

Subpart 27.1—General

27.101 Applicability.

The policies, procedures, and clauses prescribed by this part 27 are applicable to all agencies. Agencies are authorized to adopt alternate policies, procedures, and clauses, but only to the extent determined necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency action adopting such alternate policies, procedures, and clauses shall be covered in published agency regulations.

27.102 [Reserved]

27.103 Policy.

The policies pertaining to patents, data, and copyrights are set forth in this part 27 and the related clauses in part 52.

27.104 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made while performing Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent.

(c) Generally, the Government encourages the use of inventions in performing contracts and, by appropriate contract clauses, authorizes and consents to such use, even though the inventions may be covered by U.S. patents and indemnification against infringement may be appropriate.

(d) Generally, the Government should be indemnified against infringement of U.S. patents resulting from performing contracts when the supplies or services acquired under the contracts normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or are the same as such supplies or services with relatively minor modifications.

(e) The Government acquires supplies or services on a competitive basis in accordance with part 6, but it is important that the efforts directed toward full and open competition not improperly demand or use data relating to private developments.

(f) The Government honors the rights in data resulting from private developments and limits its demands for such rights to those essential for Government purposes.

(g) The Government honors rights in patents, data, and copyrights, and complies with the stipulations of law in using or acquiring such rights.

(h) Generally, the Government requires that contractors obtain permission from copyright owners before including privately-owned copyrighted works in data required to be delivered under Government contracts.

[49 FR 12974, Mar. 30, 1984, as amended at 50 FR 1743, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

Subpart 27.2—Patents

27.200 Scope of subpart.

This subpart prescribes policy with respect to—

(a) Patent infringement liability resulting from work performed by or for the Government;

(b) Royalties payable in connection with performing Government contracts; and

(c) Security requirements covering patent applications containing classified subject matter filed by contractors.

27.201 Authorization and consent.

27.201-1 General.

(a) In those cases where the Government has authorized or consented to the manufacture or use of an invention described in and covered by a patent of the United States, any suit for infringement of the patent based on the manufacture or use of the invention by or for the United States by a contractor (including a subcontractor at any tier) can be maintained only against the Government in the U.S. Claims Court and not against the contractor or subcontractor (28 U.S.C. 1498). To ensure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, the Government shall give authorization and consent in accordance with this regulation. The liability of the Government for damages in any such suit