

Army Regulation 70–57

**Research, Development, and
Acquisition**

Army Technology Transfer

**Headquarters
Department of the Army
Washington, DC
12 June 2018**

UNCLASSIFIED

SUMMARY of CHANGE

AR 70–57

Army Technology Transfer

This major revision, dated 12 June 2018—

- o Changes title from “Military-Civilian Technology Transfer” to “Army Technology Transfer” (cover).
- o Clarifies the relationship between Army technology transfer and intellectual property (para 1–1).
- o Implements new Department of Defense technology transfer policy and guidance, including Section 2539b, Title 10, United States Code with regard to samples, drawings, and manufacturing or other information as implemented under Department of Defense Directive 5535.11 (para 1–8*a*).
- o Provides guidance for Section 2539b, Title 10, United States Code with regard to testing services and leasing of laboratory space (para 1–8*b*).
- o Updates guidance on licensing of Army intellectual property (paras 1–10*a*, 1–10*b*(3), 1–10*b*(4), 1–10*c*, and 1–10*d*).
- o Provides policy on collection and distribution of royalties to non-government inventors and clarification regarding royalties or income to Army laboratories (para 1–12 and app C).
- o Updates policy for cooperative research and development agreements and patent license agreements (paras 1–14, 2–1, 2–2, 2–3, 2–4*a*, and 2–4*d*).
- o Provides additional cooperative research and development agreements guidance requiring mandatory clauses (para 1–14*b*).
- o Updates delegations of authority for technology transfer mechanisms to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (para 2–1).
- o Requires the Army Director for Technology Transfer to establish a technology transfer database (2–1*f*(6)).
- o Updates responsibilities of laboratory commanders and directors and heads of research and technology applications offices (para 2–4*d*).

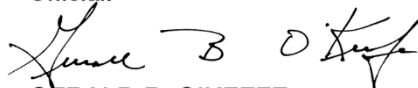
Effective 12 July 2018

Research, Development, and Acquisition
Army Technology Transfer

By Order of the Secretary of the Army:

MARK A. MILLEY
General, United States Army
Chief of Staff

Official:



GERALD B. O'KEEFE
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 within 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 domestic and international civilian and military sectors.

Applicability. This regulation applies to all research and development centers, laboratories, activities, and appropriate staff elements of the Regular Army. It does not apply to the Army National Guard/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 regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating 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 AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal controls in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix D).

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

Distribution. This publication is available in electronic media only and is intended for the Regular Army.

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Chapter 1 General

Section I

Introduction

1–1. Purpose

This regulation implements Section 3701 et seq., Title 15, United States Code (15 USC 3701 et seq.); EO 12591; DODD 5535.3; and DODI 5535.8 and prescribes policies and responsibilities for technology transfer within the Department of the Army (DA). While this regulation provides policy and guidance concerning the transfer of intellectual property between the military and civilian communities, general DA policy concerning intellectual property is found in AR 27–60. Trademark licensing is covered by AR 27–60 and the Army Trademark Licensing Program policies and guidance. Trademark licensing policy and guidance described herein apply only when ancillary to patent or copyright licensing.

1–2. References

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

Responsibilities are listed in chapter 2.

Section II

Technology Transfer Policy

1–5. Technology transfer

DA policy prescribes the use of technology transfer as an integral component of research and development (R&D) 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 the organization or whose custody and administration is transferred, or assigned to the government as a result of their organization's activities; 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

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 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. AR 70–41 provides policy guidance for the development of ICRDA agreements and IEP annexes.

