for the disposition or transfer of property, personnel, records, and funds of the Government Patents Board.

SEC. 4. Except to the extent that they may be inconsistent with this order, all determinations, regulations, rules, rulings, orders, and other actions made or issued by the Government Patents Board, or by any Government agency with respect to any function transferred by this order, shall continue in full force and effect until amended, modified, or revoked by appropriate authority.

SEC. 5. Subsections (a) and (c) of section 3 of Executive Order No. 10096 are hereby revoked, and all other provisions of that order are hereby amended to the extent that they are inconsistent with the provisions of this order.

JOHN F. KENNEDY.

§ 208. Regulations governing Federal licensing

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

(Added Pub. L. 96–517, § 6(a), Dec. 12, 1980, 94 Stat. 3024; amended Pub. L. 98–620, title V, § 501(12), Nov. 8, 1984, 98 Stat. 3367.)

AMENDMENTS

1984—Pub. L. 98–620 substituted ''Secretary of Commerce'' for ''Administrator of General Services''.

§ 209. Licensing federally owned inventions

(a) AUTHORITY.—A Federal agency may grant an exclusive or partially exclusive license on a federally owned invention under section 207(a)(2) only if—

(1) granting the license is a reasonable and necessary incentive to—

(A) call forth the investment capital and expenditures needed to bring the invention to practical application; or

(B) otherwise promote the invention's utilization by the public;

(2) the Federal agency finds that the public will be served by the granting of the license, as indicated by the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public, and that the proposed scope of exclusivity is not greater than reasonably necessary to provide the incentive for bringing the invention to practical application, as proposed by the applicant, or otherwise to promote the invention's utilization by the public;

(3) the applicant makes a commitment to achieve practical application of the invention within a reasonable time, which time may be extended by the agency upon the applicant's request and the applicant's demonstration that the refusal of such extension would be unreasonable;

(4) granting the license will not tend to substantially lessen competition or create or maintain a violation of the Federal antitrust laws; and

(5) in the case of an invention covered by a foreign patent application or patent, the interests of the Federal Government or United States industry in foreign commerce will be enhanced.

(b) MANUFACTURE IN UNITED STATES.—A Federal agency shall normally grant a license under section 207(a)(2) to use or sell any federally owned invention in the United States only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c) SMALL BUSINESS.—First preference for the granting of any exclusive or partially exclusive licenses under section 207(a)(2) shall be given to small business firms having equal or greater likelihood as other applicants to bring the invention to practical application within a reasonable time.

(d) TERMS AND CONDITIONS.—Any licenses granted under section 207(a)(2) shall contain such terms and conditions as the granting agency considers appropriate, and shall include provisions—

(1) retaining a nontransferrable, irrevocable, paid-up license for any Federal agency to practice the invention or have the invention practiced throughout the world by or on behalf of the Government of the United States;

(2) requiring periodic reporting on utilization of the invention, and utilization efforts, by the licensee, but only to the extent necessary to enable the Federal agency to determine whether the terms of the license are being complied with, except that any such report shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5; and

(3) empowering the Federal agency to terminate the license in whole or in part if the agency determines that—

(A) the licensee is not executing its commitment to achieve practical application of the invention, including commitments contained in any plan submitted in support of its request for a license, and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken, or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(B) the licensee is in breach of an agreement described in subsection (b);

(C) termination is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license, and such requirements are not reasonably satisfied by the licensee; or

(D) the licensee has been found by a court of competent jurisdiction to have violated the Federal antitrust laws in connection with its performance under the license agreement.

(e) PUBLIC NOTICE.—No exclusive or partially exclusive license may be granted under section 207(a)(2) unless public notice of the intention to grant an exclusive or partially exclusive license on a federally owned invention has been provided in an appropriate manner at least 15 days before the license is granted, and the Federal

agency has considered all comments received before the end of the comment period in response to that public notice. This subsection shall not apply to the licensing of inventions made under a cooperative research and development agreement entered into under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

(f) PLAN.—No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for development or marketing of the invention, except that any such plan shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5.

(Added Pub. L. 96–517, §6(a), Dec. 12, 1980, 94 Stat. 3024; amended Pub. L. 106–404, §4(a), Nov. 1, 2000, 114 Stat. 1743; Pub. L. 107–273, div. C, title III, §13206(a)(15), Nov. 2, 2002, 116 Stat. 1905.)

AMENDMENTS

2002—Subsecs. (d)(2), (f). Pub. L. 107–273 struck out ''of the United States Code'' after ''title 5''.

2000—Pub. L. 106–404 amended section catchline and text generally, restructuring and revising provisions setting forth criteria, terms, and conditions relating to granting of licenses on federally owned inventions.

§210. Precedence of chapter

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

(1) section 10(a) of the Act of June 29, 1935, as added by title I of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);

(4) section 30168(e) of title 49;

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a);[1] 82 Stat. 360);

(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

(8) section 6 of the Coal Research and Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

(11) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908; 88 Stat. 1878);

(12) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

(13) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);[1]

(14) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

(15) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

(16) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

(17) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);[1]

(18) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

(19) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

(20) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178j; 92 Stat. 2533); and

(21) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

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

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

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

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

(e) The provisions of the Stevenson-Wydler Technology Innovation Act of 1980 shall take precedence over the provisions of this chapter to the extent that they permit or require a disposition of rights in subject inventions which is inconsistent with this chapter.

(Added Pub. L. 96–517, §6(a), Dec. 12, 1980, 94 Stat. 3026; amended Pub. L. 98–620, title V, §501(13), Nov. 8, 1984, 98 Stat. 3367; Pub. L. 99–502, §9(c), Oct. 20, 1986, 100 Stat. 1796; Pub. L. 103–272,

[1] See References in Text note below.