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Agencies Seek Feedback on Draft Marching Orders Framework

The Department of Commerce and the National Institute of Standards and Technology are requesting comments on a “draft guidance framework designed to help federal agencies evaluate when it may be appropriate to exercise ‘march-in’ rights under the Bayh–Dole Act,” NIH announced. “March-in refers to a federal agency’s right to march-in and require the contractor, an assignee, or exclusive licensee of a federally funded subject invention to grant a license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant a license itself. Currently, an agency can exercise march-in rights only under four specific circumstances. To date, no agency has exercised its right to march-in,” the agency said Dec. 12.

In a Dec. 8 announcement, the U.S. Patent and Trademark Office (USPTO) explained that, for 40 years, “the Bayh–Dole Act has promoted the commercialization of federally funded research and technology by according the recipient of those funds the right to retain ownership and seek patents on those inventions,” but also noted the lack of action by agencies. “The draft framework released today encourages funding agencies to consider both the practical impact and the potential impact the use of march-in rights could have on the broader research and development (R&D) ecosystem. It guides agencies in assessing three overarching questions and provides eight hypothetical scenarios in which march-in could emerge, to demonstrate how an agency might apply the framework to its decision-making process,” USPTO said. The deadline for comments on the framework, published in the Dec. 8 *Federal Register*, is Feb. 6.

[Link to NIH announcement](#)

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