1–8. Samples, drawings, information, equipment, materials, and certain services

a. The Army has authority under 10 USC 2539b to sell, rent, lend, or give samples, drawings, and manufacturing or other information; to sell, rent, or lend government equipment or materials; to make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and to make available to any person or entity to include foreign corporations or foreign organizations, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range. This authority is implemented under DODI 5535.11 and DOD 7000.14–R, Volume 11A, Chapter 14, as delegated from the Secretary of the Army (SECARMY) to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA (ALT)), and further delegated by the ASA (ALT) to directors and commanders of Army laboratories, centers, ranges, or other facilities or activities that own or have control of the types of facilities, equipment, information, and personnel as specified in DODI 5535.11. All requirements in the implementing authority will be complied with in exercising this delegated authority.

b. Under 10 USC 2539b the results of tests performed with services made available by an Army laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

1–9. Allocation of intellectual property rights

Allocation of intellectual property rights will be accomplished in accordance with 35 USC 200 et seq., 10 USC 2539b, and 15 USC 3710a, as implemented by DODD 5535.3, DODI 5535.8, and DODI 5535.11.

1–10. Licensing of Army intellectual property

a. Licensing of Army inventions will be accomplished in accordance with 35 USC 200 et seq.; Part 404, Title 37, Code of Federal Regulations (37 CFR 404); and 15 USC 3710a(b)(1).

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

(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 under 5 USC 552 from disclosure will be appropriately marked and protected.

(4) Maintain administrative records in accordance with the Army Records Information Management System (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. Certain information, for example, trade secrets or commercial or financial information that is privileged or confidential within the record is treated as obtained from a person and privileged/confidential and therefore not subject to disclosure (refer to 35 USC 209). Drafters of licenses should be wary of agreeing to confidentiality terms that interfere with Army management and oversight of the Army Technology Transfer Program (ATTP). Nonetheless, persons with access to privileged/confidential information will take care that such information is not distributed to persons without proper authorization.

c. Licensing of copyrights assigned to the United States of America as represented by the SECARMY will comply with the Miscellaneous Receipts Act (31 USC 3302(b)). Absent specific statutory authorization, all funds received for use of a copyright assigned to United States must be deposited in the general fund of the U.S Treasury as miscellaneous receipts. If a work protected by copyright discloses subject matter that is or may be patentable, the work may be licensed according to paragraph 1–10a and any funds received, distributed in accordance with appendix C.

d. Licensing of Army Trademarks will be accomplished in accordance with 10 USC 2260, DODD 5535.09, AR 27–60, AR 601–208, and the Army Trademark Licensing Program as implemented by the Assistant Secretary of the Army (Manpower and Reserve Affairs).

e. A license of Army intellectual property will not include any provision that would allow a licensee to file an enforcement lawsuit against an alleged infringer unless 30 days’ notice (and a copy of the draft or final license) has been given to the Chief, Regulatory Law and Intellectual Property Division (JALS–RL/IP) of the U.S. Army Legal Services Agency (USALSA) that a license will include such a provision. JALS–RL/IP must provide any objection to such a provision during the 30 day review period. The license provision must require the licensee to notify JALS–RL/IP, USALSA at least 30 days prior to either filing an enforcement suit or sending a cease and desist letter to an alleged infringer.

1–11. Appeals of Army licensing determinations

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

a. 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.

b. Appeals will be filed within 30 days of receiving actual or constructive knowledge of the basis for the appeal. If the 30th calendar day falls on a weekend or Federal holiday, then the appeal will be due the next business day. The procedures for an appeal are detailed in appendix B.

1–12. Distribution of royalties and other income

All royalties received by the Army for the licensing of Army-owned inventions will be distributed in accordance with 15 USC 3710c, DODI 5535.8, DFAS–IN Regulation 37–1, and appendix C of this regulation. Paragraph C–1 provides a list of questions for determining how patent royalties received by the Army are shared with inventor(s), while paragraph C–2 provides specific guidance to be followed for distributing royalties to inventors and using royalties in excess of those required to be distributed to inventors for other purposes authorized by statute.

1–13. Use of royalties

Royalties may be used for the purposes outlined in 15 USC 3710c and DODI 5535.8 (for example, technology transfer, research, and so forth).

