

(ii) The right to use for its private purposes, subject to patent, security, or other provisions of this contract, contract data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The Contractor agrees that to the extent if receives or is given access to proprietary data or other technical, business, or financial data in the form of recorded information from OWRT or an OWRT Contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this "Rights in Technical Data" clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.* (1) The Contractor agrees not to, without prior written authorization of the Contracting Officer, establish a claim to statutory copyright in any contract data first produced in the performance of the contract, and warrants that anyone who authors such contract data will have agreed, in writing, to the same. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf at least a nonexclusive, irrevocable, royalty-free, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any

material copyrighted by others without first granting or obtaining at no cost to the Government a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the Contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall request the written authorization of the Contracting Officer to include such copyrighted material in the technical data without a license.

(d) *Subcontracting.* It is the responsibility of the Contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(1) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(2) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) *Withholding of proprietary data.* Notwithstanding the inclusion of the "Additional Technical Data Requirements" clause in this contract or any provision of this contract specifying the delivery of technical data, the Contractor may withhold proprietary data from delivery, provided that the Contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating, and attachment characteristics, functional characteristics and performance requirements ("Form, Fit, and Function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.) or a general description of such proprietary data where "Form, Fit, and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provision of paragraph (f), the "Contractor licensing" provision of paragraph (g), and, if included, the "Limited rights in proprietary data" provisions of paragraph (h).

(f) *Inspection rights.* Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three (3) years after final payment under this contract, may inspect at the Contractor's facility any proprietary data withheld under paragraph (e) and not furnished under paragraph (h) for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

(g) *Contractor licensing.* Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the Contractor agrees that upon written application, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality. "A subject of this contract" as used in this provision (g) means any product, item of manufacture, or process which was used in the effort covered by the contract's Statement of Work or Specification, and it includes Subject Inventions made under the contract. The licensing required may be limited to the field or fields of technology contemplated for this contract. Contractor shall not be obligated to license any data if the Contractor demonstates to the satisfaction of the Solicitor that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available.

(3) Such data, in the form of results obtained by their use, are being supplied by the Contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the Contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by its use within a period of time set by the Solicitor upon a written request therefor by the Contractor.

(3) *Optional Clause—limited rights in proprietary data.* In research, development, or demonstration contracts and supply contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data (long form) clause shall be supplemented by the additional paragraph (h) set forth below. It should be noted that this paragraph does not entitle the contractor to place a Limited Rights Legend on any technical data furnished to the Government under paragraph (h) below unless the Contracting Officer requests in writing delivery of identified technical data previously withheld under paragraph (e) of the rights in Technical Data clause. Paragraph (h) provides that proprietary data may be specified in the contract as being excluded from the delivery requirement of paragraph (h). Alternatively, the Limited Rights Legend specified in paragraph (h) may be made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the Limited Rights Legend, subparagraphs (a), (b), and (C) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, subparagraph (a) of the Limited Rights Legend shall used, and subparagraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other OWRT contractors only for information or use in connection with work performed under their contracts, subparagraph (b) of the Limited Rights Legend shall be used, and subparagraphs (a) and (c) may be deleted, if otherwise inapplicable. In either of the foregoing examples, the contractor may, if he can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude such contractors or evaluators from subparagraphs (a) or (b). If the data is required solely for emergency repair or overhaul, subparagraph (c) of the Limited Rights Legend shall be retained, and subparagraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event it is determined that all of the subparagraphs (a), (b), and (c) of the Limited Rights Legend are to be deleted, the word "none" shall be inserted in the Legend after the colon (:).

(h) *Limited rights in proprietary data.* Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the Contractor shall, upon written request from the Contracting Officer at any time prior to three (3) years after final payment under this contract, promptly deliver to the Government any "proprietary data" withheld pursuant to paragraph (e) of the "Rights in Technical Data" clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision, provided the "proprietary data" meets the conditions for initial witholding under paragraph (e) of the "Rights in Technical Data" clause. The Government will thereafter treat the "proprietary data" in accordance with such legend. However, at the written request of the Contractor, the restrictive period for the proprietary data of three (3) years, as appears in the legend, may be made a longer time upon approval thereof in writing by the Contracting Officer when found warranted by the Contractor's justification thererfor in negotiations before submittal of such data under this provision.

