§ 3701. Findings

The Congress finds and declares that:

[See main volume for text of (1) to (9)]

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments, including inventions, software, and training technologies, should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(As amended Pub.L. 99-502, § 9(f)(1), Oct. 20, 1986, 100 Stat. 1797.)

Short Title of 1986 Amendments. Section 1 of Pub.L. 99-502 provided that: "This Act [enacting sections 3710a to 3710d of this title, amending this section and sections 3702, 3703, 3704, 3705, 3707, 3708, 3710 and 3714 of this title and section 210 of Title 35, Patents and repealing former section 3709 of this title] may be cited as the 'Federal Technology Transfer Act of 1986'."

Pub.L. 99-382, § 1, Aug. 14, 1986, 100 Stat. 811, provided: "That this Act [amending section 3704 of this title] may be cited as the 'Japanese Technical Literature Act of 1986'."

1986 Amendment. Par. (10). Pub.L. 99-502, § 9(f)(1), inserted ", which include inventions, computer software, and training technologies," after "These developments".

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3702. Purpose

It is the purpose of this chapter to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of cooperative research centers;

(3) stimulating improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector;

[See main volume for text of (4) and (5)]

(As amended Pub.L. 99-502, § 9(b)(1), (f)(2), Oct. 20, 1986, 100 Stat. 1795, 1797.)

1986 Amendment. Par. (2). Pub.L. 99-502, § 9(b)(1), substituted "cooperative research centers" for "centers for industrial technology".

Par. (3). Pub.L. 99-502, § 9(f)(2), inserted ", including inventions, software, and training technologies," after "developments".

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3703. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(1) "Office" means the Office of Productivity, Technology, and Innovation established under section 3704 of this title.

(2) "Secretary" means the Secretary of Commerce.

(3) "Assistant Secretary" means the Assistant Secretary for Productivity, Technology and Innovation, appointed pursuant to section 3704 of this title.

(4) "Centers" means the Cooperative Research Centers established under section 3705 or section 3707 of this title.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 3705 or section 3707 of this title that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

(7) "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate.

(8) "Federal agency" means any executive agency as defined in section 105 of Title 5 and the military departments as defined in section 102 of such title.

(9) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under Title 35 or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(10) "Made" when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

(11) "Small business firm" means a small business concern as defined in section 632 of this title and implementing regulations of the Administrator of the Small Business Administration.

(12) "Training technology" means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.

(As amended Pub.L. 99-502, § 9(b)(2), (d), Oct. 20, 1986, 100 Stat. 1795, 1796.)

References in Text. The Plant Variety Protection Act, referred to in par. (9), is Pub.L. 91-577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (section 2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables volume.

1986 Amendment. Par. (1). Pub.L. 99-502, § 9(b)(2)(A), substituted definition of "Office" as the Office of Productivity, Technology, and Innovation for former definition of that term as the Office of Industrial Technology.

Par. (3). Pub.L. 99-502, § 9(b)(2)(B), substituted provisions relating to the Assistant Secretary for Productivity, Technology and Innovation for provisions which related to the Director of the Office of Industrial Technology.

Par. (4). Pub.L. 99-502, § 9(b)(2)(C), substituted definition of "Centers" as Cooperative Research Centers for former definition of that term as the Centers for Industrial Technology.

Par. (6). Pub.L. 99-502, § 9(b)(2)(D), redesignated former par. (7) as (6), and struck out former par. (6), which defined the term "Board" as the National Industrial Technology Board established pursuant to section 3709 of this title.

Par. (7). Pub.L. 99-502, § 9(b)(2)(D), redesignated former par. (8) as (7). Former par. (7) redesignated (6).

Pub.L. 99-502, § 9(b)(2)(D), redesignated former par. (8) as (7).

Pub.L. 99-502, § 9(b)(2)(E), in par. (6) as so redesignated substituted "owned, leased, or otherwise used by a Federal agency and funded" for "owned and funded".

Par. (8). Pub.L. 99-502, § 9(d), added par. (8). Former par. (8) redesignated (7).

Pars. (9) to (12). Pub.L. 99-502, § 9(d), added pars. (9) to (12).

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3704. Commerce and technological innovation

(a) In general

The Secretary shall establish and maintain an Office of Productivity, Technology, and Innovation, in accordance with the provisions, findings, and purposes of this chapter.

(b) Assistant Secretary

The President shall appoint, by and with the advice and consent of the Senate, an Assistant Secretary for Productivity, Technology, and Innovation.

(c) Duties

The Secretary, through the Assistant Secretary on a continuing basis, shall—

[See main volume for text of (1) to (5)]

(6) provide that cooperative efforts to stimulate industrial innovation be undertaken between the Assistant Secretary and other officials in the Department of Commerce responsible for such areas as trade and economic assistance;

(7) encourage and assist the creation of centers and other joint initiatives by State or local governments, regional organizations, private businesses, institutions of higher education, nonprofit organizations, or Federal laboratories to

encourage technology transfer, to stimulate innovation, and to promote an appropriate climate for investment in technology-related industries;

(8) propose and encourage cooperative research involving appropriate Federal entities, State or local governments, regional organizations, colleges or universities, nonprofit organizations, or private industry to promote the common use of resources, to improve training programs and curricula, to stimulate interest in high technology careers, and to encourage the effective dissemination of technology skills within the wider community;

(9) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(10) publish the results of studies and policy experiments.