1–14. Transfer to and collaboration with foreign-owned or foreign-controlled entities

To the maximum extent practicable, activity commanders or directors should seek collaborative opportunities with U.S.-based domestic entities.

a. DA policy promotes the economic, environmental, and societal good of U.S. citizens and strengthens 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. To the maximum extent practicable, activity commanders or directors should seek collaborative opportunities with, and give preference to, U.S.-based domestic entities. When contemplating collaborations with foreign entities, activity commanders or directors must determine if such foreign participation is consistent with U.S. and Department of Defense (DOD) policy, and which legal mechanism best supports the proposed collaboration.

(1) For all proposed technology transfer collaborations or patent license agreements (PLA) with foreign-owned or foreign-controlled entities, appropriate laboratory and center officials must determine if the International Traffic in Arms Regulations (22 CFR Subchapter M, Parts 120 through 130), the Export Administration Regulations (15 CFR Subchapter C, Parts 730 through 774), and DOD guidance require control of the technology to be transferred.

(2) Unless prior concurrence is obtained from the DA Office of the General Counsel (OGC) (International Law), all proposed technology transfer collaborations or PLAs with foreign government defense agencies involving the defense or military articles, materials, equipment, services, and technical data—as defined under the International Traffic in Arms Regulations (22 CFR Part 120)—must be undertaken under “international agreements” such as ICRDAs (AR 70–41) or IEP annexes.

(3) If the decision is made to execute a CRADA or PLA with a foreign entity or government, the activity commander or director will, as outlined in EO 12591, consider whether such entity or government permits and encourages U.S. participation on a comparable basis, whether that foreign government has policies that protect U.S. intellectual property rights, and whether that foreign government has adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under national security export controls.

b. Army laboratories or centers may enter into CRADAs directly with foreign governmental entities (for example, ministries, universities, or agencies that carry out research activities) under certain restrictions. In addition to the steps and reviews set forth in paragraphs 1–14a(1) through 1–14a(3), any CRADA with a foreign governmental entity must contain clauses that provide (in effect) that:

(1) “The Parties recognize and agree that THIS IS NOT AN INTERNATIONAL AGREEMENT, that international law is not applicable to this Agreement, and that international law does not govern the interpretation of the provisions of this Agreement.”

(2) “Any dispute arising under this Agreement which is not disposed of by agreement of the principal investigators shall be submitted jointly to the signatories of this Agreement (or their successors). A joint decision of the signatories or their designees shall be the disposition of such dispute. If the Parties cannot reach a joint decision, either Party may terminate this Agreement immediately. The Parties agree that no court, tribunal, or similar judicial or administrative body of the countries of either Party or of any international entity or country has jurisdiction or authority to consider, or rule on, or provide enforceable judgment concerning disputes arising between the Parties under this Agreement.”

(3) “The terms of this Agreement affecting Intellectual Property rights, use of specimens (where applicable), and ownership of data for activities under this Agreement are not intended to and do not affect any other existing or future agreements between any agency of the United States of America and any agency or regional or national authority of the Cooperator’s government.”

(4) “Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice, not less than 30 days prior to the desired termination date.”

1–15. 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 DODI 5230.24, DODD 5230.25, and AR 380–5. Release of trade secret, commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4) is governed by the provisions of the Freedom of Information Act (5 USC 552(b)) or, for CRADAs or patent licenses, 15 USC 3710a(c)(7).

1–16. Participation in the Federal Laboratory Consortium

The Federal Laboratory Consortium (FLC) is an entity comprised of all Federal R&D laboratories and organizations that facilitates the transfer of Federal technology under the authority of 15 USC 3710(e). Army laboratories and centers are encouraged to participate in and support the FLC.

1–17. Competition with private enterprise

In the execution of the ATTP, appropriate care will be taken to avoid actions that might create actual or apparent undue influence over, or undue competition with, private enterprise.

1–18. Conflict of interest and ethics

Managers at all levels will ensure that actions taken under the ATTP 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.