Limited Rights Legend

This "proprietary data," is a trade secret of ———, and is submitted in confidence on ———, under Contract No. ——— (and Subcontract ———, if appropriate) with the Office of Water Research and Technology, United States Department of the Interior (and Purchase Order No. ———, if applicable). It may be duplicated and used by the Government with the express linitations that it may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the

Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the proprietary data be retained in confidence and not be further disclosed;

(b) This "proprietary data" may be disclosed to other Contractors participating in the Government's program of which this contract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work, or other purpose(s) specified as follows (if no other, enter "NONE"):, under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

These restrictions shall terminate three (3) years from the date of submittal stated in this notice.

This legend shall be marked on any reproduction of this data in whole or in part.

(4) *Acquisition of proprietary data-computer software.* Where it has been determined that delivery of proprietary computer software is necessary with limited rights in the Government, the Rights in Technical Data (long form) clause shall be supplemented by the addition of paragraph (h) set forth below. The Limited Rights Legend specified in paragraph (h) is applicable only to the proprietary computer software determined to be necessary for delivery with limited rights. Government acquisition of any rights in the software greater than the rights appearing from the numbered subparagraph of the Legend shall be specified in the contract, and, unless found impractical, stated on the Legend in additional subparagraphs.

(h) *Acquisition of proprietary data-computer software.* Upon written request of the Contracting Officer for any computer software which has been data withheld pursuant to paragraph (e) of this clause, the Contractor shall promptly furnish (including any data specifically identified in the contract as required to be furnished under this paragraph) such data. The following notice is authorized to be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

Restricted Rights Notice

This computer software is the property of ——— and is furnished under OWRT Contract No. ——— (and subcontract ———, if appropriate). It may not be used, duplicated, nor disclosed by the Government except as provided below or as otherwise stated in the contract.

The Government may:

(i) use this computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(ii) use this computer software with a backup computer if the computer for which it was acquired is inoperative;

(iii) copy this computer software for safekeeping (archives) or backup purposes;

(iv) modify this computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as proprietary data, such portions shall be subject to the same restricted rights;

(v) disclose this computer software for use by on-site employees of support service Contractors providing such Contractors agree to protect such computer software from unauthorized use or disclosure; and

(vi) treat this computer software, if it bears a copyright notice, as a published copyrighted work licensed without disclosure prohibitions to the Government with minimum rights in accordance with subparagraphs (i) through (iv) above.

Any greater rights which the Government may have acquired in this computer software are stated in the contract. This Notice shall be marked on any reproduction of this computer software, in whole or in part.

Where it is impractical to include the above notice on computer software in machine readable form, the following short form notice may be used in lieu thereof:

Restricted Rights Notice (Short Form)

Duplication, use, or disclosure is subject to restrictions stated in Contract No. ——— with (name of Contractor) ———.

(f) *Rights in data—special works.* (1) The clause set forth in paragraph (2) below shall be used in all contracts where the principal purpose or task of the contract is the production of copyrightable works, even though such works may incorporate uncopyrighted material or material previously copyrighted by the contractor or others. Such contracts include those:

(i) Primarily for production of motion pictures, or other audio-visual works, television recordings or scripts, musical compositions or arrangements, sound tracks or recordings, sculptures, paintings and other fine arts, photographs and other pictorial works, translations, adaptations, and the like;

(ii) For books, compilations, surveys, histories, or technology information pamphlets;

(iii) For works pertaining to management studies, support services, training, career guidance, or similar functions of a Government agency; and

(iv) For works pertaining to guidance or instruction of Government officials or employees in the discharge of official duties.

