

## SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

CROSS REFERENCE: For joint procurement regulations of the Armed Forces, see chapter I of this title.

### PART 736—DISPOSITION OF PROPERTY

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AUTHORITY: Secs. 5031, 6011, 70A Stat. 278, as amended; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 3618, 3678, 3709, 38 Stat. 1084, 44 Stat. 605, 49 Stat. 885, 53 Stat. 811, 54 Stat. 396, 57 Stat. 380, 59 Stat. 260, sec. 27, 60 Stat. 856, sec. 5, 60 Stat. 998, sec. 4, 62 Stat. 286, secs. 7(c), 8(a-b), 62 Stat. 452, 63 Stat. 377, 64 Stat. 1109, 65 Stat. 645, 68 Stat. 832, sec. 501(c)(3), 68A Stat. 163, secs. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 70A Stat. 141, sec. 5003, 72 Stat. 1252, 72 Stat. 1793, sec. 616, 73 Stat. 381, as amended; 31 U.S.C. 487, 628, 41 U.S.C. 5, 31 U.S.C. 686, 686a, 40 U.S.C. 304a, 50 U.S.C. 98-98h, 22 U.S.C. 521, 44 U.S.C. 366-380, 42 U.S.C. 1572, 24 U.S.C. 37, 20 U.S.C. 77d, 15 U.S.C. 328, 49 U.S.C. 1156(c), 1157(a-b), 40 U.S.C. 471 *et seq.*, 42 U.S.C. 1855-1855g, 22 U.S.C. 1611-1613c, 1750 *et seq.*, 26 U.S.C. 501(c)(3), 10 U.S.C. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 38 U.S.C. 5003, 42 U.S.C. 1891-1893, 40 U.S.C. 483a, E.O. 10885, 25 FR 8471, 40 U.S.C. 471; 40 U.S.C. 486; 10 U.S.C. 2576; 33 U.S.C. 1401; Pub. L. No. 96-41 (50 U.S.C. 98); Pub. L. No. 93-288 (42 U.S.C. 5121).

SOURCE: 25 FR 4674, May 27, 1960, unless otherwise noted.

#### § 736.1 General.

Real and personal property under the jurisdiction of the Department of the Navy, exclusive of battleships, aircraft carriers, cruisers, destroyers, and submarines (referred to as warships in this part) and certain public domain lands and mineral interests, may be disposed of under the authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (40 U.S.C. 471), in this part referred to as the Federal Property Act.

The Federal Property Act places the responsibility for the disposition of excess and surplus property located in the United States, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands with the Administrator of General Services, and for disposition of such property located in foreign areas, with the head of each executive agency. The Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 of January 21, 1974, (39 FR 2577) provide authority for the disposal of warships as well as other vessels stricken from the Naval Vessel Register. The United States Maritime Commission, however, is authorized to dispose of surplus vessels, other than warships, or 1,500 gross tons or more which the Commission determines to be merchant vessels or capable of conversion to merchant use (40 U.S.C. 484(i)). Accordingly, in disposing of its property, the Department of the Navy is subject to applicable regulations of the Administrator of General Services and the Secretary of Defense, and, in regard to potential merchant vessels other than warships, to determinations of the United States Maritime Commission. In general, property of the Department of the Navy, which becomes excess to its needs, may not be disposed of to the general public until it has been determined to be surplus after screening such property with the other military departments of the Department of Defense and all other agencies of the Government, and after it has been offered for donation to educational institutions, and law enforcement and marine research activities.

(a) Within the limitations indicated in the introductory paragraph of this section, the Department of the Navy is authorized to sell its surplus personal property under the authority of the Federal Property Act and the Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7305), and to report its real property,

when excess to the needs of the Department of Defense, to the General Services Administration for ultimate disposition by that agency or the Department of the Navy. The Department of the Navy is also authorized to transfer real and personal property to other departments or agencies of the Government, and to sell, transfer and otherwise dispose of certain vessels and other personal property under special statutory authority. Ships other than warships are sold pursuant to the Federal Property Act (40 U.S.C. 484(i)) by the U.S. Maritime Commission if over 1500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. In certain cases, Navy vessels and other property may be transferred or otherwise made available to other agencies without reimbursement (sec. 616, 73 Stat. 381; 40 U.S.C. 483a).