1–19. Designation as a specified laboratory or center

Commanders and directors of organizations that have not been designated as a specified laboratory or center whose organization would be considered a laboratory under the definition in 15 USC 3710a(d)(2) may contact the ASA (ALT) through their chain of command to request designation as a specified laboratory or center. Requests should be addressed to the Army Director for Technology Transfer (ADTT), be endorsed by all intermediate commanders or directors, and provide justification for the request.

Chapter 2 Responsibilities

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

The ASA (ALT) is delegated all the authorities provided to the head of the agency by 15 USC 3701 et seq.; the authorities provided to the SECARMY by 10 USC 2539b(a) and DODI 5535.11; and is responsible for DA policy and guidance regarding all technology transfer and foreign CRADA activities. 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 ATTP 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, other invention licenses and copyright licenses, but excluding trademark licenses) and all signed CRADAs that are with a foreign entity as defined in EO 12591 or involve the receipt of more than \$1 million in funds in any one fiscal year from the non-Federal entity. This review for conformance with applicable law, regulation, and Army policy will be completed within 30 days of receipt of the agreement by the ADTT and the DA OGC. 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, for use by the FLC on an annual basis, those funds required to be transferred pursuant to 15 USC 3710(e)(6)(A).

- e. Designate the DASA(R&T) as the Army official for deciding appeals pursuant to 37 CFR 404.11.
- f. Designate the ADTT to perform the following on behalf of the ASA (ALT)—
 - (1) Monitor the ATTP and the levels of effort of all Army specified laboratories and centers to ensure compliance with DOD policy and law on technology transfer.
 - (2) Provide policy guidance on technology transfer to the technology-developing agencies and their specified laboratories and centers.
 - (3) Coordinate and support the activities of all Army ORTAs.
 - (4) Serve as the Army agency representative in all matters concerning technology transfer.
 - (5) Review Army CRADAs and PLAs that require review, as set forth in paragraph 2–1c, within 30 days of receipt by the ADTT and DA OGC, and, if necessary, disapprove or require modification to achieve conformance with applicable law, regulation, and Army policy.
 - (6) Establish, and maintain, as part of the Army’s Business Enterprise Systems Architecture, a business process automation tool that automates the required reporting of Army CRADAs and PLAs to the Office of the Secretary of Defense, and creates a repository of these Army agreements. The tool will provide program data, activity, and effectiveness. The agreements reporting tool will serve as the Army’s sole reporting mechanism for new CRADAs and PLAs, which allows for required Headquarters, DA reviews of foreign agreements or CRADAs generating 1 million dollars or more per year. Any systematic data outputs from the database established for the collection of program data will be maintained in accordance with AR 25–400–2.
 - (7) Provide input for periodic and special reports, as required.
 - (8) Establish, maintain, and disseminate to all Army ORTAs, a listing of Army ORTA contact information no less than once per year.

2–2. The Department of the Army Office of General Counsel

The DA OGC is responsible for providing legal advice to the ADTT to include reviewing for legal sufficiency all CRADAs and PLAs requiring review, as set forth in paragraph 2–1c within the 30-day review period, in consultation with the JALS–RL/IP of the USALSA on intellectual property matters, on behalf of the ASA (ALT).

2–3. The U.S. Army Legal Services Agency

The USALSA (JALS–RL/IP) will provide, upon request from the ADTT, consultation to the DA OGC on intellectual property matters relating to CRADAs and PLAs.

2–4. Army command, Army service component command, and direct reporting unit commanders who head technology-developing agencies

Commanders of Army commands, Army service component commands, direct reporting units and heads of other technology-developing agencies that have supervisory responsibility for at least one laboratory or center as defined in 15 USC 3710a(d)(2) will ensure the execution of the policies set forth in this regulation within their command or agency. They—

