Copyright and U.S. Government Employees: Statutes, Rules, and Exceptions

1. Core Statutory Rule: 17 U.S.C. § 105

This is the foundational law. It states that copyright protection is not available for any work created by an officer or employee of the U.S. Government as part of their official duties. Such works automatically enter the public domain in the U.S. However, the government may hold copyrights that are transferred to it by other parties. The law also allows, in certain defense or intelligence agencies, for the government to require a broad license to works produced in service.

2. Related Regulations and Guidance

• Code of Federal Regulations (37 CFR): The CFR contains rules of the Copyright Office. While it provides procedures for registration and licensing, it does not override §105's rule that government works are public domain.
• Copyright Office Circulars: Circular 1 ('Copyright Basics') explains that U.S. Government works are not eligible for copyright.
• University/Agency Guidance: For example, the University of Kansas General Counsel's information paper confirms federal works are public domain, with exceptions for contractors and personal works outside official duties.

3. Exceptions and Edge Cases

Scenario	Explanation
Contractors/Grantees	Works by contractors or grantees may be copyrightable. The government typically secures a license, but the creator may retain copyright.
Transferred Works	If a private party assigns copyright to the U.S. Government, the government can hold it. Such works are not automatically public domain.
Defense/Intelligence Licensing	Under §105(b), some agencies can require employees to grant the government a

	nonexclusive license.
Foreign Publication	U.S. government works may be copyrighted abroad, since foreign copyright laws differ.
Employee Private Capacity	If created outside official duties, government employees may claim copyright for personal works.

4. Key References (Summarized)

• 17 U.S.C. §105: Establishes that works of the U.S. Government are not eligible for copyright.
• 17 U.S.C. §101: Defines 'work of the U.S. Government' as a work prepared by an officer or employee as part of their duties.
• Copyright Office Circular 1: Confirms that such works are in the public domain domestically.
• CFR (Title 37): Provides registration rules, but does not alter the ineligibility of federal works.
• University of Kansas General Counsel Guide: Provides plain-language explanation with contractor exceptions.
• Department of Energy guidance: Notes that contractor works may retain copyright if contract allows.