(b) This part sets forth the general procedures and authority with respect to the disposition of property under the control of the Department of the Navy except disposition of property to foreign governments under the authority of such statutes as the Aid to American Republics Act (54 Stat. 396; 22 U.S.C. 521) and the Mutual Defense Assistance Control Act of 1951 (65 Stat. 644; 22 U.S.C. 1611-1613c).

(c) The Department of Defense Material Disposition Manual and directives issued by the Department of the Navy cover the disposition of all property of the Department including disposition under the Federal Property Act. The Defense Material Disposition Manual is available on the internet at [www.drms.dla.mil](http://www.drms.dla.mil). Section XXIV of Navy Procurement Directives contains similar information applicable to the disposition of contractor inventory. These publications are available for inspection at the offices of the Commandants of the several Naval Districts; and at various Navy and Marine Corps installations.

[25 FR 4674, May 27, 1960, as amended at 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976; 65 FR 53590, Sept. 5, 2000]

#### § 736.2 Dispositions under contracts.

(a) Contractor inventory (that is, personal property acquired by a con-

tractor under terms vesting title in the Government but in excess of the amount required for performance of a contract) may be sold to the contractor or otherwise disposed of in accordance with the terms and conditions set forth in the contract and applicable Navy instructions. See also parts 8 and 13 and §§ 30.2 and 30.3 of this title.

(b) Industrial and plant equipment provided by the Government to a contractor for the performance of a contract may, subject to applicable statutory authority and Navy instructions be disposed of in accordance with the applicable contract terms and conditions.

(c) Transfer to nonprofit education or research institutions of title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research is authorized by the act of September 6, 1958 (sec. 2, 72 Stat. 1793; 42 U.S.C. 1892) and implementing regulations (§§ 13.800 to 13.803 of this title).

#### § 736.3 Sale of personal property.

(a) The sale of personal property determined to be surplus or foreign excess or for exchange purposes is authorized by the Federal Property Act and regulations of the Administrator of General Services (see § 736.1(a)). Certain vessels stricken from the Naval Vessel Register may be sold under the act of August 19, 1956, (70A Stat. 451, 10 U.S.C. 7305).

(b) Sales are by sealed bid, auction, spot bid or, under limited conditions prescribed by law, negotiated method. A deposit, generally 20 percent of the amount bid, is normally required of each bidder. Awards are usually made to the highest acceptable bidder. Normally property may not be removed from Government control until full payment is made. Arrangements must be made by the successful bidder to remove the property within the time limit prescribed in the invitation to bid or sales contract. The Government reserves the right to withdraw any property from sale when in the best interest of the Government.

(1) The Department of Defense has a contact point for any person interested in purchasing surplus Department of Defense personal property within the

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United States. The contact point is the Defense Surplus Bidders Control Office, Defense Reutilization and Marketing Office, Federal Center Building, Battle Creek, Michigan. This office maintains a single bidders list for all military departments. The list is arranged to show each person's buying interests, both geographically and with respect to categories of property. The categories of property (together with an application blank) are listed in a pamphlet "How to Buy Surplus Personal Property From The Department of Defense," prepared by the Defense Reutilization and Marketing Office, Defense Logistics Agency, Battle Creek, Michigan.

(2) Retail sales at fixed prices based on the current market value are conducted by certain Defense property disposal offices.

[39 FR 18442, May 28, 1974, as amended at 65 FR 53590, Sept. 5, 2000]

### § 736.4 Disposition of real property.

(a) Real property, including related personal property, determined to be excess to the needs of the Department of Defense is subject to disposition under the Federal Property Act. In the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense and not required for the needs and the discharge of the responsibilities of all Federal agencies, is generally disposed of by the General Services Administration as surplus property. Exceptions, however, are property worth less than \$1,000; certain leases, permits, licenses, easements or similar interests; certain fixtures, structures, and improvements; and other special classes of property which, when determined to be surplus, are disposed of by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers under authority delegated in Title II, Regulations of the General Services Administration, or under special delegations from the Administrator of General Services.

(b) Outside the States of the United States, the District of Columbia, the

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Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense is disposed of directly by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers.

