§ 1245.101 Applicability.

The provisions of the subpart apply to all inventions made or which may be made under conditions enabling the Administrator to determine that the rights therein reside in the Government of the United States under section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The provisions do not apply to inventions made under any contract, grant, or cooperative agreement with a nonprofit organization or small business firm that are afforded the disposition of rights as provided in 35 U.S.C. 200–204 (Pub. L. 96–517, 94 Stat. 3019, 3020, 3022 and 3023; and Pub. L. 98–620, 98 Stat. 3364–3367).

§ 1245.102 Definitions and terms.

As used in this subpart:

(a) Contract means any actual or proposed contract, agreement, understanding, or other arrangement with the National Aeronautics and Space Administration (NASA) or another Government agency on NASA’s behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder, and including NASA grants awarded under the authority of 42 U.S.C. 1891–1893.

(b) Contractor means the party who has undertaken to perform work under a contract or subcontract.

(c) Invention includes any art, method, process, machine, manufacture, design, or composition or matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(d) Made, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(e) 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) Board means the NASA Inventions and Contributions Board established by the Administrator of NASA within the Administration under section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)).

(g) Chairperson means Chairperson of the NASA Inventions and Contributions Board.

(h) Petitioner means a contractor or prospective contractor who requests that the Administrator waive rights in an invention or class of inventions made or which may be made under a NASA contract. In the case of an identified invention, the petitioner may be the inventor(s).

(i) Government agency includes any executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(j) Administrator means the Administrator of the National Aeronautics and Space Administration or the Administrator’s duly authorized representative.

§ 1245.103 Policy.

(a) In implementing the provisions of section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)), and in determining when the interests of the United States would be served by waiver of all or any part of the rights of the United States in inventions made in the performance of work under NASA contracts, the Administrator will be guided by the objectives set forth in the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451–2477) and by the basic policy of the Presidential Memorandum and Statement of Government Patent Policy to the Heads of the Executive Departments and agencies dated February 18, 1983. Among the most important goals are to provide incentives to foster inventiveness and encourage the reporting of inventions made under NASA contracts, to provide for the widest practicable dissemination of new technology resulting from NASA programs,
§ 1245.104 Advance waivers.

(a) The provisions of this section apply to petitions for waiver of domestic rights to any or all of the inventions which may be made under a contract.

(b) The NASA Inventions and Contributions Board normally will recommend grant of a request for advance waiver of domestic rights submitted prior to execution of contract or within 30 days after execution of the contract unless the Board finds that the interests of the United States will be better served by restricting or eliminating all or part of the rights of the contractor in one or more of the following situations:

1. When the contractor is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government;
2. When a determination has been made by Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any inventions made in the performance of work under the contract is necessary to protect the security of such activities; or
3. Where the Board finds that exceptional circumstances exist, such that restriction or elimination of the right to retain title will better promote one or more of the following objectives:
   i. Promoting the utilization of inventions arising from federally supported research and development;
   ii. Encouraging maximum participation of industry in federally-supported research and development;
   iii. Ensuring that inventions are used in a manner to promote free competition and enterprise;
   iv. Promoting the commercialization and public availability of inventions made in the United States by United States industry and labor; and
   v. Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c)(1) An advance waiver, when granted, will be subject to the reservations set forth in §1245.107. Normally, the reservations of §1245.107(a), License to the Government, and §1245.107(b), March-in rights, will apply. However, should one or more of the situations set forth in paragraphs (b)(1) through (b)(3), of this section exist, rather than denying the advance waiver request, the Board may recommend restricting