

(a) The Government as represented by the Secretary shall obtain the entire domestic right, title and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (a) of this section), the Department, subject to the approval of the Commissioner, shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b) of this section, to the facts and circumstances relating to the making of any particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (1) to invent or improve or perfect any art, machine, manufacture, or composition of matter, (2) to conduct or perform research, development work, or both, (3) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (4) to act in a liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, falls within the provisions of paragraph (a) of this section, and it shall be presumed that any invention made by any other em-

ployee falls within the provisions of paragraph (b) of this section. Either presumption may be rebutted by a showing of the facts and circumstances and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the Government employee, subject to law.

(d) In any case wherein the Government neither (1) obtains the entire domestic right, title and interest in and to an invention pursuant to the provisions of paragraph (a) of this section, nor (2) reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions of paragraph (b) of this section, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

#### **§ 7.4 Option to acquire foreign rights.**

In any case where it is determined that all domestic rights should be assigned to the Government, it shall further be determined, pursuant to Executive Order 9865 and Government-wide regulations issued thereunder, that the Government shall reserve an option to require the assignment of such rights in all or in any specified foreign countries. In case where the inventor is not required to assign the patent rights in any foreign country or countries to the Government or the Government fails to exercise its option within such period of time as may be provided by regulations issued by the Commissioner of Patents, any application for a patent which may be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for all governmental purposes, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government.

#### **§ 7.7 Notice to employee of determination.**

The employee-inventor shall be notified in writing of the Department's determination of the rights to his invention and of his right of appeal, if any.

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Notice need not be given if the employee stated in writing that he would agree to the determination of ownership which was in fact made.

### § 7.8 Employee's right of appeal.

An employee who is aggrieved by a determination of the Department may appeal to the Commissioner of Patents, pursuant to section 4(d) of Executive Order 10096, as amended by Executive Order 10930, and regulations issued thereunder, by filing a written appeal with the Commissioner, in duplicate, and a copy of the appeal with the Secretary within 30 days (or such longer period as the Commissioner may, for good cause, fix in any case) after receiving written notice of such determination.

## PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

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AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

SOURCE: 57 FR 34646, Aug. 5, 1992, unless otherwise noted.

### § 8.1 What is the scope and applicability of this part?

(a) Except as provided in paragraph (c) of this section, this part establishes the procedures to be followed when the Department or any employee of the Department receives a demand for—

- (1) Testimony by an employee concerning—
  - (i) Records contained in the files of the Department;
  - (ii) Information relating to records contained in the files of the Department; or
  - (iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status; or

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(2) The production or disclosure of any information or records referred to in paragraph (a)(1) of this section.

(b) This part does not create any right or benefit, substantive or procedural, enforceable by any person against the Department.

(c) This part does not apply to—

(1) Any proceeding in which the United States is a party before an adjudicative authority;

(2) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(3) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the mission or functions of the Department.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

[57 FR 34646, Aug. 5, 1992, as amended at 73 FR 27748, May 14, 2008]

### § 8.2 What definitions apply?

The following definitions apply to this part:

*Adjudicative authority* includes, but is not limited to—

(1) A court of law or other judicial forums; and

(2) Mediation, arbitration, or other forums for dispute resolution.

*Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

*Department* means the U.S. Department of Education.

*Employee* means a current or former employee or official of the Department or of an advisory committee of the Department, including a special government employee, unless specifically provided otherwise in this part.

*Legal proceeding* means—

(1) A proceeding before an adjudicative authority;

(2) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress, to the extent of matter within the committee's or subcommittee's jurisdiction; or

(3) An administrative proceeding.

*Secretary* means the Secretary of Education or an official or employee of