

Army Regulation 70–57

Research, Development, and Acquisition

Military–Civilian Technology Transfer

**Headquarters
Department of the Army
Washington, DC
26 February 2004**

UNCLASSIFIED

SUMMARY of CHANGE

AR 70-57

Military-Civilian Technology Transfer

This revision dated 26 February 2004--

- o Implements new Department of Defense technology transfer policy and guidance as outlined in Department of Defense Directive 5535.3 and Department of Defense Instruction 5535.8 (para 1-1).
- o Revises the funding requirement to make it more generic (paras 1-6, 2-7c, and 2-7e).
- o Adds language on the licensing of Army inventions (para 1-9).
- o Deletes text copied from other reference sources and instead simply cites those applicable references to mitigate the need to revise this regulation when the source documents are updated (para 1-9).
- o Adds language on appealing Army licensing determinations (para 1-10).
- o Revises the policy for review of cooperative research and development agreements and patent license agreements (paras 1-13 and 2-1c).
- o Adds language to address export controls and Government Accounting Office concerns (paras 1-13, 2-7j, and 2-8n).
- o Removes references to programs and references that are no longer active (paras 1-14, 2-1d, 2-2, and 2-6).
- o Updates the document to reflect changes in titles or delegation (chap 1 and para 2-1).
- o Establishes the Deputy Assistant Secretary of the Army (Research and Technology) as the appellate authority for licensing appeals (para 2-2).
- o Removes the requirement to collect and distribute royalties as the Defense Finance and Accounting Service performs this function (para 2-4).
- o Clarifies the role of the Army Domestic Technology Transfer Program Manager (paras 2-4b and 2-4c).
- o Removes references to specific major Army commands (para 2-6).
- o Adds adequate staffing requirement for organizations with less than 200 full-time technical staff (para 2-7d).
- o Revises language to conform to Department of Defense Directive 5535.3 (paras 2-7e, 2-7f, 2-7g, 2-7i, 2-7k, 2-7l, 2-8d, 2-8f, and 2-8o).

- o Further defines the duties of the Office of Research and Technology Applications (paras 2-8k, 2-8l, and 2-8p through s).
- o Reorders the presentation of material to make the document more readable.
- o Deletes extraneous information on programs not directly related to military-civilian technology transfer that were present in the previous version.

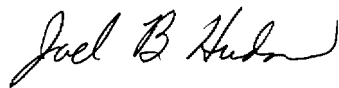
Research, Development, and Acquisition

Military–Civilian Technology Transfer

By order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:



JOEL B. HUDSON
Administrative Assistant to the
Secretary of the Army

History. This publication is a major revision.

Summary. This regulation implements Section 3701 et seq., Title 15, United States Code; Executive Order 12591; Department of Defense Directive 5535.3; and Department of Defense Instruction 5535.8. It prescribes Department of the Army policies and responsibilities for technology transfer with the domestic civilian sector. Specifically, it provides policies and operational guidelines for entering into cooperative research and development agreements, for the licensing of intellectual property, for the provision of technical assistance to State and local governments, and for other cooperative

efforts in research and development necessary to provide new technologies of interest to both the civilian and military sectors.

Applicability. This regulation applies to all research and development centers, laboratories, activities, and appropriate staff elements of the Active Army. It does not apply to the Army National Guard of the United States or the U.S. Army Reserve.

Proponent and exception authority.

The proponent of this regulation is the Assistant Secretary of the Army (Acquisition, Logistics and Technology). The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulation. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or a direct reporting unit or field operating agency of the proponent agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters

to the policy proponent. Refer to Army Regulation 25–30 for specific guidance.

Army management control process.

This regulation contains management control provisions in accordance with Army Regulation 11–2, but it does not identify key management controls that must be evaluated.

Supplementation.

Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), ATTN: SAAL–ZT, 103 Army Pentagon, Washington, DC 20310–0103.

Suggested improvements.

Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Assistant Secretary of the Army (Acquisition, Logistics and Technology), ATTN: SAAL–ZT, 103 Army Pentagon, Washington, DC 20310–0103.

Distribution.

This publication is available in electronic media only and is intended for command levels C, D, and E for the Active Army.

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Glossary

Chapter 1 General

Section I Introduction

1–1. Purpose

This regulation implements Section 3701 et seq., Title 15, United States Code, (15 USC 3701); Executive Order (E.O.) 12591; Department of Defense Directive (DODD) 5535.3; and DOD Instruction (DODI) 5535.8 and prescribes policies and responsibilities for domestic technology transfer within the Department of the Army (DA).

1–2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Responsibilities

Responsibilities are listed in chapter 2.

Section II Domestic Technology Transfer Policy

1–5. Domestic technology transfer

It is DA policy to use domestic technology transfer as an integral part of the research and development (R&D) effort through a variety of technology transfer mechanisms and to encourage technology transfer from all appropriate R&D activities, consistent with the military mission. The commanders or directors of specified Army laboratories and centers have the responsibility and the authority to enter into cooperative research and development agreements (CRADAs) in accordance with 15 USC 3710a; to license, assign, or waive rights to intellectual property developed by their activity; and to support active marketing and assistance by their laboratories or centers, including participation in economic development organizations, contracting with partnership intermediaries, and providing technical assistance to State and local governments and local educational systems.

1–6. Funding at specified laboratories and centers

Adequate funding will be made available to accomplish technology transfer by the Army and its specified laboratories and centers.

1–7. Cooperative research and development agreements

Efforts under CRADAs will be for specified R&D consistent with the missions of the laboratory and will be for a specified duration. Special consideration will be given to entering into CRADAs with small-business firms and consortia involving small-business firms as well as to businesses located in the United States or those that agree that products embodying inventions made under the CRADA or produced through the use of such inventions will be manufactured substantially in the United States. Commanders or directors will apply principles of fairness and sound judgment in the selection of parties with whom to enter into CRADAs. Competitive procedures normally associated with awards of procurement contracts need not be applied to CRADAs. A CRADA will not be used when a government procurement contract or a government-to-government international cooperative research, development, and acquisition (ICRDA) agreement or Information Exchange Program (IEP) annex is the appropriate instrument for accomplishing the R&D effort. Army Regulation (AR) 70–41 provides policy guidance for the development of ICRDA agreements and IEP annexes.

1–8. Allocation of intellectual property rights

Allocation of intellectual property rights will be accomplished in accordance with 15 USC 3710a, as implemented by DODD 5535.3 and DODI 5535.8.

1–9. Licensing of Army inventions

a. Licensing of Army inventions will be accomplished in accordance with 35 USC 200 et seq. and Part 404, Title 37, Code of Federal Regulations (37 CFR 404).

b. In addition to the requirements of 35 USC 200 et seq. and 37 CFR 404, commanders or directors of Army Laboratories will—

(1) Respond in writing to any written objections received in accordance with the notification requirements of 35

USC 209(e) and 37 CFR 404.7. Such responses will contain an explanation of the laboratory's position in connection with each issue raised.

(2) Prepare a written determination addressing how the proposed license grant would comply with 35 USC 209(a), (b), and (c) and 37 CFR 404.7.

(3) Maintain an administrative record that includes all documents received or generated in conjunction with the grant of an exclusive or partially exclusive license. Any information the applicant provides that is proprietary, confidential, or otherwise subject to protection from disclosure will be appropriately marked and protected.

(4) Administrative records will be maintained in accordance with the Army Records Information Management System (ARIMS) (see AR 25-400-2). The administrative record maintaining licensing documentation, financial records, plans, and so forth of Army inventions is protected by 5 USC 552. All information within the record is treated as obtained from a person and privileged/confidential and therefore not subject to disclosure (refer to 35 USC 209).