The clause in paragraph (2) below should be modified with the assistance of the Solicitor where the contract calls for the editing, translation, addition, or other modification of the subject matter of an existing work.

(2) *Rights in data—special works clause.*

Rights in Data—Special Works

(a) The term "Data" as used herein means recorded information regardless of form or characteristics, such as writings, musical and dramatic works, motion pictures, television and other audio-visual works, sound recordings, sculptures, paintings and other fine arts, or other pictorial works or reproductions, drawings or other graphic representations, and works of similar nature (whether or not copyrighted) which are to be delivered under this contract. The term includes data such as management studies and data produced under support services contracts but does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with the prior written permission of the Contracting Officer, the Contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such data and warrants that anyone who authors such data will have agreed, in writing, to the same. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others so to do, without the written consent of the Contracting Officer until such time as the Government may have released such data to the public.

(c) The Contractor hereby grants to or will obtain for the Government a nonexclusive, irrevocable, royalty-free license throughout the world (1) to publish, exhibit, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract but which are incorporated in the work furnished under this contract; and (2) to authorize others to do as provided in (1) of this paragraph (c).

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the public translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in data furnished under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(g) *Rights in technical data clause (short form).* (1) The clause set forth in paragraph (2) below may be used in

contracts for basic research including grants, special support research agreements with educational institutions, contracts with consultants, contracts for symposia or for the conduct of training and educational programs, and in other contracts of a similar nature. This clause shall not be used in any contract where proprietary information of the contractor may be utilized in the performance of work under the contract, and in such instances the Additional Technical Data Requirements clause of § 14R–9.202–3(c) and the Rights in Technical Data (long form) clause of § 14R–9.202–3(e)(2) shall be used. The short form clause of this section shall not be used in situations involving long-term consultancy arrangements.

(2) *Rights in technical data clause—short form.*

Rights in Technical Data—Short Form

(a) *Definitions.* The definitions of terms set forth in 41 CFR 14R–9.201 apply to the extent these terms are used herein.

(b) *Allocation of rights.* (1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this contract;

(ii) The right of the Contracting Officer or his representatives to inspect at all reasonable times up to three (3) years after final payment under this contract all technical data first produced or specifically used in the contract (for which inspection the Contractor or its subcontractor shall afford proper facilities to Government employees);

(iii) The right to have any technical data first produced or specifically used in the performance of this contract delivered to the Government as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract.

(2) The Contractor shall have the right to use for its private purposes, subject to patent, security, or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The Contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business, or financial data in the form of recorded information from OWRT or an OWRT Contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(c) *Copyrighted material.* (1) The Contractor agrees not to, without prior written authorization of the Contracting Officer, establish a claim to statutory copyright on any contract data first produced in the performance of the contract and warrants that anyone who authors such contract data will have agreed, in writing, to the same. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf at least a nonexclusive, irrevocable, royalty-free, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the contract.

(2) The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost to the Government a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the Contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall request the written authorization of the Contracting Officer to include such copyrighted material in the technical data without a license.

(h) *Rights in existing books, fine art, computer software, motion pictures or television recordings, or similar existing work.* (1) Where a contract has for an objective the purchase of an existing work protected by copyright, whether or not registered or marked by notice thereof, and a purpose of the purchase is to reproduce the work, or to undertake any other activity coming under the copyright, the following clause shall be used. The Schedule of the contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations in procurement of existing motion pictures or television recordings are (i) means of exhibition or transmission, (ii) time, (iii) types of audience, and (iv) geographical location. Consideration should be given to the modificaiton of paragraph (b) of the clause in consultation with the Solicitor to make the indemnity coextensive with the rights acquired under paragraph (a) of the clause as limited by the Schedule of the contract.

(2) *Rights in existing work data clause.*

Rights in Data—Existing Works

(a) Except as otherwise provided in the Schedule of this contract, the Contractor hereby grants to the Government a nonexclusive, irrevocable, royalty-free license to distribute, perform, use, and exhibit the material called for under this contract for Governmental purposes throughout the world, and to authorize others to do so.