(d) Japanese technical literature

(1) In addition to the duties specified in subsection (c) of this section, the Secretary shall establish and, through the National Technical Information Service and such other offices within the Department of Commerce as the Secretary considers appropriate, maintain a program (including an office in Japan) which shall, on a continuing basis—

(A) monitor Japanese technical activities and developments;

(B) consult with businesses, professional societies, and libraries in the United States regarding their needs for information on Japanese developments in technology and engineering;

(C) acquire and translate selected Japanese technical reports and documents that may be of value to agencies and departments of the Federal Government, and to businesses and researchers in the United States; and

(D) coordinate with other agencies and departments of the Federal Government to identify significant gaps and avoid duplication in efforts by the Federal Government to acquire, translate, index, and disseminate Japanese technical information.

Activities undertaken pursuant to subparagraph (C) of this paragraph shall only be performed on a cost-reimbursable basis. Translations referred to in such subparagraph shall be performed only to the extent that they are not otherwise available from sources within the private sector in the United States.

(2) Beginning in 1986, the Secretary shall prepare annual reports regarding important Japanese scientific discoveries and technical innovations in such areas as computers, semiconductors, biotechnology, and robotics and manufacturing. In preparing such reports, the Secretary shall consult with professional societies and businesses in the United States. The Secretary may, to the extent provided in advance by appropriation Acts, contract with private organizations to acquire and translate Japanese scientific and technical information relevant to the preparation of such reports.

(3) The Secretary also shall encourage professional societies and private businesses in the United States to increase their efforts to acquire, screen, translate, and disseminate Japanese technical literature.

(4) In addition, the Secretary shall compile, publish, and disseminate an annual directory which lists—

(A) all programs and services in the United States that collect, abstract, translate, and distribute Japanese scientific and technical information; and

(B) all translations of Japanese technical documents performed by agencies and departments of the Federal Government in the preceding 12 months that are available to the public.

(5) The Secretary shall transmit to the Congress, within 1 year after August 14, 1986, a report on the activities of the Federal Government to collect, abstract, translate, and distribute declassified Japanese scientific and technical information.

(e) Report

The Secretary shall prepare and submit to the President and Congress, within 8 years after October 21, 1980, a report on the progress, findings, and conclusions of activities conducted pursuant to this section and sections 3705, 3707, 3710, 3711, and 3712 of this title (as then in effect) and recommendations for possible modifications thereof.

(As amended Pub.L. 99-382, § 2, Aug. 14, 1986, 100 Stat. 811; Pub.L. 99-502, § 9(b)(3)-(5), (e)(2)(A), Oct. 20, 1986, 100 Stat. 1795, 1797.)

[1] So in original. Probably should be "or".

1986 Amendments. Subsec. (a). Pub.L. 99-502, § 9(b)(3), substituted "Office of Productivity, Technology, and Innovation" for "Office of Industrial Technology".

Subsec. (b). Pub.L. 99-502, § 9(b)(4), substituted "Assistant Secretary" for "Director" as the subsection catchline, and in text substituted "an Assistant Secretary for Productivity, Technology, and Innovation" for "a Director of the Office" and struck out provision which required that the Director of the Office be compensated at the rate provided for Level V of the Executive Schedule in section 5316 of Title 5.

Subsec. (c). Pub.L. 99-502, § 9(b)(5)(A), substituted "the Assistant Secretary" for "the Director" in provisions preceding par. (1).

Subsec. (c)(6). Pub.L. 99-502, § 9(b)(5)(A), substituted "the Assistant Secretary" for "the Director".

Subsec. (c)(7). Pub.L. 99-502, § 9(b)(5)(C), added par. (7). Former par. (7) redesignated (9).

Subsec. (c)(8). Pub.L. 99-502, § 9(b)(5)(C), added par. (8). Former par. (8) redesignated (10).

Subsec. (c)(9). Pub.L. 99-502, § 9(b)(5)(B), redesignated former par. (7) as (9).

Subsec. (c)(10). Pub.L. 99-502, § 9(b)(5)(B), redesignated former par. (8) as (10).

Subsec. (d). Pub.L. 99-382, § 2(2), added subsec. (d). Former subsec. (d) was redesignated (e).

Subsec. (e). Pub.L. 99-502, § 9(e)(2)(A), in subsec. (e) as so redesignated inserted "(as then in effect)" after "3712 of this title".

Subsec. (e). Pub.L. 99-382, § 2(1), redesignated subsec. (d) as (e).

Legislative History. For legislative history and purpose of Pub.L. 99-382, see 1986 U.S.Code Cong. and Adm.News, p. 1812; Pub.L. 99-502, 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3706. Cooperative Research Centers

(a) **Establishment.**—The Secretary shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

[See main volume for text of (1) to (6)]

(b) **Activities.**—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university research;

[See main volume for text of (2)-(4); (c) and (d)]

(e) **Research and development utilization.**—In the promotion of technology from research and development efforts by Centers under this section, chapter 18 of Title 35 shall apply to the extent not inconsistent with this section.

(f) **Repealed.** Pub.L. 99-502, § 9(b)(10), Oct. 20, 1986, 100 Stat. 1796.

(As amended Pub.L. 99-502, § 9(b)(6)-(10), Oct. 20, 1986, 100 Stat. 1796.)

1986 Amendment. Catchline. Pub.L. 99-502, § 9(b)(6), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Subsec. (a). Pub.L. 99-502, § 9(b)(7), substituted "Cooperative Research Centers" for "Centers for Industrial Technology" in provisions preceding par. (1).

Subsec. (b)(1). Pub.L. 99-502, § 9(b)(8), struck out "basic and applied" following "industry-university".

Subsec. (e). Pub.L. 99-502, § 9(b)(9), substituted provisions that in research and development utilization under this section chapter 18 of Title 35 shall apply to the extent not inconsistent with this section for provisions establishing conditions under which each Center for Industrial Technology or supporting agency could acquire or retain title to any invention conceived or made under the auspices of the Center, or patent on such invention, and further establishing procedures for issuing licenses to responsible applicants, with de novo review of adverse decisions by the supporting agency available in the United States Court of Claims.

