

**TITLE 15 > CHAPTER 63 > § 3710a**

**§ 3710a. Cooperative research and development agreements**

**(a) General authority**

Each Federal agency may permit the director of any of its Government-operated Federal laboratories, and, to the extent provided in an agency-approved joint work statement or, if permitted by the agency, in an agency-approved annual strategic plan, the director of any of its Government-owned, contractor-operated 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 (in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for inventions made or other intellectual property developed at the laboratory and other inventions or other intellectual property that may be voluntarily assigned to the Government.

**(b) Enumerated authority**

**(1)** Under an agreement entered into pursuant to subsection (a)(1) of this section, the laboratory may 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 laboratory employee under the agreement, or, subject to section 209 of title 35, may grant a license to an invention which is federally owned, for which a patent application was filed before the signing of the agreement, and directly within the scope of the work under the agreement, for reasonable compensation when appropriate. The laboratory shall ensure, through such agreement, that the collaborating party has the option to choose an exclusive license for a pre-negotiated field of use for any such invention under the agreement or, if there is more than one collaborating party, that the collaborating parties are offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party. In consideration for the Government's contribution under the agreement, grants under this paragraph shall be subject to the following explicit conditions:

**(A)** A nonexclusive, nontransferable, irrevocable, paid-up license from the collaborating party to the laboratory to practice the invention or have the invention practiced throughout the world by or on behalf of the Government. In the exercise of such license, the Government shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of section 552 (b)(4) of title 5 or which would be considered as such if it had been obtained from a non-Federal party.

**(B)** If a laboratory assigns title or grants an exclusive license to such an invention, the Government shall retain the right—

**(i)** to require the collaborating party to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the invention in the applicant's licensed field of

use, on terms that are reasonable under the circumstances; or

**(ii)** if the collaborating party fails to grant such a license, to grant the license itself.

**(C)** The Government may exercise its right retained under subparagraph (B) only in exceptional circumstances and only if the Government determines that—

**(i)** the action is necessary to meet health or safety needs that are not reasonably satisfied by the collaborating party;

**(ii)** the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the collaborating party; or

**(iii)** the collaborating party has failed to comply with an agreement containing provisions described in subsection (c)(4)(B) of this section.

This determination is subject to administrative appeal and judicial review under section 203 (2) <sup>[1]</sup> of title 35.

**(2)** Under agreements entered into pursuant to subsection (a)(1) of this section, the laboratory shall ensure that a collaborating party may retain title to any invention made solely by its employee in exchange for normally granting the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

**(3)** Under an agreement entered into pursuant to subsection (a)(1) of this section, a laboratory may—

**(A)** accept, retain, and use funds, personnel, services, and property from a collaborating party and provide personnel, services, and property to a collaborating party;

**(B)** use funds received from a collaborating party in accordance with subparagraph (A) to hire personnel to carry out the agreement who will not be subject to full-time-equivalent restrictions of the agency;

**(C)** to the extent consistent with any applicable agency requirements or standards of conduct, permit an employee or former employee of the laboratory to participate in an effort to commercialize an invention made by the employee or former employee while in the employment or service of the Government; and

**(D)** 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.

**(4)** A collaborating party in an exclusive license in any invention made under an agreement entered into pursuant to subsection (a)(1) of this section shall have the right of enforcement under chapter 29 of title 35.

**(5)** A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement pursuant to subsection (a)(1) of this section may use or obligate royalties or other income accruing to the laboratory under such agreement with respect to any invention only—

**(A)** for payments to inventors;

**(B)** for purposes described in clauses (i), (ii), (iii), and (iv) of section 3710c (a)(1)(B) of this title; and

**(C)** for scientific research and development consistent with the research and development missions and objectives of the laboratory.

**(6)**

**(A)** In the case of a laboratory that is part of the National Nuclear Security Administration, a designated official of that Administration may waive any license retained by the Government under paragraph (1)(A), (2), or (3)(D), in whole or in part and according to negotiated terms and conditions, if the designated official finds that the retention of the license by the Government would substantially inhibit the commercialization of an invention that would otherwise serve an important national security mission.

**(B)** The authority to grant a waiver under subparagraph (A) shall expire on the date that is five years after October 30, 2000. The expiration under the preceding sentence of authority to grant a waiver under subparagraph (A) shall not affect any waiver granted under that subparagraph before the expiration of such authority.

**(C)** Not later than February 15 of each year, the Administrator for Nuclear Security shall submit to Congress a report on any waivers granted under this paragraph during the preceding year.

**(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 standards of conduct for its employees 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 presented by the director of a Government-operated laboratory, 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 by the director of a Government-operated laboratory 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.

**(C)**

**(i)** Any non-Federal entity that operates a laboratory pursuant to a contract with a Federal agency shall submit to the agency any cooperative research and development agreement that the entity proposes to enter into and the joint work statement if required with respect to that agreement.

**(ii)** A Federal agency that receives a proposed agreement and joint work statement under clause (i) shall review and approve, request specific modifications to, or disapprove the proposed agreement and joint work statement within 30 days after such submission. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the agreement and approval of a joint work statement under this clause.

**(iii)** In any case in which an agency which has contracted with an entity referred to in clause (i) disapproves or requests the modification of a cooperative research and development agreement or joint work statement submitted under that clause, the agency shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

**(iv)** Any agency that has contracted with a non-Federal entity to operate a laboratory may develop and provide to such laboratory one or more model cooperative research and development agreements for purposes of standardizing practices and procedures, resolving common legal issues, and enabling review of cooperative research and development agreements to be carried out in a routine and prompt manner.

**(v)** A Federal agency may waive the requirements of clause (i) or (ii) under such circumstances as the agency considers appropriate.

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

**(7)**

**(A)** No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552 (b)(4) of title 5, which is obtained in the conduct of research

or as a result of activities under this chapter from a non-Federal party participating in a cooperative research and development agreement shall be disclosed.

**(B)** The director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of information that results from research and development activities conducted under this chapter and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

#### **(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, intellectual property, 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, intellectual property, 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;

**(2)** the term “laboratory” means—

**(A)** 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;

**(B)** a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a substantial purpose of the contract is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and

**(C)** a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government,

but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

**(3)** the term “joint work statement” means a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement; and

**(4)** the term “weapon production facility of the Department of Energy” means a facility under the control or jurisdiction of the Secretary of Energy that is operated for national security

purposes and is engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

**(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.

**(g) Principles**

In implementing this section, each agency which has contracted with a non-Federal entity to operate a laboratory shall be guided by the following principles:

- (1)** The implementation shall advance program missions at the laboratory, including any national security mission.
- (2)** Classified information and unclassified sensitive information protected by law, regulation, or Executive order shall be appropriately safeguarded.