- a. May enter into CRADAs and license, assign, or waive rights to intellectual property created in their organization or assigned to the government as a result of their organization’s activities, for example the funding of a research and development contract or from a CRADA, as needed.
- b. May exercise the authorities themselves, as needed, to execute a CRADA or to license intellectual property created in their organization or assigned to the government as a result of their organization’s activities.
- c. Will designate a point of contact for technology transfer at their headquarters. Designees will provide a chain of communication, monitor and support program performance in their organization, support the ADTT to coordinate technology transfer for research development testing and evaluation activities in their organization, and ensure the execution of stated Army policies.
- d. Will designate the commanders and directors of laboratories and centers within the command to implement the policies specified by law including DODD 5535.3 and DODI 5535.8 at their specific laboratory or center. Additionally, the commander or director of each specified laboratory or center identified by the ASA (ALT)—
 - (1) May enter into CRADAs, partnership intermediary agreements (15 USC 3715), education partnerships, and any other authorized technology transfer agreement unless specifically withheld by a higher authority and license, assign, or waive rights to intellectual property created in their organization, or whose custody and administration is transferred, or assigned to the government as a result of their organization’s activities, as appropriate.
 - (2) Will ensure that CRADAs and other technology transfer mechanisms are reviewed by the servicing legal office for legal sufficiency and comply with appropriate conflict of interest and ethics rules, security regulations and other policies disclosure of controlled unclassified information and classified military information governing, export control laws and regulations.

(3) 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.

(4) 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.

(5) Will make available adequate funds for support of the ORTA and related activities, and as appropriate, for services of partnership intermediaries and for in-kind contributions to CRADAs.

(6) Will ensure that technology transfer is a high priority in their laboratories or centers and is a visible element in R&D program planning.

(7) Will include goals for, and objectives of, technology transfer in the performance standards of appropriate technical managers, 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.

(8) Will execute an awards program, including cash awards, to recognize technology transfer accomplishments by scientific, engineering and support staff (refer to 15 USC 3710b and AR 672–20).

(9) May provide technical assistance to State and local governments and local educational organizations.

(10) 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 EO 12999).

(11) Will establish administrative procedures and support staff training on compliance with export control laws and regulations and ICRDA (that is, international agreements) and foreign disclosure regulations to ensure that the appropriate international technology transfer mechanism is used and that no restricted or controlled technologies are transferred to foreign entities without appropriate coordination and documentation with the organization's foreign disclosures officer.

(12) Will provide appropriate and adequate training to ORTA personnel involved in technology transfer activities and ensure that they are included in the organization's management development program.

(13) Will support the 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.

(14) Will ensure that any contract, CRADA, or other technology transfer agreement entered into by their organization contains language that adequately protects government intellectual property that has been reviewed and approved by the servicing legal office.

(15) Will designate the head for the ORTA at their laboratory or center to manage the 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 to State and local governments, schools, and potential private sector partners.

(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, when requested and 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 inventions for which notification of availability for exclusive licensing is required by law and publicize such availability.

(j) Coordinate 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. This includes ensuring that any proposed non-Federal entity is not on a debarred and suspended contractor listing in accordance with Federal Acquisition Regulation (FAR) Subpart 9.401 and EOs 12549 and 12689.

(m) Ensure that no technology transfer activities directly or unduly 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 technology transfer activities conflict with ICRDA and export control regulations, policies governing controlled unclassified information and classified military information, or any other of the responsibilities and procedures for technology transfer control within DOD in the official laboratory CRADA or PLA administrative record. Such documentation may include letters, emails, faxes, and checklists (see para 1–14.)

(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 ADTT 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 ADTT and DA OGC to begin the 30 day review.

(q) Promptly comply with the requirements and procedures established by the ADTT to enter a signed copy of all CRADAs and other specified license agreements into the official Army database.

(r) Maintain data and program records in accordance with AR 25–400–2; provide program status, information, and reports as requested by the ADTT or higher authority.

(s) Provide technology transfer advice and expertise to scientific, engineering and technical personnel within the laboratory and ensure the technical staff receives technology transfer education and training.

Appendix A

References

Section I

Required Publications

AR 27–60

Intellectual Property (Cited in para 1–1.)

