

## **CHAPTER 43-03-06**

### **PUBLIC INFORMATION - PATENT AND NEW TECHNOLOGIES POLICIES**

#### Section

43-03-06-01	Application Ownership
43-03-06-02	Rights to Technical Data
43-03-06-03	Use for Governmental Purposes
43-03-06-04	Patent Rights - Manufacturing in North Dakota

#### **43-03-06-01.**

**Application ownership.** Information contained in unsuccessful applications will remain the property of the applicant, but the commission will retain file copies of all applications, findings, and reports. Except with regard to confidential information, applications are public information and are available to the public upon request and payment of copying charges.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 54-17.5-06, 57-61-01.5

#### **43-03-06-02. Rights to technical data.**

Rights to technical data, including software developed under the terms of a grant, shall remain with the grantee.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

#### **43-03-06-03. Use for governmental purposes.**

The grantee may copyright and publish material developed with commission funding. The state of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have an irrevocable royalty-free right to practice under any patents, patent applications, or other new technology developed under the commission's programs. The intent of this section is to enable state agencies to purchase or use, or both, new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under commission funding and then later in the purchase of the processes or products. The state may not use this provision to enter into the private marketplace through direct manufacture or production of goods and services. The commission may waive the state's royalty-free right if any other governmental entity, state, federal, or foreign, provides matching funds and imposes conditions that do or may conflict with the right provided for by this section. A waiver may be given only if the following are met:

1. The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;
2. The other funding source provides at least twenty percent of the project's funding; and
3. It is unlikely the state would ever seek to use the right given the state under this section.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

#### **43-03-06-04. Patent rights - Manufacturing in North Dakota.**

Applicants may retain the principal worldwide patent rights to any invention made with financial support under this program, except the patent holder agrees directly, or through licensing of patents, to assure that any manufacturing thereof shall substantially occur in North Dakota. Similarly, use of any new technology or other technical information derived in part from funding under this program requires that any manufacturing thereof shall substantially occur in North Dakota. For the purposes of this section, the words "substantial" or "substantially" shall mean not that the primary manufacturing must occur in North Dakota, but rather that more than incidental manufacturing must occur in North Dakota. The grantee or licensee or assignee, as determined by the commission, must reimburse the entire grant amount received through the commission should such licensees or assignees relocate or be established out of the state and not continue substantial manufacturing in North Dakota. The commission may choose not to enforce the "substantial manufacturing" requirement of this section if there is no person or entity in North Dakota capable of fulfilling the requirement and it is unlikely that in the near future a person or entity would be capable of satisfying the requirement.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5