

#### § 264.4

#### 32 CFR Ch. I (7-1-99 Edition)

(1) The Patent Advisor assigned to the Defense Staff of the U.S. Mission to the North Atlantic Treaty Organization and European Regional Organizations (USRO), Paris, France, is the United States representative to the Technical Property Committees in Europe. The J-4, Hq. United States Forces Japan, Tokyo, Japan is the United States representative to the United States-Japanese Technical Property Committee. A member of the Office of Assistant General Counsel, International Affairs, Office of the Secretary of Defense, is the United States representative to the United States-Australian Technical Property Committee. The appropriate representative should be consulted on all problems dealing with patent rights, technical information and related matters under the agreements.

(2) These representatives receive policy guidance from the Department of Defense. The Assistant Secretary of Defense for International Security Affairs is responsible within the Department of Defense for transmitting such policy guidance through appropriate channels. Guidance transmitted for the United States representative in Europe shall be forwarded to the Defense Advisor, USRO; guidance transmitted for the United States representative in Japan shall be transmitted to the Commanding General, United States Forces Japan.

(c) Department of Defense problems arising in the United States in connection with the interchange of patent rights and privately owned technical information should be referred to the patent activity of the appropriate Military Department.

[25 FR 14456, Dec. 31, 1960, as amended at 26 FR 1993, Mar. 8, 1961; 26 FR 6479, July 19, 1961]

#### § 264.4 Policy.

It is the policy of the Department of Defense to encourage and facilitate international interchanges of patent rights and technical information to further the common defense of the United States and friendly nations. In achieving this purpose, the following principles shall be observed.

(a) Classified military information shall be released only through Government channels and only when con-

sistent with the National Disclosure Policy, or when approved as an exception to that policy.

(b) In accordance with the Congressional policy prescribed by section 413(a) of the Mutual Security Act of 1954, as amended (22 U.S.C. 1933(a)), and pursuant to the bilateral agreements referred to in § 264.3, commercial relationships shall be utilized whenever appropriate and to the maximum extent feasible in order to encourage the participation of private enterprise in the Mutual Security Program, to relieve the Department of Defense of administrative burdens, and to reduce the costs to the United States of such interchanges.

(c) In accordance with section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the utilization of commercial channels for the exportation of unclassified privately owned technical information relating to articles designated as arms, ammunition, and implements of war in the United States Munitions List shall be subject to the regulations issued by the Secretary of State pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) (Title 22 CFR, chapter I, subchapter M). (The term "technical data" is used in those regulations to describe technical information relating to such articles).

(d) Technical information which might be privately owned may be released under paragraph (e) (1) or (2) of this section by Department of Defense Agencies to foreign governments if any one of the following conditions are met:

(1) The owner expressly consents to the proposed release;

(2) The United States, by contract or otherwise, has acquired or is entitled to acquire, the information under circumstances which permit the proposed release; or

(3) The Secretary of the Military Department concerned, or his designee, determines, under the authority of the Mutual Security Act of 1954, as amended, that:

(i) The exigencies of the requirement for release to further the common defense do not allow sufficient time to obtain the consent of the owner; or

(ii) The owner refuses consent and the best interests of the United States would be served by the release.

(e) In accordance with the provisions of the agreements referred to in §264.3, the release to foreign governments by Department of Defense agencies of technical information which might be privately owned shall normally be in accord with the following two step procedure:

(1) Release for information only.

(2) Permission for manufacture, or use, for defense purposes.

(f)(1) All technical information, whether privately owned or government owned, released to a foreign government by Department of Defense Agencies shall be marked with the following restrictions:

1. This information is accepted for defense purposes only.

2. This information shall be accorded substantially the same degree of security protection as such information has in the United States.

3. This information shall not be disclosed to another country without the consent of the United States.

(2) When technical information which might be privately owned is released for information only, the restrictive marking shall also contain these additional notations:

4. This information is accepted upon the understanding that it might be privately owned.

5. This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient Government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

6. The recipient Government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense purposes.

(g) When technical information which might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

(1) Notice of the release;

(2) The identity of the recipient, if not contrary to security regulations;

(3) Notice that the recipient has been advised that the information might be privately owned; and

(4) Notice of the restrictions to which the release is subject.

#### §264.5 Claims for compensation.

(a) With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) provides the exclusive remedy for compensation for infringement within the United States of a patent issued by the United States and for damage resulting from the disclosure by the United States of privately owned technical information.

(b) The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) to enter into agreements with claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from time to time. The Secretaries of the Military Departments are authorized to make successive redelegations in writing of this power and authority to any officer, employee, board or agent of their respective departments.

(c) Funds appropriated for military assistance pursuant to the Mutual Security Act of 1954, as amended, which have been made available to a Military Department may be used to settle claims under section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758). In addition, in those cases where the provisions of 10 U.S.C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such claims.

#### PART 266—AUDITS OF STATE AND LOCAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER NONPROFIT INSTITUTIONS

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266.1 Purpose.