1-10. Appeals of Army licensing determinations

a. Parties who may appeal Army licensing determinations are contained within 37 CFR 404.11.

b. The Deputy Assistant Secretary of the Army (Research and Technology) (DASA(R&T)) is designated as the appellate authority for appeals pursuant to this section.

c. Appeals will be filed within 30 calendar days of receiving actual or constructive knowledge of the basis for the appeal. If the thirtieth calendar day falls on a weekend or Federal holiday, then the appeal will be due the next working day. The procedures for an appeal under this paragraph are contained in appendix B.

1-11. Distribution of royalties and other income

All royalties will be determined and distributed in accordance with 15 USC 3710c, DODI 5535.8, and DFAS-IN Regulation 37-1.

1-12. Uses of royalties

Royalties may be used for those purposes outlined in 15 USC 3710c and DODI 5535.8.

1-13. Transfer to foreign-owned or foreign-controlled entities

It is DA policy to promote the economic, environmental, and societal good of U.S. citizens and to strengthen the ability of U.S. industry to compete in the global marketplace by encouraging U.S. or domestic exploitation of federally developed technologies wherever possible. There is no requirement that Army laboratories and centers must enter into any technology transfer agreement with a nondomestic partner. When contemplating collaboration with foreign entities, activity commanders or directors must determine if collaboration with a foreign entity is the best option for achieving their objectives and whether such foreign participation is consistent with U.S. and Department of Defense (DOD) policy. If foreign collaboration is the best option, then the activity commander or director must decide which mechanism best supports the proposed collaboration: a CRADA, an ICRDA agreement, an IEP annex, or a patent license agreement (PLA). If the decision is made to execute a CRADA or PLA with a foreign entity, the activity commander or director will, as outlined in E.O. 12591, consider whether such entities or governments permit and encourage U.S. participation on a comparable basis, whether those foreign governments have policies that protect U.S. intellectual property rights, and whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under national security export controls. Appropriate laboratory and center officials must determine if the International Traffic in Arms Regulations (22 CFR Parts 120-130), the Export Administration Regulations (15 CFR Parts 730-774), and DOD guidance require control of the technology to be transferred. Such determinations must be documented in the official CRADA and PLA.

1-14. Controlled unclassified information

Controlled unclassified information used in or resulting from collaborative efforts under a CRADA and the marking and dissemination of such information is controlled by DODD 5230.24, DODD 5230.25, and AR 380-5.

1-15. Participation in the Federal Laboratory Consortium

Army laboratories and centers are encouraged to participate in and support the Federal Laboratory Consortium (FLC).

1-16. Competition with private enterprise

In the execution of the Army Domestic Technology Transfer Program (ADTTP), appropriate care will be taken to avoid actions that might create actual or apparent undue influence over, or competition with, private enterprise and the free operation of the economy.

1-17. Conflict of interest and ethics

Managers at all levels will ensure that actions taken under the ADTTP are accomplished without actual or apparent

personal or organizational conflicts of interest that violate statutory or regulatory ethics standards. (Refer to DOD 5500.7-R and other statutes or regulations, as applicable.)

Chapter 2 Responsibilities

2-1. The Assistant Secretary of the Army (Acquisition, Logistics and Technology)

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) is delegated all the authorities provided to the head of the agency by 15 USC 3701 et seq. and is responsible for all domestic technology transfer and ICRDA policy and guidance within DA. The ASA(ALT), or his or her designee, will—

- a.* Institute policies and procedures under which laboratories and centers may be authorized to license, assign, or waive rights to intellectual property and distribute royalties and other payments in accordance with DODI 5535.8.
- b.* Specify the Army laboratories and centers authorized to participate in the ADTTP and those that must establish an Office of Research and Technology Applications (ORTA) or equivalent organizational element.
- c.* Review, or have reviewed on their behalf, all agreements with foreign entities that license Army-owned intellectual property (including PLAs and other invention licenses, but excluding trademark licenses) and all signed CRADAs that are with a foreign entity as defined in E.O. 12591 or involve the receipt of more than \$1 million in funds in any one fiscal year from the non-Federal partner. This review for conformance with applicable law, regulation, and Army policy will be completed within 30 days of receipt of the agreement by the ADTTP Manager and the Intellectual Property Counsel of the Army (IPCA). All documents associated with review of agreements, PLAs, and CRADAs will be maintained and disposed of in accordance with AR 25-400-2.
- d.* Transfer to the National Institute of Standards and Technology (NIST), for use by the FLC on an annual basis, those funds required to be transferred pursuant to 15 USC 3710(e)(7)(A), as amended.

