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NASA Procedural Requirements

NPR 2092.1B
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COMPLIANCE IS MANDATORY

Distribution of Royalties and Other Payments Received by NASA from the Licensing or Assignment of Inventions

Responsible Office: Office of the General Counsel

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Preface

P.1 Purpose

When NASA receives royalties or other payments as a result of the licensing or assignment of inventions, NASA must distribute such royalties and other payments in accordance with law. This NPR establishes the responsibilities and procedures for such distributions.

P.2 Applicability

a. This NPR is applicable to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers, all of which are considered to be a laboratory or laboratories as defined in 15 U.S.C. § 3710a(d)(2) .

b. This NPR applies to royalties or other payments received by NASA from the licensing or assignment of an invention owned in whole or in part by NASA. Such invention may be made by (1) a NASA employee, (2) an employee of another U.S. Government agency when such invention is assigned to NASA, (3) an individual directly assigning his or her interest in the invention to the U.S. Government, and (4) an employee of a NASA contractor or grantee where the title to such invention has been assigned to the contractor or grantee from the employee and subsequently to NASA by the contractor or grantee or has vested in NASA by operation of law.

c. This NPR also applies to royalties or other payments received by NASA from the licensing or assignment of an invention made by an employee, contractor, or grantee of another U.S. Government agency and of which NASA has custody and administration, pursuant to 35 U.S.C. 207, unless otherwise agreed between NASA and the transferring agency.

d. The term "royalties and other payments" means any money, including running royalties, alternate or periodic minimum royalties, and licensing or assignment fees, other than payments of patent costs and costs for maintaining a patent, received by NASA for granting a license or assignment in an invention.

P.3 Authority

- a. Distribution of royalties received by Federal agencies, 15 U.S.C. § 3710c.
- b. Property rights in inventions, 51 U.S.C. § 20135.
- c. Patent Rights in Inventions Made with Federal Assistance, 35 U.S.C. § 200 et seq.

P.4 Applicable Documents and Forms

- a. NPD 2090.6 Authority to Enter into License Agreements and Implementation of Licensing Authority
- b. NPD 2091.1, Inventions Made by Government Employees
- c. NPD 2092.1, Royalties and Other Payments Received by NASA from the Licensing or Assignment of Inventions.

P.5 Measurement/Verification

Compliance with the requirements contained in this NPR is verified through the actions and approvals performed by the responsible parties identified in Chapter 1.

P.6 Cancellation

NPR 2092.1A, Distribution of Royalties Received by NASA from the Licensing or Assignment of Inventions, dated August 7, 2003.

Chapter 1. Responsibility

1.1 Office of the Chief Technologist, Director, Technology Transfer Program Office

The Office of the Chief Technologist (OCT), Director, Technology Transfer Program Office, or designees, shall manage this policy, including coordinating with the Chief Financial Officer designee at the NASA Shared Services Center (NSSC) on the collection and distribution of royalties and other payments due from the licensing and assignment of inventions.

1.2 Office of General Counsel, Agency Counsel for Intellectual Property

1.2.1 The Office of General Counsel, Agency Counsel for Intellectual Property (ACIP) or designee, shall develop, in coordination with the Director, Technology Transfer Program Office, the Agency's policy and procedures for the distribution and use of royalties or other payments. The ACIP shall provide legal oversight regarding royalties and other payments due from the licensing or assignment of inventions.

1.2.2 The ACIP or designee, will establish and maintain model license and assignment documents which will direct the licensee or assignee where to forward royalties and other payments due to NASA.

1.3 Chief Financial Officer, Office of the Chief Financial Officer

1.3.1 The Chief Financial Officer, or designee, at the NSSC shall:

- a. Establish and maintain a system for receiving, accounting, depositing, and distributing royalties and other payments received from the licensing or assignment of inventions.
- b. Distribute royalty payments to inventors entitled to receive such royalty payments, along with information that contains (1) the name of the licensee and the license number, (2) the total amount of the royalties from which the distribution is being made, (3) the date royalties were received, (4) the amount of the distribution, and (5) a reference to this NPR.
- c. Notify the Center Directors; Director, NASA Management Office, and Executive Director, Office of Headquarters Operations, of the amount of royalties and other payments available for distribution to their facilities, and inform the Office of the General Counsel and the Chair of the Inventions and Contributions Board of the distributions.

1.4 Center License Administrator

1.4.1 The Center License Administrator, or designee, shall normally forward the royalties and other payments due, along with the applicable license or assignment numbers, the identification of the NASA Centers or facilities in which the inventions were made, and the identities of the inventors or co-inventors entitled to receive royalty payments, directly to the Chief Financial Officer designee at the NSSC at the following address:

NASA Shared Service Center
FMD Accounts Receivable
Attn: For the Accounts of [name of Center]
Bldg. 1111, C Road
Stennis Space Center, MS 39529.

Note: A particular license may provide other direction for the forwarding of royalty payments, including direct payment by the licensee to the NSSC.

1.5 Center Directors; Director, NASA Management Office, and Executive Director, Office of Headquarters Operations

1.5.1 Center Directors; Director, of the NASA Management Office, and Executive Director of the Office of Headquarters Operations shall:

- a. Ensure that all royalties and other payments available for distribution to their facilities are used and obligated in accordance with NPD 2092.1 and this NPR.
- b. Keep the Associate Administrator informed as necessary.

1.6 Inventors

1.6.1 It is each inventor's responsibility to keep both the Chief Financial Officer, and the Patent or Intellectual Property Counsel at the appropriate NASA facility, apprised of his or her current address and telephone number. Any

changes should be provided in writing to the applicable Center Patent or Intellectual Property Counsel and to:

Office of the Chief Financial Officer
NASA Shared Service Center
Financial Management Division
Bldg. 1111, C Road
Stennis Space Center, MS 39529.