AR 70–41

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

AR 380–5

Department of the Army Information Security Program (Cited in para 1–15.)

AR 601–208

The Army Brand and Marketing Program (Cited in para 1–10*d*.)

AR 672–20

Incentive Awards (Cited in para 2–4*d*(8).)

DFAS–IN Regulation 37–1

Finance and Accounting Policy Implementation (Cited in para 1–12.) (Available at <http://www.asafm.army.mil/budget/di/di.asp>.)

DODD 5230.25

Withholding of Unclassified Technical Data from Public Disclosure (Cited in para 1–15.) (Available at <http://www.esd.whs.mil/DD/>.)

DODD 5535.3

DOD Domestic Technology Transfer (T2) Program (Cited in para 1–1.) (Available at <http://www.esd.whs.mil/DD/>.)

DODD 5535.09

DOD Branding and Trademark Licensing Program (Cited in para 1–10*d*.) (Available at <http://www.esd.whs.mil/DD/>.)

DODI 5230.24

Distribution Statements on Technical Documents (Cited in para 1–15.) (Available at <http://www.esd.whs.mil/DD/>.)

DODI 5535.8

DOD Technology Transfer (T2) Program (Cited in para 1–1.) (Available at <http://www.esd.whs.mil/DD/>.)

DODI 5535.11

Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DOD Persons and Entities (Cited in para 1–8*a*.) (Available at <http://www.esd.whs.mil/DD/>.)

EO 12549

Debarment and Suspension (Cited in paragraph 2–4*d*(15)(*l*)). (Available at <https://www.archives.gov/federal-register>.)

EO 12591

Facilitating Access to Science and Technology (Cited in para 1–1.) (Available at <https://www.archives.gov/federal-register>.)

EO 12689

Debarment and Suspension (Cited in para 2–4*d*(15)(*l*)). (Available at <https://www.archives.gov/federal-register>.)

EO 12999

Educational Technology: Ensuring Opportunity for All Children in the Next Century (Cited in para 2–4*d*(10).) (Available at <https://www.archives.gov/federal-register>.)

FAR Subpart 9.401

Debarment, Suspension, and Ineligibility (Cited in para 2–4*d*(15)(*l*)). (Available at https://acquisition.gov/far/current/html/subpart%209_4.html.)

15 CFR Subchapter C, Parts 730 through 774

Export Administration Regulations (Cited in para 1–14a(1).) (Available at <https://www.ecfr.gov/cgi-bin/ecfr?page=browse>.)

22 CFR Subchapter M, Parts 120–130

International Traffic in Arms Regulations (Cited in para 1–14a(1).) (Available at <https://www.ecfr.gov/cgi-bin/ecfr?page=browse>.)

37 CFR 404

Licensing of Government Owned Inventions (Cited in para 1–10a.) (Available at <https://www.ecfr.gov/cgi-bin/ecfr?page=browse>.)

5 USC 552

Freedom of Information Act (Cited in para 1–10b(3).)

10 USC 2194

Education Partnerships (Cited in para 2–4d(10).)

10 USC 2260

Licensing of intellectual property: retention of fees (Cited in para 1–10d.)

10 USC 2539b

Availability of samples, drawings, information, equipment, materials, and certain services (Cited in para 1–8a.)

15 USC 3701 et seq.

Stevenson-Wydler Technology Innovation Act of 1980 (Cited in para 1–1.)

31 USC 3302

Custodians of money (Cited in para 1–10c.)

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. Army publications are available on the Army Publishing Directorate website at <http://armypubs.army.mil>. USC is available at <http://uscode.house.gov/>.

AR 11–2

Managers' Internal Control Program

AR 25–30

Army Publishing Program

AR 25–400–2

The Army Records Information Management System (ARIMS)

AR 380–10

Foreign Disclosure and Contacts with Foreign Representatives

DOD 5500.7–R

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

DOD 7000.14–R, Volume 11A, Chapter 14

Department of Defense Financial Management Regulation (FMR) Availability Through Sale or Fee For Use of Samples, Drawings, Information, Equipment, and Certain Services by a Government Laboratory, Center, Range, or Testing Facility (Available at <http://comptroller.defense.gov/fmr.aspx>.)