2-2. The Deputy Assistant Secretary of the Army (Research and Technology)

The DASA(R&T) is designated as the Army official for deciding appeals pursuant to 37 CFR 404.11.

2-3. The Commanding General, U.S. Army Materiel Command

The Commanding General, U.S. Army Materiel Command (CG, AMC), or his or her designee, will establish and staff the position of the ADTTP Manager. Office of the Command Counsel, Headquarters (HQ) AMC, will provide appropriate legal support to the ADTTP Manager.

2-4. The Army Domestic Technology Transfer Program Manager

The ADTTP Manager will perform the following on behalf of the ASA(ALT):

- a.* Monitor the ADTTP and the levels of effort of all Army specified laboratories and centers.
- b.* Provide policy guidance on domestic technology transfer to the technology developing agencies and their specified laboratories and centers.
- c.* Coordinate and support the activities of all Army ORTAs.
- d.* Serve as the Army agency representative in matters concerning domestic technology transfer.
- e.* Review Army CRADAs and PLAs that require review, as set forth in paragraph 2-1c, within 30 days of receipt by the ADTTP Manager and IPCA, and, if necessary, disapprove or require modification to achieve conformance with applicable law, regulation, and Army policy.
- f.* Maintain an archival file of all Army CRADAs and PLAs. When an ICRDA agreement or IEP annex is used to accomplish the technology transfer, the ICRDA agreement or IEP annex development, execution, and archival file will be maintained in the U.S. Army International On-Line Information Management System (<http://206.37.238.74>).
- g.* Establish and maintain a database for the collection of program data for the evaluation of program activity and effectiveness. Any systematic data outputs from the database established for the collection of program data will be maintained in accordance with AR 25-400-2. If there are not any systematic data outputs, a periodic snapshot of the database is acceptable as a record. Snapshots should be updated as changes are made to the system and maintained according to the date and version of the database or change.
- h.* Provide input for periodic and special reports, as required.

2-5. The Intellectual Property Counsel of the Army

The IPCA is responsible for reviewing the legal sufficiency of all CRADAs and PLAs requiring review, as set forth in paragraph 2-1c, on behalf of the ASA(ALT) within the 30-day review period.

2-6. Commanders of major Army commands and other heads of technology-developing agencies

Commanders of major Army commands (MACOMs) and other heads of technology-developing agencies will assure the execution within their organizations of the policies set forth in this regulation. They—

- a.* May enter into CRADAs and license, assign, or waive rights to intellectual property created in their organization, as needed.
- b.* Exercise these authorities themselves, as needed, to execute a CRADA or to license intellectual property created in their organization.
- c.* Designate a point of contact for domestic technology transfer at their headquarters. Designees will provide a chain of communications, monitor and support program performance in their organization, support the ADTTP Manager in coordinating the technology transfer programs of RDTE activities in their organization, and ensure execution of stated Army policies.

2-7. Commanders or directors of specified laboratories and centers

Commanders and directors of all specified laboratories and centers may enter into CRADAs and license, assign, or waive rights to intellectual property created in their organizations. They are responsible for carrying out the policies specified by law, DODD 5535.3, and DODI 5535.8. Specifically, the commander or director of each specified laboratory or center identified by ASA(ALT)—

