§ 650.2 National Science Foundation patent policy.

As authorized by the National Science Board at its 230th meeting, October 15–16, 1981, the Director of the National Science Foundation has adopted the following statement of NSF patent policy.

(a) In accordance with the Bayh-Dole Act and the Presidential Memorandum entitled “Government Patent Policy” issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Department of Commerce in all its funding agreements for the performance of experimental, developmental, or research work, including awards made to foreign entities, unless the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.

(c) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee, or the inventor’s employer if other than the awardee, shows that it would be harmed by that action.

(d) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit Foundation that relate to performance of scientific or engineering research.

As stated in the NSF Acquisition Regulation (chapter 25 of title 48 of the Code of Federal Regulations), this part applies to contracts as well as to grants and cooperative agreements.
§ 650.3 Source of authority.


(b) Section 11(e) of the National Science Foundation Act of 1950, as amended, (42 U.S.C. 1871(e)) provides that the Foundation shall have the authority to do all things necessary to carry out the provisions of this Act, including, but without being limited thereto, the authority—to acquire by purchase, lease, loan, gift, or condemnation, and to hold and dispose of by grant, sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this Act.

(c) Section 12 of the NSF Act (42 U.S.C. 1871) provides that each contract or other arrangement executed pursuant to this Act which relates to scientific research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed.

(d) The Presidential Memorandum entitled “Government Patent Policy” issued February 18, 1983, directs Federal agencies, to the extent permitted by law, to apply to all research performers the policies of the Bayh-Dole Act. Under the provisions of the National Science Foundation Act quoted above, the Foundation is permitted to apply the Bayh-Dole policies without restriction.

§ 650.4 Standard patent rights clause.

(a) The following Patent Rights clause will be used in every funding agreement awarded by the Foundation that relates to scientific or engineering research unless a special patent clause has been negotiated (see §650.5).

PATENT RIGHTS (AUGUST, 2005)

(a) Definitions—(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, to any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) Subject invention means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of grant performance.

(3) 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.

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

(5) Small business firm means a domestic 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 Patents Rights clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) Nonprofit organization means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (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 domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(b) Allocation of Principal Rights. The grantee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patents Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. If the award indicates it is