



INSTALLATIONS AND LOGISTICS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
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MEMORANDUM FOR Educational and Nonprofit Institutions whose
Patent Policies have been Approved

The purpose of this memorandum is to alert you to certain changes shortly to be made in the patent rights provisions of Section LX, Part 1 of the Armed Services Procurement Regulation (ASPR) which will impact you as educational and nonprofit institutions whose patent policies have been approved under the provisions of ASPR 9-107.4(c)(2)(i). These changes will appear in Defense Procurement Circular 75-3 which is presently scheduled for issuance during September 1975. In essence, this revision to ASPR closely parallels similar provisions of the Federal Procurement Regulations which were published in 40 Fed. Reg. 19814 on 7 May 1975 (and clerical changes thereto published in 40 Fed. Reg. 28067 on 3 July 1975).

The ASPR revision terminates the "Approved Patent Policy" concept as a special situation under Section 1(c) of the Presidential Statement of Government Patent Policy (36 Fed. Reg. 16887, 26 August 1971) and, in lieu thereof, provides that any prospective contractor having an effective program for the transfer of technology, as by the licensing of inventions, will be entitled to the patent rights "license" clause in a contract where a patent rights "deferred" clause would otherwise be appropriate. Educational and nonprofit institutions must demonstrably have such programs in order to be entitled to the "license" clause, whether or not their patent policies have previously been approved. Thus, a policy approved by the Department of Defense will no longer be a prerequisite to qualifying for the "license" clause.

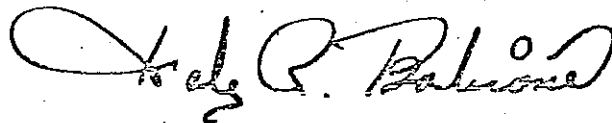
Consonant with the foregoing, the "greater rights" determination provided for under the forthcoming ASPR revision expressly enables either the contractor, or his employee-inventor to request such determination in order to retain title to a Subject Invention. The ASPR revision also provides detailed guidance as to the kind of



information supportive of a request for such a determination, the criteria to be applied in acting on such requests, and the conditions applicable to a favorable determination.

Finally, the ASPR revision provides two short-form patent rights clauses for use, under certain conditions, in contracts for basic or applied research with nonprofit organizations in the "title" and "deferred" situations of Sections 1(a) and 1(c), respectively, of the Policy Statement. These clauses omit several of the contractual requirements of the standard patent rights clauses which were believed to be generally unnecessary in these contract situations.

Our operational experience suggests that the new criteria may be in greater accord with the intent of the Policy Statement of encouraging the expeditious development for civilian use of inventions resulting from federally sponsored research and development work.



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