(5 U.S.C. 301, 40 U.S.C. 471-514)

[35 FR 10008, June 18, 1970, as amended at 41 FR 26008, June 24, 1976]

### § 736.5 Disposition of real and personal property under special statutory authority.

In addition to the authority to sell personal property to the general public and to transfer real property to the General Services Administration under the provisions of §§ 736.3 and 736.4, the Department of the Navy has further authority to dispose of personal and real property as described in paragraphs (a) through (h) of this section.

(a) *Disposition to other Government agencies.* The Department of the Navy is authorized to transfer real and personal property to other governmental departments or agencies under statutes applicable to particular agencies, the act of March 4, 1915 (38 Stat. 1084) as amended (31 U.S.C. 686) and, as to certain personal property, under directives of the General Services Administration.

(b) *Leases.* Real and personal property under the control of the Department of the Navy not excess to its needs and not for the time being required for public use may be leased, when the Secretary of the Navy shall deem it to be advantageous to the Government, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Such leases shall be for a period of not exceeding five years unless the Secretary determines that a longer period will promote the national defense or will be in the public interest. Such leases are authorized by the act of August 10, 1956 (70A Stat. 150; 10 U.S.C. 2667). Leases of Government-owned real property where the estimated annual rental is more than 50,000 must be deferred for 30 days

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after reporting the proposed transaction to the Armed Services Committees of Congress in accordance with the act of August 10, 1956 (70A Stat. 147), as amended (10 U.S.C. 2662).

(c) *Disposition of strategic materials.* Strategic materials may be disposed of by the Department of the Navy under the authority described in § 736.3 only when such property is excess to the needs of the Department of Defense and when the Director of the Office of Civil and Defense Mobilization (acting through the Defense Materials Service of the General Services Administration) determines that the amounts of such materials to be disposed of are so small as to make transfer thereof under the act of June 7, 1939 (53 Stat. 811) as amended (50 U.S.C. 98-98h) economically impractical, or such materials are not necessary for stockpile requirements determined in accordance with section 2 of said act.

(d) *Disposition of vessels.* Vessels stricken from the Naval Vessel Register may be sold by the Department of the Navy under the authority and subject to the limitations of the Federal Property Act (sections 203(i), 63 Stat. 386, 40 U.S.C. 484(i)) and the act of August 10, 1956, (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 (39 FR 2577). However, pursuant to section 203(i) of the Federal Property Act (40 U.S.C. 484(i)), the United States Maritime Commission disposes of vessels, other than warships, if over 1,500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. Vessels may be sold for scrapping or for use under such authority or, if such sale is not feasible, the Naval Sea Systems Command may arrange for the demolition of a vessel and sale of the resulting materials by an authorized selling activity as set forth in § 736.3.

(e) Exchange or sale of property for replacement purposes. Under the authority of section 201(c) of the Federal Property Act (40 U.S.C. 481(c)) and consistent with Department of Defense implementing regulations, DOD 4140.1-R and the Defense Federal Acquisition Regulation Supplement, the Department of the Navy is authorized in the acquisition of new equipment to ex-

change or sell similar items which are not excess to its needs, and apply the exchange allowance or proceeds of sale in whole or part payment for the items acquired.

(f) *Donations and loans of personal property.* (1) Certain personal property of the Department of the Navy, including vessels, which become surplus, may be donated or loaned under the authority contained in the Federal Property Act and the act of August 10, 1956 (70A Stat. 453; 10 U.S.C. 2572, 7308, 7545) to:

(i) Schools such as maritime academies or military, naval, Air Force or Coast Guard preparatory schools, designated by the Secretary of Defense as educational activities of special interest to the armed services.

(ii) Accredited schools, colleges and universities and educational institutions which have been exempted from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 and State Departments of Education for use by tax exempt educational institutions. Applications for donation shall be approved by the Department of Health and Human Services and the Administrator of General Services and may be filed with the field representative of the Department of Health and Human Services located nearest the applicant.

(iii) States, Territories, Commonwealths, or possessions of the United States and political subdivisions, municipal corporations, veterans associations, soldiers' monument associations, State museums, and non-profit educational museums, subject in certain cases to the approval of the Curator for the Navy and to objection by a concurrent resolution of the Congress.

(2) Applications other than those to be filed with the field representative of the Department of Health and Human Services shall be filed with the Department of the Navy and referred to the cognizant Command or Headquarters for action except that applications for vessels and district craft shall be referred to the Chief of Naval Operations, applications for boats to the Naval Sea Systems Command, and applications for barges, floating drydocks, and other floating construction equipment to the

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Naval Facilities Engineering Command. Detailed instructions with respect to such applications are set forth in the Defense Material Disposition Manual.