Subsec. (f). Pub.L. 99-502, § 9(b)(10), struck out subsec. (f), which had provided for consultation by the supporting agency with the Attorney General and issuance by the Attorney General of an advisory opinion as to whether the proposed joint research activities of a Center for Industrial Technology would violate any of the antitrust laws.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

National Critical Materials Council, recommendations by Council regarding establishment of

Title 30, Miner Lands and Mining.

§ 3707. National Science Foundation Cooperative Research Centers

(a) Establishment and provisions.—The National Science Foundation shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof.

[See main volume for text of (b) and (c)]

(As amended Pub.L. 99-502, § 9(b)(11), (12), (e)(2)(B), Oct. 20, 1986, 100 Stat. 1796, 1797.)

1986 Amendment. Catchline. Pub.L. 99-502, § 9(b)(11), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Subsec. (a). Pub.L. 99-502, § 9(b)(12), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Pub.L. 99-502, § 9(e)(2)(B), struck out provisions that sections 3705(e) and 3705(f) of this title would apply to Centers established under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3708. Administrative arrangements

[See main volume for text of (a) to (c)]

(d) Cooperative efforts.—The Secretary and the National Science Foundation shall, on a continuing basis, provide each other the opportunity to comment on any proposed program of activity under section 3705, 3707, 3710, 3710d, or 3712 of this title before funds are committed to such program in order to mount complementary efforts and avoid duplication.

(As amended Pub.L. 99-502, § 9(e)(2)(C), Oct. 20, 1986, 100 Stat. 1797.)

1986 Amendment. Subsec. (d). Pub.L. 99-502, § 9(e)(2)(C), added references to sections 3710 and 3710d of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3709. Repealed. Pub.L. 99-502, § 9(a), Oct. 20, 1986, 100 Stat. 1795.

Section, Pub.L. 96-480, § 10, Oct. 21, 1980, 94 Stat. 2317, related to the National Industrial Technology Board.

§ 3710. Utilization of Federal technology

(a) Policy

(1) It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) Establishment of Research and Technology Applications Offices

Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications.

Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.

The agency head may waive the requirement set forth in clause (2) of the preceding sentence. If the agency head waives such requirement, the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) Functions of Research and Technology Applications Offices

It shall be the function of each Office of Research and Technology Applications—

(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry;

(4) to provide technical assistance to State and local government officials; and

(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) Dissemination of technical information

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) utilize the expertise and services of the National Science Foundation and the Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;

(4) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(3) of this section; and

(6) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(6) redesignated (5).

(e) Establishment of Federal Laboratory Consortium for Technology Transfer

(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal Laboratories and the private sector, shall—

(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments; and

(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government).

(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) of this section and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a representative appointed from each Federal agency with one or more member laboratories.

(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

(4) The Director of the National Bureau of Standards shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Bureau, as requested by the Consortium and approved by such Director.

(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

(6) Not later than one year after October 20, 1986, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made.

(7)(A) Subject to subparagraph (B), an amount equal to 0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Bureau of Standards at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Bureau to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, or 1991.

(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

(8)(A) The Consortium shall use 5 percent of the funds provided in paragraph (7)(A) to establish demonstration projects in technology transfer. To carry out such projects, the Consortium may arrange for grants or awards to, or enter into agreements with, nonprofit State, local, or private organizations or entities whose primary purposes are to facilitate cooperative research between the Federal laboratories and organizations not associated with the Federal laboratories, to transfer technology from the Federal laboratories, and to advance State and local economic activity.

(B) The demonstration projects established under subparagraph (A) shall serve as model programs. Such projects shall be designed to develop programs and mechanisms for technology transfer from the Federal laboratories which may be utilized by the States and which will enhance Federal, State, and local programs for the transfer of technology.

(C) Application for such grants, awards, or agreements shall be in such form and contain such information as the Consortium or its designee shall specify.

(D) Any person who receives or utilizes any proceeds of a grant or award made, or agreement entered into, under this paragraph shall keep such records as the Consortium or its designee shall determine are necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition of such proceeds and the total cost of the project in connection with which such proceeds were used.

(f) Agency reporting

Each Federal agency which operates or directs one or more Federal laboratories shall report annually to the Congress, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section.

(g) Functions of Secretary

(1) The Secretary, in consultation with other Federal agencies, may—

(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and

options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

(2) Two years after October 20, 1986 and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this chapter. Other Federal agencies shall cooperate in the report's preparation.

(3) Not later than one year after October 20, 1986, the Secretary shall submit to the President and the Congress a report regarding—

(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.

(Pub.L. 96-480, § 10, formerly § 11, Oct. 21, 1980, 94 Stat. 2318, renumbered § 10 and amended by Pub.L. 99-502, §§ 3-5, 9(e)(1), Oct. 20, 1986, 100 Stat. 1787, 1789, 1791, 1797.)

1986 Amendment. Subsec. (a). Pub.L. 99-502, § 4(a), designated existing provisions as par. (1), and added pars. (2) and (3).

Subsec. (b). Pub.L. 99-502, § 4(h)(1), substituted "200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions" for "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time", added "Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development programs so as to ensure that highly competent technical managers are full participants in the technology transfer process", substituted "requirement set forth in clause (2) of the preceding sentence" for " requirements set forth in (1) and/or (2) of this subsection", and substituted "such requirement" for "either requirement (1) or (2)".

Subsec. (c)(1). Pub.L. 99-502, § 4(b)(2)(A), substituted "to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications" for "to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry".

Subsec. (c)(3). Pub.L. 99-502, § 4(b)(2)(B), substituted "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer" for "the Center for the Utilization of Federal Technology", and struck out "and" following the semicolon.

