

United States Department of Agriculture  
Animal and Plant Health Inspection Service

# Wildlife Services Directive

WS 4.415  
4/1/2022

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## INVENTIONS, PATENTS AND PATENT ROYALTY DISTRIBUTION

### 1. PURPOSE

To establish guidance on the process for patenting, licensing, and distribution of royalty payments received on licensed Wildlife Services' (WS) technologies. This Directive promotes the development and transfer of WS technologies to public sector entities and outlines legal incentives to WS personnel who participate in the technology transfer process.

### 2. REPLACEMENT HIGHLIGHTS

This Directive replaces WS Directive 4.415, Inventions and Patents, dated, October 7, 2005.

### 3. AUTHORITY

- a. 7 U.S.C. 8351 to 8353, and 16 U.S.C. 667, authorizes officers, agents, and employees of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) to conduct a program of wildlife services and to enter into agreements with states, local jurisdictions, individuals, and public and private agencies, organizations, and institutions for the purpose of conducting such services.
- b. 15 U.S.C. 3710 c, establishes standard policy for the distribution of royalties or other payments received by a Federal agency from the licensing and assignment of inventions under agreements entered into by Federal laboratories and from the licensing of inventions of Federal laboratories under 35 U.S.C. 207 & 37 CFR 404 or under any other provision of law.

### 4. POLICY

#### a. Reporting Inventions

WS personnel must, through their supervisor, contact the National Wildlife Research Center's (NWRC) Technology Transfer Coordinator (TTC) regarding procedures for reviewing and processing work-related inventions, patent applications, and licensing the rights to produce and sell WS technology.

b. Patent Royalty Management and Distribution

- (1.) Royalty income generated under WS patent licenses will be received, monitored, and distributed by the APHIS Agreements Services Center (ASC), Financial Management Division (FMD). ASC FMD will distribute royalties to inventor(s) and provide the remaining royalty payments as described below.
- (2.) Each fiscal year, all royalty income received from a WS licensing agreement for an invention with a Government ownership interest will be distributed to the WS inventor(s) and laboratory/WS State Program from which the invention(s) originated according to the sections 4. c. and 4. d. of this Directive.

c. Royalty Distribution to WS Inventors

Each year in accordance with 15 U.S.C. 3710 c, WS will pay the first \$2,000, and thereafter in accordance with APHIS policy thirty-five percent (35%) of the royalties to the WS inventors if the inventor's patent rights are assigned to the United States Government. This payment will be distributed evenly among WS inventors. Payments made under this section will not exceed \$150,000 per year to any one inventor, unless the Congress approves a larger award.

d. Royalty Distribution within WS

- (1.) Annual royalty income that remains after distribution to the inventors (see Section 4. c.) in accordance with 15 U.S.C 3710 c, will be provided to the NWRC Director for distribution in a manner that promotes development of intellectual property and product development collaborations aimed at resolving human-wildlife conflicts. The NWRC Director may delegate the authority to distribute royalty income to the TTC.
- (2.) In instances where the invention originated from non-research WS programs, the NWRC Director or TTC can provide funds to the WS State Office or national program leaders for use as defined in Section 4. d. (3.).
- (3.) The royalty income received and transferred to the NWRC or the WS program must be used or obligated within two (2) years of receipt. These funds may be used to:
  - (a.) Provide support to WS personnel for travel devoted to seeking and developing new product development partnerships.
  - (b.) Provide support for TTC activities specifically related to technology transfer functions.
  - (c.) Provide support to further scientific research and development consistent with WS' mission and objectives.
  - (d.) Provide technology transfer education and training opportunities to personnel consistent with the WS mission and objectives.
  - (e.) Reward WS scientific, engineering, and technical personnel regardless of whether the technology has commercial applications.
  - (f.) Provide appropriate incentives to WS personnel who are not inventors but who substantially increased the technical value of inventions.

- (g.) Funds remaining after allocations presented above, will be used to pay WS' share of the APHIS Interagency Agreement with the U.S. Forest Service for technology transfer support services.

## 5. DEFINITIONS

- a. Assignment: A transfer by a party of all or part of its right, title, and interest in a patent to their employer. A government inventor must assign their rights to a patent for a technology that they develop during their performance of duties to the United States, as represented by the Secretary of Agriculture. This does not mean that the inventor loses their rights to be an inventor.
- b. Government Ownership: The U.S. Government rights to an invention that was made by an employee during performance of their duties.
- c. Invention: A novel method, process, or device.
- d. Inventor: A person who provided significant intellectual contributions to the development of a novel process or device.
- e. Patent: A government authority or license conferring a right or title for a set period, especially the sole right to exclude others from making, using, or selling an invention.
- f. Patent License: A patent license agreement is a contract between a patent owner (licensor) and a licensee that defines the terms under which the licensee may make, sell, and use a patented invention. The agreement also defines how royalties will be paid to the patent owner.
- g. Royalty Income: Royalty income includes any money, including running royalties, alternate or periodic minimum royalties, milestone payments, and licensing or assignment fees. Royalty income does not include reimbursements for the payments of patent prosecution costs or patent maintenance fees.
- h. Royalty Distribution: The process by which royalty income is distributed to inventors and assignees. In the case of WS, this includes inventors, the NWRC and WS operations, state, or national program offices.
- i. Technology Transfer: The process by which existing knowledge, facilities, or capabilities developed under federal Research & Development funding are utilized to fulfill public and private needs.

## 6. SCOPE

This Directive is applicable to all WS personnel.

## 7. REFERENCES

- a. Bayh-Dole Act, 1980
- b. Federal Technology Transfer Act, 1986
- c. National Technology Transfer and Advancement Act of 1995 (Public Law 104-113)
- d. Stevenson-Wydler Technology Innovation Act of 1980, as amended
- e. Technology Transfer Commercialization Act, 2000
- f. USDA Departmental Regulation 4040-451-430, Employee Performance and Awards

Janet L. Bucknall  
WS Deputy Administrator