(g) *Disposition of equipment for research.* Under the act of September 6, 1958 (72 Stat. 1793; 42 U.S.C. 1891-1893), equipment purchased with research grant or contract funds may be transferred for the conduct of basic or applied scientific research to (1) non-profit institutions of higher education or (2) non-profit organizations whose primary purpose is the conduct of scientific research. An annual report of such transfers must be made to the appropriate Committees of Congress.

(h) *Assistance in major disaster relief.* Under the Disaster Relief Act of 1974 (Pub. L. No. 93-288) and subject to directions of the Federal Emergency Management Agency, certain excess personal property may be utilized for or donated to States and local governments for relief of suffering and damage resulting from major disasters. Surplus property may also be disposed of to States for sale to small business concerns affected by specific disasters such as hurricanes.

[25 FR 4674, May 27, 1960, as amended at 25 FR 11066, Nov. 22, 1960, 26 FR 12158, Dec. 20, 1961; 35 FR 10008, June 18, 1970; 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976; 47 FR 28371, June 30, 1982; 65 FR 53590, Sept. 5, 2000; 65 FR 67628, Nov. 13, 2000]

### § 736.6 Certification prior to disposition.

The transfer, sale, or other disposition of a battleship, aircraft carrier, cruiser, destroyer, or submarine shall not be made unless and until the Chief of Naval Operations, in accordance with the act of August 10, 1956 (70A Stat. 452; 10 U.S.C. 7307), has certified that such material is not essential to the defense of the United States.

### § 736.7 Approval by the Attorney General.

Prior to the disposition, either competitively or by negotiation, to private interests of a plant or plants, or other property, which cost the Government \$1,000,000 or more if real property, or \$3,000,000 or more if personal property (other than a patent, process, tech-

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nique or invention), or of patents, processes, techniques or inventions, irrespective of cost, the Department of the Navy must notify the Attorney General of the proposed disposal and the probable terms and conditions thereof. Within a reasonable time, in no event to exceed sixty days after receiving such notification, the Attorney General will advise the Department of the Navy, whether, insofar as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. In such cases, the Department of the Navy must obtain from the proposed purchaser information regarding its financial status, the anticipated use to be made of the property and any other information as may be required by the Attorney General; the award or final sale must be delayed until the Attorney General advises of his determination.

## PART 744—POLICIES AND PROCEDURES FOR THE PROTECTION OF PROPRIETARY RIGHTS IN TECHNICAL INFORMATION PROPOSED FOR RELEASE TO FOREIGN GOVERNMENTS

Sec.

744.1 Purpose.

744.6 Authorization for release without consent of the owner.

AUTHORITY: Sec. 301, 80 Stat. 379, secs. 5031, 6011, 70A Stat. 278, 375 as amended; 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply the Mutual Security Act of 1954 (68 Stat. 832) as amended, 22 U.S.C. 1750 *et seq.*, and Act of Sept. 4, 1961 (Pub. L. 87-195, 75 Stat. 424), 22 U.S.C. 2151-2406 (2351, 2356).

### § 744.1 Purpose.

This part implements part 264 of this title and the Technical Property Interchange Agreements between the United States and foreign governments which agreements are designed to facilitate the interchange of patent rights and technical information for defense purposes.

[26 FR 12217, Dec. 21, 1961]

### § 744.6 Authorization for release without consent of the owner.

(a) Military equipment including the information essential for its operation,

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maintenance and repair and technical information, known or claimed to be proprietary, which is being considered for release in accordance with § 264.4(d)(3), may be released when the Chief of Naval Operations or his designee or a bureau chief or deputy bureau chief determines under the authority of the Act that such action clearly warrants the assumption of financial liability that may be incurred and there is no acceptable substitute equipment or information for which consent to release is obtainable or which is not proprietary.

(b) Where any technical information is released in accordance with this section, such release shall be subject to the conditions of release set forth in § 264.4(f).

(c) Military equipment, including the information essential for its operation, maintenance, and repair, known or claimed to be privately owned and for which consent for release cannot be obtained may be furnished to foreign governments in accord with § 264.4(d)(3) without further legal authorization, provided such release is made pursuant to the grant aid provisions of the Mutual Security Act of 1954, as amended, and provided further, there is no acceptable substitute equipment or information for which consent for release is obtainable or which is not proprietary.