Subsec. (c)(4). Pub.L. 99-502, § 4(b)(2)(C), substituted "to State and local government officials; and" for "in response to requests from State and local government officials" and struck out the period at the end thereof.

Subsec. (c)(5). Pub.L. 99-502, § 4(b)(2)(D), added par. (5).

Catchline. Pub.L. 99-502, § 4(c)(1), substituted "Dissemination of technical information" for "Center for the Utilization of Federal Technology".

Subsec. (d). Pub.L. 99-502, § 4(c)(1), in provisions preceding par. (1), substituted "The National Technical Information Service shall" for "The Center for the Utilization of Federal Technology shall" and struck out provision establishing in the Department of Commerce a Center for the Utilization of Federal Technology.

Subsec. (d)(2). Pub.L. 99-502, § 4(c)(3), redesignated former par. (3) as (2), and in par. (2) as so redesignated struck out "existing" preceding "Federal Laboratory". Former par. (2) was struck out.

Pub.L. 99-502, § 4(c)(2), struck out former par. (2), which had required the Center for the Utilization of Federal Technology to coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories.

Subsec. (d)(3). Pub.L. 99-502, § 4(c)(4), added par. (3). Former par. (3) redesignated (2).

Subsec. (d)(4). Pub.L. 99-502, § 4(c)(5), redesignated former par. (5) as (4). Former par. (4) was struck out.

Pub.L. 99-502, § 4(c)(6), in par. (4) as so redesignated substituted "subsection (c)(3)" for "subsection (c)(4)".

Pub.L. 99-502, § 4(c)(4), struck out former par. (4), which had required the Center for the Utilization of Federal Technology to receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories.

Subsec. (d)(5). Pub.L. 99-502, § 4(c)(5), redesignated former par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (d)(6). Pub.L. 99-502, § 4(c)(5), redesignated former par. (6) as (5).

Subsec. (e). Pub.L. 99-502, § 3(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub.L. 99-502, § 3(1), redesignated former subsec. (e) as (f).

Pub.L. 99-502, § 4(d)(1), in subsec. (f) as so redesignated substituted "report annually to the Congress, as part of the agency's annual budget submission, on the activities" for "prepare biennially a report summarizing the activities".

Pub.L. 99-502, § 4(d)(2), in subsec. (f) as so redesignated struck out provision which had required that the report be transmitted to the Center for the Utilization of Federal Technology by Nov. 1 of each year in which it was due.

Subsec. (g). Pub.L. 99-502, § 5, added subsec. (g).

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710a. Cooperative research and development agreements

(a) General authority

Each Federal agency may permit the director of any of its Government-operated Federal laboratories—

(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency); and

(2) to negotiate licensing agreements under section 207 of Title 35, or under other authorities for Government-owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the Government.

(b) Enumerated authority

Under agreements entered into pursuant to subsection (a)(1) of this section, a Government-operated Federal laboratory may (subject to subsection (c) of this section)—

(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

(2) grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, or options thereto, in any invention made in whole or in part by a Federal employee under the agreement, retaining a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory deems appropriate; and

(3) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party; and

(4) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

(c) Contract considerations

(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this chapter.

(3)(A) Any agency using the authority given it under subsection (a) of this section shall review employee standards of conduct for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements

with Federal agencies (including the agency with which the employee involved is or was formerly employed).

(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall—

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(5)(A) If the head of the agency or his designee desires an opportunity to disapprove or require the modification of any such agreement, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(6) Each agency shall maintain a record of all agreements entered into under this section.

(d) Definitions

As used in this section—

(1) the term "cooperative research and development agreement" means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31; and

(2) the term "laboratory" means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government.

(e) Determination of laboratory missions

For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

(f) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(Pub.L. 96-480, § 11, formerly § 12, as added and renumbered § 11 by Pub.L. 99-502, §§ 2, 9(e)(1), Oct. 20, 1986, 100 Stat. 1785, 1797.)

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710b. Rewards for scientific, engineering, and technical personnel of Federal agencies

The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

(1) inventions, innovations, or other outstanding scientific or technological contributions of value to the United States due to commercial application or due to contributions to missions of the Federal agency or the Federal government, or

(2) exemplary activities that promote the domestic transfer of science and technology development within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

(Pub.L. 96-480, § 12, formerly § 13, as added and renumbered § 12 by Pub.L. 99-502, §§ 6, 9(e)(1), Oct. 20, 1986, 100 Stat. 1792, 1797.)

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710c. Distribution of royalties received by Federal agencies

(a) In general

(1) Except as provided in paragraphs (2) and (4), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into under section 3710a of this title; and inventions of Government-operated Federal laboratories licensed under section 207 of Title 35, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:

(A)(i) The head of the agency or his designee shall pay at least 15 percent of the royalties or other income the agency receives on account of any invention to the inventor (or co-inventors) if the inventor (or each such co-inventor) was an employee of the agency at the time the invention was made. This clause shall take effect on October 20, 1986 unless the agency publishes a notice in the Federal Register within 90 days of such date indicating its election to file a Notice of Proposed Rulemaking pursuant to clause (ii).

(ii) An agency may promulgate, in accordance with section 553 of Title 5 regulations providing for an alternative program for sharing royalties with inventors who were employed by the agency at the time the invention was made and whose names appear on licensed inventions. Such regulations must—

(I) guarantee a fixed minimum payment to each such inventor, each year that the agency receives royalties from that inventor's invention;

(II) provide a percentage royalty share to each such inventor, each year that the agency receives royalties from that inventor's invention in excess of a threshold amount;

(III) provide that total payments to all such inventors shall exceed 15 percent of total agency royalties in any given fiscal year; and

(IV) provide appropriate incentives from royalties for those laboratory employees who contribute substantially to the technical development of a licensed invention between the time of the filing of the patent application and the licensing of the invention.