5 USC 4504

Presidential awards

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 strategy for 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

Definitions

15 USC 3703(7)

Definitions

15 USC 3710a

Cooperative research and development agreements

15 USC 3710(e)

Establishment of Federal Laboratory Consortium for Technology Transfer

15 USC 3715

Use of partnership intermediaries

35 USC

Patents

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

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

Unless otherwise indicated, DA Forms are available on the Army Publishing Directorate website (<http://armypubs.army.mil>).

DA Form 11-2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

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 DA 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 2–1*e*.

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, Room (2E525), 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 30th calendar day falls on a weekend or Federal holiday, then the appeal will be due the next business day. The brief will concisely state the grounds for the 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 1–10*b*(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, they 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 their decision to the appellant. The decision of the appellate authority will constitute a final decision by the DA.

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.

Appendix C

Distribution of Royalties

C–1. Patent royalty distribution questions

- a.* What patent(s) is/are covered by the PLA?
- b.* If more than one government-owned patent is licensed, does the PLA allocate royalties by patent?
- c.* What share of royalties is attributable to each patent licensed under the PLA?
- d.* Is this the first royalty distribution during the fiscal year paid as a result of this/these patent(s) being licensed?
- e.* As to each licensed patent: how many inventors have assigned their rights in the invention to the United States?
- f.* What amount of the royalty payment goes to the inventor(s) and what amount goes to the laboratory?
- g.* Did the inventors agree among themselves concerning each co-inventor's percent contribution to the invention evidenced by a written agreement submitted to the laboratory or center ORTA?
- h.* To what amount is each inventor entitled?
- i.* Are all of the inventors alive? If not, to whom will the royalty share of any deceased inventor be paid?
- j.* Is there a current address for each inventor/authorized recipient?

C–2. Distribution of royalties and other payments received by Army laboratories

a. Royalties or other payments received on account of any invention licensed or assigned by an Army laboratory shall be payable to the inventor or each co-inventor, as prescribed in the remainder of paragraph C–2.

b. The laboratory shall pay at least \$2000 to the inventor or each co-inventor each year, plus equal shares of at least 20 percent of the remainder of the royalties or other payments, except as provided below. Government employee inventors whose rights have been assigned to the United States are entitled to share in royalty distribution. Non-government employee inventors, whose rights have been assigned to the United States, either directly or indirectly through their employer, are entitled to share in royalty distribution.

c. If the royalties or other payments received in any given year are less than or equal to \$2000, or for co-inventors, less than or equal to \$2000 times the number of inventors, the entire amount is paid to the inventor, or for co-inventors, the entire amount is divided equally among the co-inventors. The inventor or co-inventors shall receive their prescribed share of any royalties or other payments, as received by the Government on an annualized basis.

d. When one or more inventions are licensed to more than one licensee, the “at least \$2000” mandated by paragraph C–2*b* will apply per invention per fiscal year and not per license agreement. This does not prohibit an Army laboratory from paying at least \$2000 per invention per license agreement.

e. In the absence of extrinsic evidence to the contrary, royalty payments received under a PLA or assignment covering more than one invention shall be presumed to accrue equally to each invention. Each distinct and unexpired patent or patent application will be counted as one invention.

f. In the absence of extrinsic evidence that co-inventors made unequal contributions to the invention, subject to review and approval by the concerned legal counsel for the Army laboratory it shall be presumed that the co-inventors made equal contributions to the invention and are entitled to equal shares of at least 20 percent of the remainder of the royalties or other payments. One example of extrinsic evidence of unequal contribution is an agreement signed by all inventors specifying the percent contribution of each inventor.

g. In determining royalty distribution, royalties shall first be divided in accordance with paragraph C–2*e* and then among all eligible inventors in accordance with paragraph C–2*f*.

