EXPLANATION OF DRAFT BILL

The attached draft bill dated 3/5/83 is generally modeled after S. 1657 as amended by the Committee on Commerce, Science, and Transportation (Report No. 97-381, 97th Cong., 2nd Sess.). It also incorporates several floor amendments that were intended to be introduced. Part I, below, discusses the treatment of the proposed floor amendments. Part II, below, discusses other differences between this draft bill and S. 1657 as reported by the Committee.

Part I - Treatment of Proposed Floor Amendments

The author was provided copies of six floor amendments intended to be introduced. These are disposed of as follows:

1. Senator McClure intended to offer an amendment which would have changed the exceptional circumstances under which agencies could limit a contractor's rights. With only minor changes, this amendment is found at section 301 (a) (4).

2. Senator McClure planned to offer an amendment dealing with use of royalties by GOGO's. This is found at section 301 (c) (6). We believe that the amendment should be revised to permit royalty-sharing with the GOGO employee inventor and for the payment of patent expenses.

3. Senator McClure planned to offer an amendment to the disclosure, election, and filing requirements. This has been adopted at section 301(c)(1) and (2). Acceptance of this amendment is based on the fact that the bill places responsibility for the drafting of the regulations in the Secretary of Commerce. Senator McClure's langauge is broad enough to accomodate reporting, electing, and filing provisions similar to those applied to small business in OMB Circular A-124. Coupled with some language in the Senate Report of what is intended, this language should be acceptable. (It should be noted that Senator McClure's proposed amendment contained the words "disclosed to it" on lines 11 and 12. It is assumed that this was a mistake and that it was meant to say "elected". The draft bill, accordingly, uses "elected" rather than "disclosed to it.")

4. Senator McClure proposed to delete lines 8-13 on p. 44 which would have deleted portions of the United States Synthetic Fuels Corporation Act of 1980 which provide that title to inventions made under projects supported by the Corporation (including via loans and loan guarantees) vest in the Corporation. This is not adopted in the draft bill. Allowing such langauge to stand would conflict with the basic purpose of the Act to encourage private development of inventions.

5. Senator Nunn proposed a change to the miscellaneous amendments dealing with NASA. This has been adopted as part of the more extensive amendments on the same subsection that Senator Schmitt planned to propose. Minor changes have

been made at Sec. 501(6)(C) on p. 20 and 21 of the draft to reference Bayh-Dole as well as the new Act. Language has also been added that not only must the NASA requirement not "conflict" but that they may not require "earlier reporting." It should be noted that it is still unclear why NASA believes it needs statutory language to require complete technical reports. It is important to make sure that this amendment is worded so that it will not allow NASA to circumvent the reporting scheme of Bayh-Dole and this Act, since NASA was strongly opposed to the reporting regulations adopted under Bayh-Dole.

6. Senator Schmitt planned to introduce several amendments. Some merely involved numbering changes and are not discussed here. The others were as follows:

(A) An addition to the subsection on the Government license dealing with licensing of foreign governments under treaties has not been adopted. However, changes have been made to section 301(a)(3) which are believed to address the major concerns behind the proposed amendment. Revised section 301(a)(3) gives agencies ample authority to take additional rights to fullfill their obligations under treaties and other international agreements of all sorts. The only substantive change is that language about "future treaties and agreements" is dropped. No sound reason is seen why contractor's rights in inventions should be left subject to hypothetical future agreements not even in existence at the time of the contract.

(B) Senator Schmitt's proposed amendment relating to technical data is not included in this draft. The concept that contractors may acquire trade secrets in Government funded research is controversial and its impact should be carefully considered prior to use.

(C) Senator Schmitt's proposed amendments relating to NASA have been adopted with the changes outlined in 5, above.

Part II - Other Changes From S. 1657

Generally, this bill tracks S. 1657 very closely. Thus, Title I is identical to that in S. 1657. Title II is almost identical except for the fact that the duties of the Director of OMB found in section 201(a) of S. 1657 have been dropped. In turn, section 301(c) provides that the basic regulations concerning the patent clause will be issued by the Secretary of Commerce. The Secretary is also given authority to issue regulations on march-in's in section 303. These, coupled with

the other authorities given the Secretary in various parts of the Act, negate the need for general guidelines as was covered in section 201(a) of S. 1657. It is to be noted, however, that the authority of the Director of OMB at sec. 301(b)(2) to limit agency use of the exceptional circumstances provisions has been left intact and not transferred to the Secretary. In short, the bill gives the Secretary adequate authority to accomplish the intent of section 201(a) of S. 1657 of bringing about uniformity.