(iii) An agency that has published its intention to promulgate regulations under clause (ii) may elect not to pay inventors under clause (i) until the expiration of two years after October 20, 1986 or until the date of the promulgation of such regulations, whichever is earlier. If an agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to October 20, 1986. If promulgation of the regulations occurs within two years after October 20, 1986, payments shall be made in accordance with such regulations, retroactive to October 20, 1986. The agency shall retain its royalties until the inventor's portion is paid under either

clause (i) or (ii). Such royalties shall not be transferred to the agency's Government-operated laboratories under subparagraph (B) and shall not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rulemaking under this subparagraph.

(B) The balance of the royalties or other income shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other income from any invention going to the laboratory where the invention occurred; and the funds so transferred to any such laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the succeeding fiscal year—

(i) for payment of expenses incidental to the administration and licensing of inventions by that laboratory or by the agency with respect to inventions which occurred at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for invention management and licensing services;

(ii) to reward scientific, engineering, and technical employees of that laboratory;

(iii) to further scientific exchange among the Government-operated laboratories of the agency; or

(iv) for education and training of employees consistent with the research and development mission and objectives of the agency, and for other activities that increase the licensing potential for transfer of the technology of the Government-operated laboratories of the agency.

Any of such funds not so used or obligated by the end of the fiscal year succeeding the fiscal year in which they are received shall be paid into the Treasury of the United States.

(2) If, after payments to inventors under paragraph (1), the royalties received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year. Any funds not so used or obligated shall be paid into the Treasury of the United States.

(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed $100,000 per year to any one person, unless the President approves a larger award (with the excess over $100,000 being treated as a Presidential award under section 4504 of Title 5).

(4) A Federal agency receiving royalties or other income as a result of invention management services performed for another Federal agency or laboratory under section 207 of Title 35 shall retain such royalties or income to the extent required to offset the payment of royalties to inventors under clause (i) of paragraph (1)(A), costs and expenses incurred under clause (i) of paragraph (1)(B), and the cost of foreign patenting and maintenance for such invention performed at the request of the other agency or laboratory. All royalties and other income remaining after payment of the royalties, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with clauses (i) through (iv) of paragraph (1)(B).

(b) Certain assignments

If the invention involved was one assigned to the Federal agency—

(1) by a contractor, grantee, or participant in a cooperative agreement with the agency, or

(2) by an employee of the agency who was not working in the laboratory at the time the inventon [1] was made,

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

(c) Reports

(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.

(2) The Comptroller General, five years after October 20, 1986, shall review the effectiveness of the various royalty-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, his findings, conclusions, and recommendations for improvements in such programs.

(Pub.L. 96-480, § 13, formerly § 14, as added, renumbered § 18 and amended by Pub.L. 99-502, §§ 7, 9(e)(1), (3), Oct. 20, 1986, 100 Stat. 1792, 1797.)

[1] So in original. Probably should be "invention".

Codification. Amendment to subsec. (a)(1) by section 9(e)(3) of Pub.L. 99-502, directing that "section 11" be substituted for "section 12" in provisions preceding subpar. (A), was not executed in view of renumbering of section 12 of Pub.L. 96-480 as section 11 by section 9(e)(1) of Pub.L. 99-502. Since both references translate as "section 3710a of this title" amendment by section 9(e)(3) of Pub.L. 99-502 resulted in no change in text.

1986 Amendment. Subsec. (a)(1). Pub.L. 99-502, § 9(e)(3), in provisions preceding subpar. (A) substituted reference to section 11 of Pub.L. 96-480 for reference to section 12 of Pub.L. 96-480. See Codification note set out under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710d. Employee activities

(a) In general

If a Federal agency which has the right of ownership to an invention under this chapter does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency shall allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

(b) Definition

For purposes of this section, Federal employees include "special Government employees" as defined in section 202 of Title 18.

(c) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(Pub.L. 96-480, § 14, formerly § 15, as added and renumbered § 14 by Pub.L. 99-502, §§ 8, 9(e)(1), Oct. 20, 1986, 100 Stat. 1794, 1797.)

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3711. National Technology Medal

[See main volume for text of section]

(Pub.L. 96-480, § 15, formerly § 12, Oct. 21, 1980, 94 Stat. 2319, renumbered § 16 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 15 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3712. Personnel exchanges

[See main volume for text of section]

(Pub.L. 96-480, § 16, formerly § 13, Oct. 21, 1980, 94 Stat. 2320, renumbered § 17 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 16 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3713. Authorization of appropriations

[See main volume for text of section]

(Pub.L. 96-480, § 17, formerly § 14, Oct. 21, 1980, 94 Stat. 2320, renumbered § 18 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 17 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to the provisions of this chapter (other than sections 3710a, 3710b and 3710c of this title) except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub.L. 96-480, § 18, formerly § 15, Oct. 21, 1980, 94 Stat. 2320, renumbered § 19 and amended by Pub.L. 99-502, §§ 2, 9(b)(13), Oct. 20, 1986, 100 Stat. 1785, 1796, renumbered § 18 and amended by Pub.L. 99-502, §§ 9(e)(1), (4), Oct. 20, 1986, 100 Stat. 1797.)

Codification. Amendment by section 9(e)(4) of Pub.L. 99-502, directing that "sections 11, 12, and 13" be substituted for "sections 12, 13, and 14" was not executed in view of renumbering of sections 12, 13, and 14 of Pub.L. 96-480 as sections 11, 12 and 13, respectively, of Pub.L. 96-480 by section 9(e)(1) of Pub.L. 99-502. Since both references translate as "sections 3710a, 3710b, and 3710c of this title", amendment by section 9(e)(4) of Pub.L. 99-502 resulted in no change in text.

