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propulsion preparatory to the submission of a research and development proposal to DOE; or

(iii) Is furnishing to a permittee having access under paragraph (b)(4) (i) or (ii) of this section substantial scientific, engineering or other professional services to be used by that permittee in a study or research and development program for which said permittee received access.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987]

PERMITS

§ 725.21 Issuance.

(a) Upon a determination that an application meets the requirements of this regulation, the Chief Health, Safety and Security Officer will issue to the applicant an access permit on Form DOE 379.

(b) An Access Permit is not an access authorization. It does not authorize any individual not having an appropriate DOE access authorization to receive Restricted Data. See § 725.24 and part 1016 of this title.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.22 Scope of permit.

(a) All access permits will as a minimum authorize access, subject to the terms and conditions of the access permit to confidential restricted data in all of the categories set forth in appendix A to this part, except C-91 and C-24.

(b) In addition, access permits may authorize access, subject to the terms and conditions of the access permit to such Secret Restricted Data as is included within the particular category or categories specified in the permit.

(c) In addition, access permits may authorize access, subject to the terms and conditions of the access permit, to such government confidential commercial information as is included within the particular category or categories specified in the permit.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987]

§ 725.23 Terms and conditions of access.

(a) Neither the United States, nor DOE, nor any person acting on behalf of DOE makes any warranty or other representation, expressed or implied, (1) with respect to the accuracy, completeness or usefulness of any information made available pursuant to an access permit, or (2) that the use of any such information may not infringe privately owned rights.

(b) The Chief Health, Safety and Security Officer, on behalf of DOE, hereby waives such rights with respect to any invention or discovery as it may have pursuant to section 152 of the Act by reason of such invention or discovery having been made or conceived in the course of, in connection with, or resulting from access to Restricted Data received under the terms of an access permit. (Note provisions of § 725.23(d).)

(c) Each permittee shall:

(1) Comply with all applicable provisions of the Atomic Energy Act of 1954, as amended, and with parts 810 and 1016 of this title and with all other applicable rules, regulations, and orders of DOE, including such rules, regulations, and orders as DOE may adopt or issue to effectuate the policies specified in the act directing DOE to strengthen free competition in private enterprise and avoid the creation or maintenance of a situation inconsistent with the antitrust laws.

(2) Be deemed to have waived all claims for damages under section 183 of title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or as a result of access to Restricted Data received under the terms of the access permit;

(3) Be deemed to have waived any and all claims against the United States, DOE and all persons acting on behalf of DOE that might arise in connection with the use, by the applicant, of any and all information supplied by them pursuant to the access permit;

(4) Obtain and preserve in his files written agreements from all individuals who will have access to Restricted Data under his access permit. The agreement shall be as follows:

In consideration for receiving access to Restricted Data under the access permit issued by the Chief Health, Safety and Security Officer, I hereby agree to:

(a) Waive all claims for damages under section 183 of title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application, and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or resulting from access to Restricted Data received under the terms of the access permit issued to (insert the name of the holder of the access permit);

(b) Waive any and all claims against the United States, DOE, and all persons acting on behalf of DOE that might arise in connection with the use, by me, of any and all information supplied by them pursuant to the access permit issued to (insert the name of the holder of the access permit).

In case of an access permit authorizing access to restricted data in category C–24, isotope separation, the agreement shall also provide for such requirements as the permittee considers necessary for purposes of fulfilling its obligations under paragraph (d) of this section.

(5) Pay all established charges for personnel access authorizations, DOE consulting services, publication and reproduction of documents, and such other services as DOE may furnish in connection with the access permit.

(d) The following terms and conditions are applicable to an access permit authorizing access to restricted data in category C–24, isotope separation irrespective of whether access to DOE's restricted data information is desired:

(1) The permittee agrees to grant a nonexclusive license at reasonable royalties to the United States and, at the request of DOE, to domestic and foreign persons, to use in the production or enrichment of special nuclear material any U.S. patent or any U.S. patent application (otherwise in condition for allowance except for a secrecy order thereon) on any invention or discovery made or conceived by the permittee, its employees, or others engaged by the

permittee in the course of the permittee's work under the access permit, or as a result of access to data or information made available by DOE.