- a.* May enter into CRADAs and partnership intermediary agreements and license, assign, or waive rights to intellectual property created in their organization as appropriate.
- b.* Will ensure that CRADAs and other technology transfer mechanisms comply with appropriate conflict of interest and ethics rules, security regulations and other policies governing militarily critical technologies, and export control laws and regulations.
- c.* Will establish a staff-level ORTA, or equivalent identifiable organizational element, adequately staffed and funded to execute the policies and perform the functions required by law or specified in this regulation.
- d.* Will assure that at least one full-time equivalent position be devoted to the performance of the ORTA functions if the specified laboratory or center has 200 or more full-time equivalent professional scientific, engineering, and related technical personnel. In organizations with less than 200 full-time technical staff, staffing should be adequate to accomplish the technology transfer mission.
- e.* Will make available adequate funds for support of ORTA activities and, as appropriate, for services of partnership intermediaries and for in-kind contributions to CRADAs.
- f.* Will ensure that domestic technology transfer is a high priority in their organizations and R&D program planning.
- g.* Will include goals for, and objectives of, technology transfer in the performance standards of appropriate technical managers and scientists and engineers of the activity and assure that technology transfer efforts are considered positively in job descriptions, promotion policies, and evaluations of job performance.
- h.* Will execute an awards program, including cash awards, to recognize domestic technology transfer accomplishments. (Refer to 15 USC 3710b and AR 672-20.)
- i.* May provide technical assistance to State and local governments and local educational organizations.
- j.* Consistent with export control laws and regulations, may loan or give research equipment or educationally useful Federal equipment that is excess to the needs of the laboratory or center to educational institutions or nonprofit institutions for the conduct of technical and scientific education and research activities. (Refer to 15 USC 3710(i), 10 USC 2194, and E.O. 12999.)
- k.* Will establish administrative procedures and support staff training on compliance with export control laws and regulations and ICRDA and foreign disclosure regulations to ensure that the appropriate international technology transfer is used and that no restricted or controlled technologies are inadvertently transferred to foreign entities.
- l.* Will provide appropriate and adequate training to ORTA personnel involved in technology transfer activities and ensure that they are included in the activity's management development program.
- m.* Will support participation of ORTA and legal staff in technology transfer activities and networking opportunities including, but not limited to: FLC, the DOD Technology Transfer Integrated Planning Team, and State and local economic development and educational organizations.

2-8. The head of the Office of Research and Technology Applications

Each ORTA or equivalent organization in each specified laboratory or center is responsible for managing the domestic technology transfer activities of the laboratory or center, including establishing cooperative R&D, licensing intellectual property, and providing technical assistance. Each ORTA will—

- a.* Assess selected R&D projects for potential commercial application.
- b.* Provide and disseminate information on federally owned or federally originated products, processes, and services.
- c.* Cooperate with and assist the FLC and other organizations that link the R&D resources of that activity, and the Federal Government as a whole, to potential users in State and local government, academia, and U.S. private industry.

- d.* Provide technical assistance, as appropriate, to State and local governments, school systems, and nonprofit organizations.
- e.* Participate, where feasible, in regional, State, and local public and private programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the activity is located.
- f.* Perform marketing and outreach activities in accordance with DODI 5535.8.
- g.* Provide laboratory representation and support to the FLC.
- h.* Assist program managers and technical personnel in identifying technologies suitable for transfer and for which application assessments need to be developed.
- i.* Identify patents and patent applications for which notification of availability for exclusive licensing is required by law and publicize such availability.
- j.* Coordinate domestic technology transfer activities with patent counsel to determine rights to technical data, patent and licensing implications, and the commercial potential of patentable technology.
- k.* Negotiate or assist in negotiating CRADAs and PLAs and provide appropriate staff coordination.
- l.* Ensure all CRADAs and PLAs receive legal review prior to entering an agreement to ensure that the agreement conforms to all applicable statutes, regulations, Executive orders, and binding instructions issued within DOD.
- m.* Ensure that no domestic technology transfer activities substantially compete with services available in the private sector.
- n.* Document determinations made by laboratory officials when entering into agreements with foreign entities that ensure no domestic technology transfer activities conflict with ICRDA and export control regulations, policies governing militarily critical technology, or any other of the responsibilities and procedures for technology transfer control within DOD in the official laboratory CRADA/PLA files. Such documentation may include letters, e-mails, faxes, and checklists. (See para 1–13.)
- o.* Prepare an annual technology transfer business plan in accordance with DODI 5535.8, describing how technology transfer responsibilities were addressed in the current year and identifying planned activities for the year ahead and submit to the ADTTP Manager as requested.
- p.* Forward a signed copy of the final negotiated version of all CRADAs and license agreements requiring review, as set forth in paragraph 2–1c, to the ADTTP Manager and IPCA to begin the 30-day review.
- q.* Promptly forward a signed copy of all other CRADAs and license agreements to the ADDTP Manager for entry into the official Army database.
- r.* Maintain data and program records in accordance with the Army Records Information Management System; provide program status, information, and reports as requested by the ADTTP Manager or higher authority.
- s.* Provide technology transfer advice and expertise to scientific, engineering, and technical personnel within the laboratory and ensure such technical staffs receive technology transfer education and training.