[24 FR 10715, Dec. 25, 1959, as amended at 44 FR 30686, May 29, 1979]

### PART 746—LICENSING OF GOVERNMENT INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE NAVY

Sec.

- 746.1 Purpose.
- 746.2 Policy.
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- 746.6 Nonexclusive license.
- 746.7 Limited exclusive license.
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- 746.12 Litigation.
- 746.13 Transfer of custody of Government inventions.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 40 U.S.C. 486(c); and 41 CFR 101-4.1.

SOURCE: 41 FR 55712, Dec. 22, 1976, unless otherwise noted.

#### § 746.1 Purpose.

This part implements Department of Defense Directive 5535.3 of November 2, 1973 and 41 CFR subpart 101-4.1, and sets forth the policy, terms, conditions, and procedures for the licensing of rights in domestic patents and patent applications vested in the United States of America and in the custody of the Department of the Navy.

#### § 746.2 Policy.

(a) A major premise of the Presidential Statement on Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that government inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable, since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given

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also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a United States citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this part.

(d) Subject to the following: (1) Any existing or future treaty or agreement between the United States and any foreign government or inter-governmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Navy research and development contracts where such licenses or other rights to such inventions are provided for in the contract and retained by the party contracting with the Department of the Navy, no license shall be granted or implied in a government invention, except as provided for in this part.

(e) No grant of a license under this part shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part shall not be immunized from the operation of state or federal law by reason of the source of the grant.

### § 746.3 Delegation of authority.

The Chief of Naval Research is delegated the authority to administer the patent licensing program, with the authority to redelegate such authority.

### § 746.4 Definitions.

(a) *Government invention* means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Navy, and is designated by the Chief of Naval Research as appropriate for the grant of an express non-exclusive or exclusive license.

(b) *To the point of practical application* means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, under such con-

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ditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

### § 746.5 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 746.6 and 746.7, subject to the applicable procedures of § 746.11. The Chief of Naval Research may remove a prior designation of availability for licensing of any patent(s) or patent application(s), provided that no outstanding licenses to that invention are in effect.

### § 746.6 Nonexclusive license.

(a) *Availability of licenses.* Each government invention normally shall be made available for the granting of non-exclusive revocable licenses, subject to the provisions of any other licenses, including those under § 746.8.

(b) *Terms of grant.* (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensees to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Chief of Naval Research may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government shall make no representation or warranty as to the validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

#### § 746.7 Limited exclusive license.

(a) *Availability of licenses.* Each government invention may be made available for the granting of a limited exclusive license, provided that:

(1) The invention has been published as available for licensing pursuant to paragraph (a) of §746.11 for a period of at least six months;

(2) The Chief of Naval Research has determined that:

(i) The invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing;

(ii) The desired practical application has not been achieved under any non-exclusive license granted on the invention; and

(iii) The desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to paragraph (d) of §746.11 for at least 60 days; and

(4) After termination of the period set forth in paragraph (a)(3) of §746.7 the Chief of Naval Research has determined that no applicant for a non-exclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application, as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in §746.2 and in accordance with the procedures set forth in §746.11.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the government invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in paragraphs (c)(6) and (c)(7) of §746.7, the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a non-exclusive license; and such period of exclusivity shall not exceed 5 years unless the Chief of Naval Research determines, on the basis of a written submission supported by a factual showing, that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Chief of Naval Research, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention throughout the world, by or on behalf of the Government of the United

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States, and by or on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United States. If the Chief of Naval Research finds it to be in the public interest, this license may also be expressly subject to this same royalty-free right by or on behalf of state and municipal governments.

(7) The license shall reserve to the Chief of Naval Research the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances:

(i) The extent that the invention is required for public use by government regulations, or

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

(iii) For other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Chief of Naval Research. Each sublicense granted by an exclusive licensee shall make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense shall be furnished to the Chief of Naval Research.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government shall make no representation or warranty as to validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

### § 746.8 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Chief of Naval Research from granting additional nonexclusive or limited exclusive licenses for government inven-

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tions when he determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for, or as part of, the consideration for a license under adversely held patents.