h. Royalties or other payments from inventions to any one person shall not exceed the statutory limit in 15 USC 3710c(a)(3) for each year, unless Presidential approval, as in 5 USC 4504 (reference C2-g) is received.

i. An Army laboratory may provide applicable incentives from royalties or other payments to laboratory employees who are not inventors or co-inventors of such inventions, but who substantially increase the technical and/or commercial value of such inventions (for example, ORTA). When the incentive is in the form of a monetary payment, such payments may be at any level subject to the authority of the activity that approved the payment, but such payments shall not exceed the limits established in paragraphs C–2*a* through C–2*h*. Payments may be on a one-time or annual basis, and they shall cease when the employee is no longer employed by that Army laboratory.

j. Assignment and use of royalties or other payments income will be applied, in accordance with the following schedule:
(1) Royalties or other payments shall be used by the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received consistent with 15 USC 3710c(a).

(2) After assignment of royalties and other payments to inventors under paragraphs C–2*a* through C–2*g*, any remainder may be used for the following:

- (*a*) Payment of expenses incidental to administration and licensing of inventions and other intellectual property.

- (b)* Additional activities at the laboratory that increase the potential for transfer of Army technology.
- (c)* Scientific R&D consistent with the R&D mission and objectives of activities at the Army laboratory.
- (d)* Rewards for scientific, engineering and technical employees of activities at the Army laboratory.
- (e)* Promotion of scientific exchange among other activities in the Army.
- (f)* Education and training of employees consistent with the R&D mission and objectives of the Army laboratory.
- k.* Royalty payments that have not been distributed to an inventor or co-inventors by the end of the fiscal year following receipt due to the whereabouts of the inventor or co-inventor being unknown will be transferred to a Department of the Treasury Trust Account for retention until the funds can be disbursed to the inventor or co-inventor or until such time as the funds are transferred to the Department of the Treasury Trust fund for Unclaimed Monies.

Appendix D

Internal Control Evaluation

D–1. Function

The function of the internal control evaluation is to ensure policies and responsibilities are followed for the Army technology transfer program.

D–2. Purpose

The purpose of the internal control evaluation is to assist designated individuals in evaluating the key internal controls listed below. It is intended as a guide and does not cover all controls.

D–3. Instruction

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

D–4. Test questions

- a.* Is the ORTA established at the laboratory or organization?
- b.* Has the laboratory or organization made available for adequate funds to support the ORTA and their activities?
- c.* Is the head of the ORTA or equivalent organization at the laboratory or organization providing and disseminating information on federally owned or federally originated products, processes, and services to State and local governments, schools, and potential private sector partners?
- d.* Has the annual technology transfer business plan for the previous fiscal year been submitted to the ADTT?

D–5. Supersession

Not applicable.

D–6. Comments

Help make this a better tool for evaluating internal controls. Submit comments to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (SAAL–ZT), 103 Army Pentagon, Washington, DC 20310–0103.

Glossary

Section I

Abbreviations

ADTT

Army Director for Technology Transfer

AR

Army Regulation

ARIMS

Army Records Information Management System

ASA (ALT)

Assistant Secretary of the Army (Acquisition, Logistics and Technology)

ATTP

Army Technology Transfer Program

CFR

Code of Federal Regulations

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

EO

executive order

FAR

Federal Acquisition Regulation

FLC

Federal Laboratory Consortium

ICRDA

International Cooperative Research, Development, and Acquisition

IEP

Information Exchange Program

JALS–RL/IP

The Regulatory Law and Intellectual Property Division of the U.S. Army Legal Services Agency

OGC

Office of the General Counsel

ORTA

Office of Research and Technology Applications

PLA

patent license agreement

R&D

research and development

SECARMY

Secretary of the Army

USALSA

U.S. Army Legal Services Agency

USC

United States Code

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

CRADAs (15 USC 3710a(d)(1)) 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(7), 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

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 FLC.

National Technical Information Service

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

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 ATTP.

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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