Appendix A References

Section I Required Publications

AR 380–5

Department of the Army Information Security Program. (Cited in para 1–14.)

AR 70–41

International Cooperative Research and Development and Acquisition. (Cited in para 1–7.)

AR 672–20

Incentive Awards. (Cited in para 2–7*h*.)

DFAS–IN 37–1

Finance and Accounting Policy Implementation. (Cited in para 1–11.) (Available at <http://www.asafm.army.mil/budget/di/di.asp>.)

DODD 5230.24

Distribution Statements on Technical Documents. (Cited in para 1–14.) (Available at <http://www.dtic.mil/whs/directives/>.)

DODD 5230.25

Withholding of Unclassified Technical Data from Public Disclosure. (Cited in para 1–14.) (Available at <http://www.dtic.mil/whs/directives/>.)

DODD 5535.3

DOD Domestic Technology Transfer (T2) Program. (Cited in paras 1–1, 1–8, and 2–7.) (Available at <http://www.dtic.mil/whs/directives/>.)

DODI 5535.8

DOD Technology Transfer (T2) Program. (Cited in paras 1–1, 1–8, 1–11, 1–12, 2–1*a*, 2–7, 2–8*f*, and 2–8*o*.) (Available at <http://www.dtic.mil/whs/directives/>.)

Executive Order 12591

Facilitating Access to Science and Technology. (Cited in paras 1–1, 1–13, and 2–1*c*.) (Available at http://www.archives.gov/federal_register/executive_orders/disposition_tables.html.)

Executive Order 12999

Educational Technology: Ensuring Opportunity for All Children in the Next Century. (Cited in para 2–7*j*.) (Available at http://www.archives.gov/federal_register/executive_orders/disposition_tables.html.)

5 USC 552

Freedom of Information Act. (Cited in para 1–9*b*(4).) (Available at <http://www.gpoaccess.gov/uscode/index.html>.)

10 USC 2194

Education Partnerships. (Cited in para 2–7*j*.) (Available at <http://www.gpoaccess.gov/uscode/index.html>.)

15 USC 3701 et seq.

Stevenson-Wydler Technology Innovation Act of 1980. (Cited in paras 1–1 and 2–1.) (Available at <http://www.gpoaccess.gov/uscode/index.html>.)

15 CFR Parts 730–774

Export Administration Regulations. (Cited in para 1–13.) (Available at <http://w3.access.gpo.gov/bis/index.html>.)

22 CFR Parts 120–130

International Traffic in Arms Regulations. (Cited in para 1–13.) (Available at <http://www.pmdtc.org/reference.htm>.)

37 CFR 404

Licensing of Government Owned Inventions. (Cited in paras 1–9 and 1–10a.) (Available at <http://www.gpoaccess.gov/cfr/index.html>.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read a related reference to understand this publication. The United States Code is available at <http://www.gpoaccess.gov/uscode/index.html>.