1986 Amendment. Pub.L. 99-502, § 9(b)(13), added exception relating to sections 3710a, 3710b and 3710c of this title.

Pub.L. 99-502, § 9(e)(4), substituted references to sections 11, 12 and 13 of Pub.L. 96-480 for references to sections 12, 13 and 14 of Pub.L. 96-480. See Codification note set out under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Library References

War and National Emergency ⇐36, 40.
C.J.S. War and National Defense §§ 44, 48.

§ 3803. Duties of Secretary of Energy

[See main volume for text of (a) and (b)]

(c) Assurance respecting scope of program activities

In assuring the effective management of this program, the Secretary shall have specific responsibility to ascertain that the program includes activities to—

[See main volume for text of (1) to (7)]

(8) ascertain any changes in fuel supply patterns, tax policies, and standards governing the manufacture of vehicles which are needed to facilitate the manufacture and use of methane-fueled vehicles.

[See main volume for text of (d)]

(As amended Pub.L. 97-375, Title I, § 106(c), Dec. 21, 1982, 96 Stat. 1820.)

1982 Amendment. Subsec. (c)(8). Pub.L. 97-375 struck out "and report to the Congress on" after "ascertain".

Legislative History. For legislative history and purpose of Pub.L. 97-375, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

Code of Federal Regulations

Review and certification of agreements, see 10 CFR 478.1.

CHAPTER 65—LIABILITY RISK RETENTION

Sec.
3902. Risk retention groups.
(a) to (c) [See main volume for text].
(d) Documents for submission to State insurance commissioners.
(e) Power of courts to enjoin conduct.
(f) State powers to enforce State laws.
(g) States' authority to sue.
(h) State authority to regulate or prohibit ownership interests in risk retention groups.
3903. Purchasing groups.
(a) to (c) [See main volume for text].
(d) Notice to State insurance commissioners of intent to do business.
(e) Designation of agent for service of documents and process.
(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws.
(g) State powers to enforce State laws.
(h) States' authority to sue.
3905. Clarification concerning permissible State authority.
(a) State motor vehicle no-fault and motor vehicle financial responsibility laws.
(b) Applicability of exemptions.
(c) Prohibited insurance policy coverage.
(d) State authority to specify acceptable means of establishing financial responsibility.
3906. Injunctive orders issued by United States district courts.

Library References

Insurance ⇐31.1.
C.J.S. Insurance § 91 et seq.

§ 3901. Definitions

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of

JAN 12 1982

MEMORANDUM FOR: HONORABLE MALCOLM BALDRIDGE
SECRETARY OF COMMERCE

FROM: DAVID A. STOCKMAN D. A. S.
DIRECTOR

SUBJECT: Assignment of Lead Agency for Implementation of P.L. 96-517

As you may know, we will soon issue a new OMB Circular which provides uniform implementing guidance for the Government patent policy section of Public Law 96-517, "The Patent and Trademark Amendments of 1980." This Act gives nonprofit organizations and small businesses a first right of refusal to title in inventions they have made in performance of Government grants and contracts. The Act takes precedent over approximately 26 conflicting statutory and administrative policies.

Since the Act is a fundamental change in the more traditional policy of Government ownership to inventions made with its support, we believe it is essential that a lead agency be designated to review agency implementing regulations; disseminate and collect information; monitor administrative or compliance measures; evaluate the Act's implementation; and recommend appropriate changes to OMB/OFPP. (A more detailed list of proposed lead agency functions and staffing is provided in Attachment A.)

The Department of Commerce seems the natural choice for assignment of this new lead agency function due to its prior experience and wide ranging interest in technology transfer, productivity, innovation and Government patent policy. In order to take full advantage of Commerce's experience and to support the expansion of the concept of P.L. 96-517 to all recipients of Federal research and development funding, the proposed functions include authority to collect information and recommend policy and regulatory changes that affect recipients beyond those covered by the Act.

recipients beyond those covered by the Act.

I hope you will accept the responsibility for the lead agency which we believe will be challenging and rewarding. I would appreciate your designating an official to work with my staff in developing the details necessary to assure smooth implementation of the Circular and the lead agency.

I have designated Don Sowle, the Administrator of the Office of Federal Procurement Policy as my staff focal point, who has responsibilitiy for issuing patent policy regulations implementing P.L. 96-517.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 10, 1982

CIRCULAR No. A-124

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Patents - Small Business Firms and Nonprofit Organizations

1. Purpose. This Circular provides policies, procedures, and guidelines with respect to inventions made by small business firms and nonprofit organizations, including universities, under funding agreements with Federal agencies where a purpose is to perform experimental, developmental, or research work.

2. Rescissions. This Circular supersedes OMB Bulletin 81-22 effective March 1, 1982.

3. Authority. This Circular is issued pursuant to the authority contained in 35 U.S.C. §206 (§6 of P.L. 96-517, "The Patent and Trademark Amendments of 1980").

4. Background. After many years of public debate on means to enhance the utilization of the results of Government funded research, Public Law 96-517 was enacted. This Act gives nonprofit organizations and small businesses, with limited exceptions, a first right of refusal to title in inventions they have made in performance of Government grants and contracts. The Act takes precedence over approximately 26 conflicting statutory and administrative policies.

Under the Act, the Office of Federal Procurement Policy (OFPP) is responsible for the issuance of the regulations implementing 35 U.S.C. §202-204 after consultation with the Office of Science and Technology Policy (OSTP). On July 2, 1981, OMB Bulletin 81-22 was issued to provide interim regulations while agency and public comments were sought. Based on a review of these comments, this Circular is issued to establish permanent implementing regulations and a standard patent rights clause.