(b) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (1) violation of proprietary rights, copyrights, or rights of privacy, arising out of the public translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in data furnished under this contract.

(i) *Contracts for the purchase or lease of existing computer software.* When purchasing or leasing existing computer software directly, rather than from a Federal Supply Schedule contract, it is important that the contract adequately describe the computer program or the computer data base, the form (tape, punch cards, disk packs) of the program to be delivered, and all the necessary documentation pertaining thereto. The contract should also specify the rights of the Government and any limitations on the right of the Government to use, disclose, or copy the computer software, such as the physical location, number of uses, or other conditions under which the computer software may be utilized. The provisions of § 14R–9.202–3(e)(4) should be used as a guide to assure that the Government obtains the necessary minimum rights to the purchased or leased computer software. The Contracting Officer shall consult with the Solicitor in drafting such rights provisions for these contracts.

§ 14R–9.202–4 Procedures—Government-owned, contractor-operated facilities.

(a) *General.* It is essential that OWRT maintain continuity in its programs which are implemented by contracts for the operation of Government-owned, contractor-operated facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to OWRT and its future contractors for the continued use of the facilities or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always apply. Accordingly, the Rights in Technical Data—Facility clause set forth in paragraph (c)(2) below is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of the Solicitor to meet particular contract situations.

(b) *Subcontracting.* Unless otherwise directed by the Contracting Officer, the contractor shall follow the policy and procedures of § 14R–9.202–1, 2, and 3 above, and shall employ the provisions of the Additional Technical Data

Requirements clause of § 14R–9.202–3(c), and the Rights in Technical Data clause of § 14R–9.202–3(e)(2) where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for such facilities or plants in which instances contractors shall include the provision of the Rights in Technical Data clause of § 14R–9.202–4.

(c) *Rights in technical data clause—facility.* (1) Whenever a contract has as a purpose the operation of a Government-owned contractor-operated research or production facility, the clause set forth in subparagraph (2) of this paragraph shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements clause of § 14R–9.202–3(c).

(2) Rights in technical data clause—facility.

Rights in Technical Data—Facility

(a) *Definitions.* (1) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not mean financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary Data" means technical data which are trade secrets developed at private expense, such as may be included in design procedures or techniques, chemical composition of materials, or manufacturing methods, process, or treatments, including minor modifications thereof, provided that such data are protectable as trade secret and accordingly:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality,

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality, and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.* (1) The Government shall have:

(i) Ownership in all technical data first produced in the performance of the contract.

(ii) The right to inspect technical data first produced or specifically used in the performance of the contract at all reasonable times (for which inspection the proper facilities shall be afforded the Government by the Contractors and its subcontractors.

(iii) The right to have all technical data first produced or specifically used in the performance of the contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract, provided that nothing contained in this paragraph shall require the Contractor to actually deliver any technical data the delivery of which is excused by this Rights in Technical Data clause.

(iv) Unlimited rights in technical data specifically used in the performance of this contract except technical data pertaining to items of standard commercial design; the Contractor agrees to leave a copy of such technical data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer; provided that if such data are proprietary, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) hereof—"Limited Rights in Proprietary Data."

(v) The right to remove, cancel, correct, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if upon delivery of the data the propriety of such markings is not substantiated by the Contractor, in writing, to the satisfaction of the Contracting Officer. The Contractor will be notified of any such action contemplated under this subparagraph (b)(v), and which will be taken if the Contractor fails to respond thereto so as to substantiate the propriety of the markings within 60 days.

(2) The Contractor shall have:

(i) The right to withhold its proprietary data, subject to the provisions of this clause.

(ii) The right to use for its private purposes, subject to patent, security, or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The Contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business, or financial data in the form of recorded information from OWRT or an OWRT Contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.* (1) The Contractor agrees not to, without prior written authorization of the Contracting Officer, establish a claim to statutory copyright in any technical data first produced in the performance of the contract, and warrants that anyone who authors such contract data will have agreed, in writing, to the same. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf at least a nonexclusive, irrevocable, royalty-free, worldwide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost to the Government a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the technical data prior to its delivery.