(2) The permittee agrees to grant to the United States, and, at the request of DOE, to domestic and foreign persons, the right at reasonable royalties to use for research, development, or manufacturing programs the production or enrichment of special nuclear material, any technical information or data, including economic evaluations thereof, of a proprietary nature developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of access to data or information made available by DOE and not covered by a U.S. patent or U.S. patent application referred to in paragraph (d)(1) of this section. If DOE disseminates any such proprietary technical information or data in its possession to any of its contractors for use in any DOE research, development, production, or manufacturing programs, it will do so under contractual provisions pursuant to which the contractor would undertake to use this information only for the work under the pertinent DOE contract. Notwithstanding the foregoing provisions of this subparagraph, the permittee waives any claim against DOE for compensation or otherwise, in connection with any use or dissemination of information or data not specifically identified and claimed by the permittee as proprietary in a written notice to DOE at the time of the furnishing of the information or data to DOE. As used in this subparagraph, the term "technical information or data, including economic evaluations thereof, of a proprietary nature" means information or data which:

(i) Is not the property of the Government by virtue of any agreement;

(ii) Concerns the details of trade secrets or manufacturing processes which the permittee has protected from us by others; and

(iii)(A) Is specifically identified as proprietary at the time it is made available to DOE.

(B) Technical information or data shall not be deemed proprietary in nature whenever substantially the same

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technical information is available to DOE which has been prepared, developed or furnished as nonproprietary information by another source independently of the proprietary information and data furnished by the permittee.

(3) If the amount of reasonable royalties provided for in paragraphs (d) (1) and (2) of this section cannot be agreed upon, the permittee agrees that such amount shall be determined by the Administrator under the provisions of section 157c of the Atomic Energy Act of 1954, as amended.

(4) In the event domestic commercial uranium enriching services are provided by persons other than an agency of the United States, the permittee agrees not to require the United States to pay the royalties provided for in paragraphs (d) (1) and (2) of this section.

(5) The acceptance, exercise, or use of the licenses or rights provided for in paragraphs (d) (1) and (2) of this section shall not prevent the Government, at any time, from contesting their validity, scope or enforceability.

(6) The permittee agrees, during the term of the access permit, to make quarterly reports to DOE in writing, in reasonable detail, respecting all technical information or data, including economic evaluations thereof, which the permittee or DOE considers may be of interest to DOE, including reports of patent applications on inventions or discoveries and of technical information and data of a proprietary nature. These reports will cover the results of the permittee's work under the access permit or as a result of data or information made available by DOE. The foregoing provisions of this subparagraph shall be subject to the provisions of paragraphs (d) (1) and (2) of this section.

(7) The permittee agrees to make available to DOE, at all reasonable times during the term of the access permit, for inspection by DOE personnel, or by mutual agreement, others on behalf of DOE, all experimental equipment and technical information or data developed by the permittee, its employees, or others engaged by the permittee, in the course of the permittee's work under the access permit or as a result of data or information made

available by DOE. The foregoing provision of this subparagraph shall be subject to the provisions of paragraphs (d) (1) and (2) of this section.

(8) The permittee agrees to pay such reasonable compensation as DOE may elect to charge for the commercial use of its inventions and discoveries including related data and technology and, except for an applicant qualifying for a permit pursuant to § 725.15(b)(3)(ii), agrees to pay \$25,000 for an access permit authorizing access to restricted data in subcategory B.

(9) Except as may be otherwise authorized by DOE, the permittee agrees not to disseminate to persons not granted access by DOE, restricted data or government confidential commercial information made available to the permittee by DOE or restricted data developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by DOE.

(10) The granting of an access permit does not constitute any assurance, direct or implied, that the Nuclear Regulatory Commission will grant the permittee a license for a production facility or any other license.

(11) In the event the permittee is engaged by DOE to perform work for DOE in the field of the separation of isotopes, the permittee agrees to undertake such measures as DOE may require for the separation of its activities under the access permit from its work for DOE.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987; 71 FR 68732, Nov. 28, 2006]

§ 725.24 Administration.

With respect to each permit issued pursuant to the regulations in this part, the Chief Health, Safety and Security Officer will designate a DOE or National Nuclear Security Administration office which will:

(a) Process all personnel access authorizations requested in connection with the permit;

(b) Review the procedures submitted by the Applicant, in accordance with part 1016 of this title, for the safeguarding of Restricted Data; and