### § 746.9 Royalties.

(a) *Nonexclusive license.* Normally, royalties shall not be changed under nonexclusive licenses granted to United States citizens and United States corporations on government inventions; however, the Chief of Naval Research may require other consideration.

(b) *Limited exclusive license.* A limited exclusive license on a government invention shall contain a royalty provision and/or other consideration flowing to the Government.

### § 746.10 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention, and other information which the Chief of Naval Research may determine is pertinent to its licensing activities and is specified in the license.

### § 746.11 Procedures.

(a) *Publication requirements.* The Chief of Naval Research shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the United States Patent and Trademark Office, and at least one other publication that the Chief of Naval Research deems would best serve the public interest, a list of the government inventions available for licensing under the conditions specified in this part. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available

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for licensing are encouraged, and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) *Contents of a nonexclusive license application.* An application for a non-exclusive license under a government invention should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and shall include:

(1) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known, and any other identification of the invention;

(2) Name and address of the person, company, or organization applying for the license, and whether the applicant is a United States citizen or a United States corporation;

(3) Name and address of the representative of applicant to whom correspondence should be sent;

(4) Nature and type of applicant's business;

(5) Source of information concerning the availability of a license on this invention;

(6) Purpose for which the license is desired and a brief description of applicant's plan to achieve that purpose;

(7) A statement of the fields of use for which applicant intends to practice the invention; and

(8) A statement as to the geographic areas in which the applicant would practice the invention.

(c) *Contents of an exclusive license application.* An application for an exclusive license should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and, in addition to the information indicated in paragraph (b) of § 746.11, an application for an exclusive license shall include:

(1) Applicant's status, if any, in any one or more of the following categories:

(i) Small business firm;

(ii) Minority business enterprise;

(iii) Location in a surplus labor area;

(iv) Location in a low-income area; and

(v) Location in an economically depressed area;

(2) A statement of applicant's capability to undertake the development

and marketing required to achieve the practical application of the invention;

(3) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that sum to perform such acts if the license is granted;

(4) A statement that contains the applicant's best knowledge of the extent to which the government invention is being practiced by private industry and the Government;

(5) Identification of other exclusive licenses granted to applicant under inventions in the custody of other government agencies; and

(6) Any other facts which the applicant believes are evidence that it is in the public interest for the Chief of Naval Research to grant an exclusive license rather than a nonexclusive license, and that such exclusive license should be granted to the applicant.

(d) *Published notices.* (1) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

(i) Identification of the invention;

(ii) Identification of the selected licensee;

(iii) Duration and scope of the contemplated license; and

(iv) A statement to the effect that the license will be granted unless:

(A) An application for a nonexclusive license, submitted by a responsible applicant pursuant to paragraph (b) of § 746.11, is received by the Chief of Naval Research within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Chief of Naval Research determines in accordance with his prescribed procedures, under which procedures the Chief of Naval Research shall record and make available for public inspection all decisions made pursuant thereto and the basis therefore, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or

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(B) The Chief of Naval Research determines that third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(2) If an exclusive license has been granted pursuant to this part, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the licensee; and
- (iii) Duration and scope of the license.

(3) If an exclusive license has been modified or revoked pursuant to paragraph (e) §746.11, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the licensee; and
- (iii) Effective date of the modification or revocation.

(e) *Modification or revocation.* (1) Any license granted pursuant to this part may be modified or revoked by the Chief of Naval Research if the licensee at any time defaults in making any report required by the license or commits any breach of covenant or agreement therein contained.

(2) A license may also be revoked by the Chief of Naval Research if the licensee willfully makes a false statement of material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(3) Before modifying or revoking any license granted pursuant to this part for any cause, the Chief of Naval Re-

search shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in paragraph (e)(1) of §746.11, or to show cause why the license should not be modified or revoked.

(f) *Appeals.* An applicant for a license, a licensee, or such other third party who has participated under paragraph (d)(1)(iv)(B) of §746.11 shall have the right to appeal, in accordance with procedures prescribed by the Chief of Naval Research, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

**§746.12 Litigation.**

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement shall be retained with respect to all licenses so issued by the Government.

**§746.13 Transfer of custody of Government inventions.**

The Chief of Naval Research may enter into an agreement to transfer custody of a Government invention to another government agency for purposes of administration, including the granting of licenses pursuant to this part.