(d) *Subcontracting.* (1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts having as a purpose the conduct of research, development, or demonstration or in subcontracts for supplies, the contract clause provisions in 41 CFR 14R–9.202–3(c) and 41 CFR 14R–9.202–3(e) (2) in accordance with the policy and procedures at 41 CFR 14R–9.202–1, 2, and 3.

(2) It is the responsibility of the Contractor to obtain from its subcontractors rights, on behalf of the Government, in technical data necessary to fulfill the Contactor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Not proceed with the subcontract without the without the written authorization of the Contracting Officer.

(d) *Optional clause—limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be

supplemented by the additional paragraph (e) set forth below. Paragraph (e) provides that technical data may be specified in the contract as being exluded from the delivery requirement thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the Limited Rights Legend, subparagraphs (a), (b), and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, subparagraph (a) of the Limited Rights Legend shall be used, and subparagraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other OWRT contractors only for information or use in connection with work performed under their contracts, subparagraph (b) of the Limited Rights Legend shall be used, and subparagraphs (a) and (c) may be deleted, if otherwise inapplicable. In either of the foregoing examples, the contractor may, if he can show the possibility of a conflict of interest because of disclosure of such data to certain contractors, or evaluators, exclude such contractors or evaluators from subparagraphs (a) or (b). If the data is required solely for emergency repair or overhaul, subparagraph (c) of the Limited Rights Legend shall be retained, and subparagraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event it is determined that all of the subparagraphs (a), (b), and (c) of the Limited Rights Legend are to be deleted, the word "none" shall be inserted in the Legend after the colon (:).

(e) *Limited rights in proprietary data.* Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government a nonexclusive, irrevocable, paid-up license and right to use by or for the Government any proprietary data of the Contractor specifically used in the performance of this contract; provided, however, that to the extent that any proprietary data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or otherside the Government except as provided in the "Limited Rights Legend" set forth below. All such proprietary data shall be marked with the following "Limited Rights Legend:"

Limited Rights Legend

This "proprietary data," furnished under Contract No. —— with the Office of Water Research and Technology, United States Department of the Interior (and Purchase Order No. ——, if applicable), may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the proprietary data be retained in confidence and not be further disclosed;

(b) This "proprietary data" may be disclosed to other Contractors participating in the Government's program of which this contract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

These restrictions shall terminate three (3) years from the date of submittal stated in this notice.

This legend shall be marked on any reproduction of this data in whole or in part.

§ 14R–9.202–5 Negotiations and deviations.

Contracting Officers shall contact the Solicitor for assistance to the Contracting Officer in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures as set forth in § 14R–9.107–4(k). In particular, advice of the Solicitor should be obtained regarding the appropriateness of modification of paragraphs (g) and (h) of the Rights in Technical Data (long form) clause, the exclusion of specific items of proprietary data from paragraph (f) in said clause, and the exclusion of the Additional Technical Data Requirements clause of § 14R–9.202–3(c).

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[44 CFR Part 67]

[Docket No. FI–5611]

National Flood Insurance Program; Proposed Addition of Special Flood Hazard Area for the City of Sherwood, Ark.

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Final rule.

SUMMARY: Technical information or comments are solicited on the proposed addition of the Special Flood Hazard Area as described below. This proposed addition of Special Flood Hazard Area is the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed addition of Special Flood Hazard Area are available for review at City Hall, 201 Country Club, Sherwood, Arkansas. Send comments to: The Honorable B. E. Henson, Mayor of Sherwood, 201 Country Club, Sherwood, Arkansas 72116.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed addition of Special Flood Hazard Area for the City of Sherwood, Arkansas, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 66. This Special Flood Hazard Area, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed addition of Special Flood Hazard Area will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. The