5. Policy and Scope. This Circular takes effect on March 1, 1982, and will be applicable to all funding agreements with small business firms and domestic nonprofit organizations executed on or after that date. This includes

a review of these comments, this Circular is issued to establish permanent implementing regulations and a standard patent rights clause.

5. Policy and Scope. This Circular takes effect on March 1, 1982, and will be applicable to all funding agreements with small business firms and domestic nonprofit organizations executed on or after that date. This includes

subcontracts at any tier made after March 1, 1982, with small business firms and nonprofit organizations even if the prime funding agreement was made prior to March 1, 1982. Unless prohibited by law, agencies are encouraged to treat subject inventions made under funding agreements made prior to July 1, 1981, in substantially the same manner as contemplated by P.L. 96-517 and this Circular for inventions made under funding agreements entered into subsequent to July 1, 1981. This can be accomplished through the granting of waivers of title on terms and conditions substantially similar to those set forth in the standard clause of Attachment A.

Agencies should be alert to determining whether amendments made after March 1, 1982, to funding agreements entered into prior to July 1, 1981, result in new funding agreements subject to this Circular and the Act. Renewals and continuations after March 1, 1982, of funding agreements entered into prior to July 1, 1981, should be normally treated as new funding agreements.

This Circular is intended to establish uniform and coordinated implementation of 35 U.S.C. §200-206 so as to foster the policy and objectives set forth in 35 U.S.C. §200.

6. Definitions. As used in this Circular --

a. The term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement, as herein defined.

b. The term "contractor" means any person, small business firm or nonprofit organization that is a party to a funding agreement.

c. The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

d. The term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.

e. The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such

a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.

e. The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such

conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

f. The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

g. The term "small business firm" means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. §632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Circular, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 121.3-12, respectively, will be used.

h. The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. §501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. §501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

7. Use of the Patent Rights (Small Business Firm or Nonprofit Organization) (March 1982) Clause.

a. Each funding agreement awarded to a small business firm or domestic nonprofit organization which has as a purpose the performance of experimental, developmental or research work shall contain the "Patent Rights (Small Business Firm or Nonprofit Organization) (March 1982)" clause set forth in Attachment A with such modifications and tailoring as may be authorized in Part 8, except that the funding agreement may contain alternative provisions--

(1) when the funding agreement is for the operation of a Government-owned research or production facility; or

(2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 38 of Title 35 of the United States Code; or

determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 38 of Title 35 of the United States Code; or

(3) when it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities.

b. (1) Any determination under Part 7.a.(2) of this Circular will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will contain such information as the funding Federal agency deems relevant and, at minimum, will (i) identify the small business firm or nonprofit organization involved, (ii) describe the extent to which agency action restricted or eliminated the right to retain title to a subject invention, (iii) state the facts and rationale supporting the agency action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the agency action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts will be sent to the Comptroller General of the United States within 30 days after the award of the applicable funding agreement. In cases of determinations application to small business firms, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(2) To assist the Comptroller General to accomplish his or her responsibilities under 35 U.S.C. §202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms during the applicable reporting period shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime funding agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause of Attachment A during each period of October 1 through September 30, beginning October 1, 1982.

c. (1) Agencies are advised that Part 7.a. applies to subcontracts at any tier under prime funding agreements with contractors that are other than small business firms or nonprofit organizations. Accordingly, agencies should take appropriate action to ensure that this requirement is reflected in the patent clauses of such prime funding agreements awarded after March 1, 1982.

(2) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with either this Circular or OMB Bulletin 81-22 (if it was applicable at the time the funding

appropriate action to ensure that this requirement is reflected in the patent clauses of such prime funding agreements awarded after March 1, 1982.

(2) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with either this Circular or OMB Bulletin 81-22 (if it was applicable at the time the funding

agreement was awarded), the agency shall take appropriate action to ensure that small business firms or domestic nonprofit organization subcontractors under such prime funding agreements that received their subcontracts after July 1, 1981, will receive rights in their subject inventions that are consistent with P.L. 96-517 and this Circular. Appropriate actions might include (i) amendment of prime contracts and/or subcontracts; (ii) requiring the inclusion of the clause of Attachment A as a condition of agency approval of a subcontract; or (iii) the granting of title to the subcontractor to identified subject inventions on terms substantially the same as contained in the clause of Attachment A in the event the subcontract contains a "deferred determination" or "acquisition by the Government" type of patent rights clause.

d. To qualify for the clause of Attachment A, a prospective contractor may be required by an agency to certify that it is either a small business firm or a domestic nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm or domestic nonprofit organization, it may file a protest in accordance with 13 C.F.R. 121.3-5 if small business firm status is questioned or require the prospective contractor to furnish evidence to establish its status as a domestic nonprofit organization.

8. Instructions for Modification and Tailoring of the Clause of Attachment A.

a. Agencies should complete the blank in paragraph g.(2) of the clause of Attachment A in accordance with their own or applicable Government-wide regulations such as the FPR or DAR. The flow-down provisions of the clause cited by the agency should, of course, reflect the requirement of Part 7.c.(1).

b. Agencies should complete paragraph 1. "Communications" at the end of the clause of Attachment A by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph 1.

c. Agencies may replace the italicized or underlined words and phrases with those appropriate to the particular funding agreement. For example "contract" could be replaced by "grant", "contractor" by "grantee", and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within that agency.

by "grant", "contractor" by "grantee", and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within that agency.

d. When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing treaty or agreement, a sentence may be added at the end of paragraph b. of the clause of Attachment A as follows:

> "This license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: _____; or pursuant to any future treaties or agreements with foreign governments or international organizations."