AR 25–400–2

The Army Records Information Management System

AR 27–60

Intellectual Property

AR 380–10

Foreign Disclosure and Contacts with Foreign Representatives

DOD 5500.7–R

Joint Ethics Regulation (JER). (Available at <http://www.dtic.mil/whs/directives/>.)

7 USC 2321 et seq.

Plant Variety Protection Act

10 USC 2195

Department of Defense Cooperative Education Programs

10 USC 2358

Research and Development Projects

10 USC 2371

Research Projects: Transactions Other Than Contracts and Grants

10 USC 2501

National Security Objectives Concerning National Technology and Industrial Base

10 USC 2506

DOD Technology and Industrial Base Policy Guidance

10 USC 2514

Encouragement of Technology Transfer

10 USC 2515

Office of Technology Transition

15 USC 632

Small-Business Concern

35 USC 200

Policy and Objective

35 USC 207

Domestic and Foreign Protection of Federally Owned Inventions

35 USC 208

Regulations Governing Federal Licensing

35 USC 209

Licensing Federally Owned Inventions

35 USC 281 et seq.

Remedy for Infringement of Patent, and Other Actions

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

This section contains no entries.

Appendix B

Appeal Procedures

B-1. Purpose

This guidance describes the basis for appealing a decision of an Army laboratory concerning the grant, denial, interpretation, modification, or termination of a license for any invention administered by the U.S. Department of the Army (the Army) and establishes procedures for reviewing and responding to such appeals. All previous procedures are superseded. This guidance implements 37 CFR 404.11, which requires Federal agencies to establish procedures under which certain parties may appeal decisions or determinations relating to the licensing of government-owned inventions by that agency.

B-2. Parties who may appeal

Parties who may appeal Army licensing determinations are contained within 37 CFR 404.11.

B-3. Appellate authority

The DASA(R&T) is designated as the appellate authority for appeals pursuant to 37 CFR 404.11 and paragraph 2-2.

B-4. Procedures for appeal

a. The appellant will file a written notice of appeal along with a supporting brief to the appellate authority (DASA(R&T)), 103 Army Pentagon, Rm. 3E620, Washington, DC 20310-0103, with a copy furnished to the commander or director of the Army laboratory (the director), no later than 30 calendar days after receiving actual or constructive knowledge of the basis for the appeal. If the thirtieth calendar day falls on a weekend or Federal holiday, then the appeal will be due the next working day. The brief will concisely state the grounds for appeal and include copies of all pertinent documents. The brief must include concise arguments as to why the director's decision should be rejected or modified. Additionally, any information the appellant provides that is proprietary, confidential, or otherwise subject to protection from disclosure will be appropriately marked. The Army will assume that any information provided is not confidential or proprietary unless marked appropriately. Upon review of the appeal, the appellate authority, or his or her designee, may require submission of additional information or documentation. Appeals will be decided on the basis of written documents, and appellants will not be entitled to an adversary hearing.

b. The director will provide, to the appellate authority, a response to the appellant's appeal no later than 30 calendar days from the director's receipt of the appellant's written appeal. Such response will thoroughly but concisely respond to each of the issues raised by the appellant's appeal. Additionally, the director will provide, also within 30 calendar days, a copy of the administrative record maintained in accordance with paragraph 1-9b(3).

c. The appellate authority may notify the current license holder, if applicable, or other interested parties that an appeal is pending and may request such parties to provide comments.

d. If the appellate authority deems it appropriate, he or she may appoint an individual or a committee to review the administrative record, including all documents submitted in support of the appeal. The committee is not required to meet as a group, but may instead review the administrative record individually and provide individual written recommendations to the appellate authority.

e. Approximately 90 calendar days after receiving the written appeal, the appellate authority will send his or her decision to the appellant. The decision of the appellate authority will constitute a final decision by the Department of the Army.

f. All documentation, recommendations, and so forth submitted or created for the administrative record of the appeal will be maintained in accordance with AR 25-400-2.

