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*(Added Dec. 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3022; amended Nov. 8, 1984, Public Law 98-620, sec. 501(9), 98 Stat. 3367.)*

**35 U.S.C. 204 Preference for United States industry.**

Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency under whose funding agreement the invention was made upon a showing by the small business firm, nonprofit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

*(Added Dec. 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3023.)*

**35 U.S.C. 205 Confidentiality.**

Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office.

*(Added Dec. 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3023.)*

**35 U.S.C. 206 Uniform clauses and regulations.**

The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter. The regulations and the standard funding agreement shall be subject to public comment before their issuance.

*(Amended Nov. 8, 1984, Public Law 98-620, sec. 501(10), 98 Stat. 3367.)*

**35 U.S.C. 207 Domestic and foreign protection of federally owned inventions.**

(a) Each Federal agency is authorized to —

- (1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;
- (2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of this title as determined appropriate in the public interest;
- (3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and
- (4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(b) For the purpose of assuring the effective management of Government-owned inventions, the Secretary of Commerce authorized to --

- (1) assist Federal agency efforts to promote the licensing and utilization of Government-owned inventions;

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- (2) assist Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and
- (3) consult with and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization.

*(Added Dec. 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3023, Amended Nov. 8, 1984, Public Law 98-620, sec. 501(11) 98 Stat. 3367.)*

**35 U.S.C. 208 Regulations governing Federal licensing.**

The Secretary of Commerce is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

*(Added Dec. 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3024; Amended Nov. 8, 1984, Public Law 98-620, sec. 501(12), 98 Stat. 3367.)*

**35 U.S.C. 209 Restrictions on licensing of federally owned inventions.**

(a) No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for development and/or

marketing of the invention, except that any such plan may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(b) A Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c)(1) Each Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that —

- (A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;
  - (B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;
  - (C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and
  - (D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public.
- (2) A Federal agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.
  - (3) First preference in the exclusive or partially exclusive licensing of federally owned inventions shall go to small business firms submitting plans that are determined

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by the agency to be within the capabilities of the firms and equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(d) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, any Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(e) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

(f) Any grant of a license shall contain such terms and conditions as the Federal agency determines appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

- (1) periodic reporting on the utilization or efforts at obtaining utilization that are being made by the licensee with particular reference to the plan submitted: Provided, That any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code;
- (2) the right of the Federal agency to terminate such license in whole or in part if it determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;
- (3) the right of the Federal agency to terminate such license in whole or in part if the licensee is in breach of an agreement obtained pursuant to paragraph (b) of this section; and
- (4) the right of the Federal agency to terminate the license in whole or in part if the agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee.

*(Added Dec. 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3024.)*

### **35 U.S.C. 210      Precedence of chapter.**

(a) This chapter shall take precedence over any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this chapter, including but not necessarily limited to the following:

- (1) section 10(a) of the Act of June 29, 1935, as added by title 1 of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);
- (2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);
- (3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);
- (4) section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721);
- (5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);
- (6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

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- (7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);
- (8) section 6 of the Coal Research Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);
- (9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);
- (10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);
- (11) subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5);
- (12) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901; 88 Stat. 1878);
- (13) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);
- (14) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);
- (15) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);
- (16) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);
- (17) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);
- (18) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);
- (19) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);
- (20) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);
- (21) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178(j); 92 Stat. 2533); and
- (22) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

The Act creating this chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

(b) Nothing in this chapter is intended to alter the effect of the laws cited in paragraph (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to allow such persons to retain ownership of inventions, except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title. Any disposition of rights in inventions made in accordance with the Statement or implementing regulations, including any disposition occurring before enactment of this section, are hereby authorized.

(d) Nothing in this chapter shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods.

*(Subsection (c) amended Nov. 8, 1984, Public Law 98-620, sec. 501(13), 98 Stat. 3367.)*