1.6.2 If reasonable attempts to obtain current information for a particular inventor are unsuccessful, the royalties to be distributed shall be recalculated without the inventor's participation in accordance with subparagraph 2.2. If the particular inventor is later located, he or she will be included in future royalty distributions, but past royalties already distributed by NASA will not be restored.

Chapter 2. Distribution of Royalties

2.1 Distribution of Royalties

Whenever NASA licenses or assigns one or more inventions, any royalties or other payments received therefrom shall be distributed to the inventors who have directly assigned their interests in such inventions to the Government, in accordance with subparagraph 2.2, and to the appropriate NASA facility or facilities, in accordance with subparagraph 2.3.

2.2 Distribution to NASA Employees Named as Inventors, and to Other Inventors Assigning Their Undivided Interests in Inventions to NASA

2.2.1 Distribution of royalties or other payments shall be calculated on a fiscal year basis and shall be distributed no later than the end of the following fiscal year's first quarter that the royalties or other payments are received. Monies remaining after distribution under this subparagraph shall be distributed in accordance with subparagraph 2.3.

2.2.2 Distribution shall be calculated on a per license or a per assignment basis and shall be based on the total royalties received by NASA for a particular license or assignment in the fiscal year for which the distribution is being calculated. If one inventor is named, that inventor shall receive the first \$5,000, plus 25 percent of the remainder. For two to four inventors, each inventor shall receive an equal share up to \$5,000 each, plus 25 percent of the remainder up to the first \$25,000 received, and an equal share of 30 percent of the remainder after the first \$25,000 received by NASA. For five or more inventors, each inventor shall receive an equal share of the first \$25,000 received plus an equal share of 30 percent of the remainder after the first \$25,000 received by NASA.

2.2.3 If the expiration of a licensed patent, or the abandonment of a licensed patent application, results in one or more inventors no longer being named inventors on any of the remaining active licensed patents and/or pending patent applications, then such inventor(s) shall receive royalties only through the fiscal year within which such patent expired or such patent application was abandoned.

2.2.4 Subject to applicable law, NASA shall distribute a deceased inventor's share of royalty payments to the inventor's estate provided that the estate is legally in existence. Upon notification of the death of an inventor, the Center Patent or Intellectual Property Counsel at the appropriate NASA facility will make reasonable efforts to contact the inventor's personal representative to obtain information needed to establish the existence of an estate and to distribute royalties to the estate. If reasonable efforts to obtain the needed information for a particular inventor's estate fail, the royalties to be distributed shall be recalculated without the participation of the inventor's estate in accordance with subparagraph 2.2.2. If the needed information is obtained at a later date, the inventor's estate will be included in future royalty distributions, but past royalties will not be restored. It is the responsibility of the inventor's personal representative to provide current information to the NASA officials listed in subparagraph 1.5.1.

2.2.5 Distribution of royalties or other payments to any one recipient shall not exceed \$150,000 per fiscal year, unless the President approves a larger amount (with the excess over \$150,000 being treated as a Presidential Award under Section 4504 of Title 5, U.S.C.).

2.3 Center Directors

2.3.1 The Center Directors; Director, NASA Management Office, or the Executive Director, Office of Headquarters Operations will be notified by the Office of the Chief Financial Officer of the balance of any royalties or other payments that are, after payment to the inventors made in accordance with subparagraph 2.2 and subject to the limitations of subparagraph 2.4, available for distribution to the facility where the invention occurred. If a license or assignment has inventors from more than one NASA facility, such distribution shall be made to each facility on a pro rata basis for the number of facilities involved, unless other arrangements have been made among the relevant facilities. Notification will also be given as to the amounts of royalties or other payments received from the licensing or assignment of inventions made by contractors or grantees, in which title to such inventions has been assigned or otherwise vested in NASA, and which are available (subject to the limitations of subparagraph 2.4) for distribution to the facilities or the NASA Management Office (in cases where the contracts or grants originated at the Centers or at the NASA Management Office, or NASA Headquarters (in cases where the contracts or grants originated at NASA Headquarters).

2.3.2 Transfer of royalties or other payments to a facility will be made on a semiannual basis. Royalties and other payments so transferred to a facility may be used or obligated by that facility during the fiscal year in which the royalties or other payments were received or during the next two (2) succeeding fiscal years:

a. to reward scientific, engineering, and technical employees of the center, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

- b. to further scientific exchange among the centers of the agency;
- c. for education and training of employees consistent with the research and development missions and objectives of the agency or center, and for other activities that increase the potential for transfer of the technology of the centers of the agency;
- d. for payment of expenses incidental to the administration and licensing of intellectual property (including patent application preparation, prosecution, maintenance fees, travel, and other costs) incurred by the agency or center with respect to inventions made at that center, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or
- e. for scientific research and development consistent with the research and development missions and objectives of the center.

2.3.3 All royalties or other payments retained by the agency or center after payments have been made pursuant to this Chapter 2 which are unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received shall be paid into the Treasury.

2.4 Excess Royalties and Other Payments

If, after payment to inventors under subparagraph 2.2, the royalties or other payments received by NASA in any fiscal year exceed 5 percent of the budget of the NASA facility or facilities in which the licensed inventions producing such royalties or other income were made, then 75 percent of such excess will be paid to the Treasury of the United States by NASA, and the remaining 25 percent shall be made available for use and obligations in accordance with subparagraph 2.3.2.