Glossary

Section I Abbreviations

ADTTP

Army Domestic Technology Transfer Program

AMC

U.S. Army Materiel Command

AR

Army regulation

ARIMS

Army Records Information Management System

ASA(ALT)

Assistant Secretary of Army (Acquisition, Logistics and Technology)

CFR

Code of Federal Regulations

CG

commanding general

CRADA

cooperative research and development agreement

DA

Department of the Army

DASA(R&T)

Deputy Assistant Secretary of the Army (Research and Technology)

DOD

Department of Defense

DODD

Department of Defense directive

DODI

Department of Defense instruction

E.O.

Executive order

FLC

Federal Laboratory Consortium

HQ

headquarters

ICRDA

international cooperative research, development, and acquisition

IEP

Information Exchange Program

IPCA

Intellectual Property Council of the Army

MACOM

major Army command

NIST

National Institute of Standards and Technology

ORTA

Office of Research and Technology Applications

PLA

patent license agreement

R&D

research and development

Section II**Terms****Army-owned invention**

An invention, plant, or design that is covered by a patent or patent application in the United States or a patent, patent application, plant variety protection, or other form of protection in a foreign country, the title to which has been assigned to or otherwise vested in the U.S. government as represented by the Secretary of the Army.

Civilian agency

Non-DOD Federal, State, or local government components.

Cooperative research and development agreement (CRADA)

A legal agreement that implements the authority specified in 15 USC 3701 et seq., as amended. CRADAs include agreements between one or more Federal laboratories and one or more non-Federal parties under which the laboratory provides personnel, services, facilities, equipment, or other resources (but not funds), with or without reimbursement, and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts that are consistent with the missions of the Army R&D activity. The term does not include procurements, grants, or other types of cooperative agreements made under the authority of any other legislation.

Heads of technology developing agencies

The commanders or other heads of major Army components responsible for the performance of R&D as well as the heads of other equivalent organizations that may be made responsible for the performance of R&D within the Army.

Invention

(Reference 15 USC 3703(9).) An invention or discovery that is or may be patentable or otherwise protected under 35 USC or any novel variety of plant that may be accountable under the Plant Variety Protection Act (7 USC 2321 et seq.).

National Institute of Standards and Technology (NIST)

An element of the Department of Commerce, formerly called the National Bureau of Standards, that has responsibility under 15 USC 3710(e)(7)(A) for collecting and administering funds on behalf of the Federal Laboratory Consortium.

National Technical Information Service (NTIS)

An element of the Department of Commerce that serves as a clearinghouse for collecting, disseminating, and transferring technical information having potential for use by the private sector and civilian agencies. It cooperates with the ORTAs of the Federal laboratories in disseminating information on laboratory technology.

Partnership intermediary

An agency of a State or local government or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government, that assists, counsels, advises, evaluates, or otherwise cooperates with small business firms that need or can make demonstrably productive use of technology-related assistance from a Federal laboratory.

Patent license agreement (PLA)

A legal agreement that grants a license to use or practice an invention.

Practical application

To manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system—in each case, under such conditions as to establish that the invention is being used and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

Small business firm

This term is the same as that used in Army procurement. It is precisely defined by 15 USC 632, the implementing regulations of the Administrator of the Small Business Administration.

Specified laboratories and centers

Army R&D laboratories and centers that conform to the definition of a *laboratory* in 15 USC 3710a(d)(2)(A) and have been designated by the ASA(ALT) as organizations authorized to participate in the ADTTP.

Technical assistance

Problem analysis, assistance in the development and interpretation of technical information, hands-on technical help from laboratory volunteers, or limited projects in the laboratory where they do not compete with available services in the private sector (see DODI 5535.8).

Technology transfer

The intentional communication or sharing of knowledge, expertise, facilities, equipment, and other resources for application to military and nonmilitary systems. Technology transfer includes spin-off, spin-on, and dual-use activities (see DODI 5535.8).

Section III**Special Abbreviations and Terms**

This section contains no entries.

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