The blank in the above should be completed with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award which are not listed. The above language may be modified by agencies by deleting the reference to future treaties or agreements or by otherwise more narrowly defining classes of future treaties or agreements. The language may also be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the language above to provide for the direct licensing by the contractor of the foreign government or international organization.

e. To the extent not required by other provisions of the funding agreement, agencies may add additional subparagraphs to paragraph (f) of the patent rights clause of Attachment A to require the contractor to do one or more of the following:

(1) Provide periodic (but no more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report;

(2) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none;

(3) Provide notification of all subcontracts for experimental, developmental, or research work; and

(2) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none;

(3) Provide notification of all subcontracts for experimental, developmental, or research work; and

(4) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

Part 9. Publication or Release of Invention Disclosures

a. 35 U.S.C. §205 provides as follows:

> "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."

b. To the extent authorized by 35 U.S.C. §205, agencies shall not disclose to third parties pursuant to requests under the Freedom of Information Act (FOIA) any information disclosing a subject invention for a reasonable time in order for a patent application to be filed. With respect to subject inventions of contractors that are small business firms or nonprofit organizations, a reasonable time shall be the time during which an initial patent application may be filed under paragraph c. of the clause of Attachment A or such other clause that may be used in the funding agreement. However, an agency may disclose such subject inventions under the FOIA, at its discretion, after a contractor has elected not to retain title or after the time in which the contractor is required to make an election if the contractor has not made an election within that time. Similarly, an agency may honor an FOIA request at its discretion if it finds that the same information has previously been published by the inventor, contractor, or otherwise. If the agency plans to file itself when the contractor has not elected title, it may, of course, continue to avail itself of the authority of 35 U.S.C. §205.

c. As authorized by 35 U.S.C. §205, Federal agencies shall not release copies of any document which is part of an application for patent filed on a subject invention to which a small business firm or nonprofit organization elected to retain title.

d. A number of agencies have policies to encourage public dissemination of the results of work supported by the

shall not release copies of any document which is part of an application for patent filed on a subject invention to which a small business firm or nonprofit organization elected to retain title.

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agency through publication in Government or other publications of technical reports of contractors or others. In recognition of the fact that such publication, if it included descriptions of a subject invention, could create bars to obtaining patent protection, it is the policy of the executive branch that agencies will not include in such publication programs, copies of disclosures of inventions submitted by small business firms or nonprofit organizations, pursuant to paragraph c. of the clause of Attachment A, except that under the same circumstances under which agencies are authorized to release such information pursuant to FOIA requests under Part 9.b. above, agencies may publish such disclosures.

e. Nothing in this Part is intended to preclude agencies from including in the publication activities described in the first sentence of Part 9.d., the publication of materials describing a subject invention to the extent such materials were provided as part of a technical report or other submission of the contractor which were submitted independently of the requirements of the patent rights provisions of the contract. However, if a small business firm or nonprofit organization notifies the agency that a particular report or other submission contains a disclosure of a subject invention to which it has elected or may elect title, the agency will use reasonable efforts to restrict its publication of the material for six months from date of its receipt of the report or submission or, if earlier, until the contractor has filed an initial patent application. Agencies, of course, retain the discretion to delay publication for additional periods of time.

f. Nothing in this Part 9 is intended to limit the authority of agencies provided in 35 U.S.C. §205 in circumstances not specifically described in this Part 9.

10. Reporting on Utilization of Subject Inventions.

a. Paragraph h. of the clause of Attachment A provides that agencies have the right to receive periodic reports from the contractor on utilization of inventions. In accordance with such instructions as may be issued by the Department of Commerce, agencies shall obtain such information from their contractors. Pending such instructions, agencies should not impose reporting requirements. The Department of Commerce and the agencies, in conjunction with representatives of small business and nonprofit organizations, shall work together to establish a uniform periodic reporting system.

b. To the extent any such data or information supplied by the contractor is considered by the contractor, or its licensee or assignee, to be privileged and confidential and is so marked, agencies shall not, to the extent permitted by

business and nonprofit organizations, shall work together to establish a uniform periodic reporting system.

b. To the extent any such data or information supplied by the contractor is considered by the contractor, or its licensee or assignee, to be privileged and confidential and is so marked, agencies shall not, to the extent permitted by

35 U.S.C. §202(c)(5), disclose such information to persons outside the Government.

11. Retention of Rights by Inventor. Agencies which allow an inventor to retain rights to a subject invention made under a funding agreement with a small business firm or nonprofit organization contractor, as authorized by 35 U.S.C. §202(d), will impose upon the inventor at least those conditions that would apply to a small business firm contractor under paragraphs d.(ii) and (iii); f.(4); h.; i.; and j. of the clause of Attachment A.

12. Government Assignment to Contractor of Rights in Invention of Government Employee. In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a small business firm or nonprofit organization and the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the same conditions as would apply to the contractor under the clause of Attachment A.

13. Exercise of March-in Rights.

a. The following procedures shall govern the exercise of the march-in rights of the agencies set forth in 35 U.S.C. §203 and the clause at Attachment A.

b. Whenever an agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding in accordance with the procedures of Part 13.c.-h. below, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days, the agency may, at its discretion, proceed with the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

c. A march-in proceeding shall be initiated by the issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the

issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the

contractor (assignee or exclusive licensee) of its rights, as set forth in this Circular and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of the agency or designee, except as provided in part 13.j. below.

d. Within 30 days after receipt of the written notice of march-in, the contractor (assignee or exclusive licensee) may submit, in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

e. Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees.

f. The official conducting the fact-finding shall prepare written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding. A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail.

g. In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and argument submitted by the contractor (assignee or exclusive licensee), and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. §200-206 and this Circular shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found that are clearly erroneous. Written notice of the determination whether march-in rights will be exercised shall be made by the

or exclusive licensee), and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. §200-206 and this Circular shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found that are clearly erroneous. Written notice of the determination whether march-in rights will be exercised shall be made by the