Title III is substantially the same as Title III of S. 1657, but has been rearranged in a more coherent manner. Thus section 301 consolidates provisions that were found in sections 301, 302, and 305 of S. 1657.

The only two substantive changes in Title III not previously discussed are as follows:

(1) A section 302(d) was added. This is primarily a technical amendment intended to make clear that an agency can subsequently waive any limitations it may have placed on a contractor under section 301(a). There could be a problem that without such language it could be argued that the Government could not waive its rights without consideration or without allowing others to compete for such rights.

(2) Section 305 on "Background Rights" has been expanded in order to adopt the same language found in Bayh-Dole. This should make this bill much more attactive to large contractors, and to date there has been almost no complaints from either the agencies or others about the Bayh-Dole background rights language.

Title IV represents the major change in this bill from S. 1657. It had no counterpart in that bill. The purpose of this title is to strengthen the licensing programs in the agencies and also to impose some discipline on the agencies so as to cut down on the number and cost of patent filings by the agencies, which it is believed have been excessive. Agencies would be forced to justify decisions to file patents, and decisions to file in order to promote commercialization would be required to be made by the licensing offices of the agency established under Stevenson-Wydler. The Secretary of Commerce would be given a review function as well as authority to establish standard formats for determinations and justifications for filing. In addition, the Secretary is authorized to issue general guidelines on the criteria for patenting for defensive and commercialization purposes.

It would probably be useful for the Committee to ask the GAO to evaluate the cost-effectiveness of current agency defensive filing programs and to devote at least part of any hearings to this subject. This is likely to put the agency patent attornies on the defensive, and they are the

individuals who have been generating the opposition among certain agencies to the bill. In any case, it would help to have some more solid data to back up this Title.

Title V is identical to Title V of S. 1657 except in two respects. First the amendments to the Space Act differ as discussed in part I, above. Second, an additional amendment has been made to Bayh-Dole at section 501(15)(J) to substitute the Secretary of Commerce for the Director of OFPP in connection with the issuance of regulations. This is consistent with the regulatory framework for other contractors as laid out in the draft bill and would ensure uniformity accross the board.

DRAFT: 3/5/83

A BILL

Entitled the "Uniform Science and Technology Research and Development Utilization Act".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—POLICY

FINDINGS

SEC. 101. The Congress, recognizing the profound impact of science, engineering, and technology policy on the economic, social, political, and technological well-being, and the health and safety, of the Nation as a whole, hereby finds and declares that—

(1) the United States has recently experienced a decline in the process of industrial innovation and productivity which adversely affects domestic productivity, the rate of economic growth, the level of employment, the balance of trade, and the attainment of other national goals;

(2) the national support of scientific and technological research and development is indispensable to sustained growth and economic stability, and it is in the national interest to maximize the benefits to the general public from such investment;

(3) scientific and technological developments and discoveries resulting from work performed with Gov-

ernment contracts constitute a valuable national resource which should be developed in a manner consistent with the public interest and the equities of the respective parties;

(4) current Federal policy with respect to the allocation of rights to the results of federally sponsored research and development delays technological progress, and inhibits commercial utilization of those results; and

(5) there is a need for the establishment and implementation of a flexible Government-wide policy for the management and utilization of the results of federally funded research and development, and this policy should promote the progress of science and the useful arts, encourage the efficient commercial utilization of technological developments and discoveries, guarantee the protection of the public interest, and recognize the equities of the contracting parties.

PURPOSE

SEC. 102. It is the purpose of this Act to—

(1) establish and maintain a uniform Federal policy applicable to the management and use of the results of federally sponsored science and technology research and development to stimulate more widespread commercial utilization of those results for the public good; and

(2) insure the effective uniform implementation of the provisions of this Act, and to monitor on a continuing basis the impact of Federal science and technology policies on innovation and technology development.

DEFINITIONS

SEC. 103. As used in this Act, the term—

(1) "contract" means any contract, grant, or cooperative agreement entered into between any Federal agency (other than the Tennessee Valley Authority) and any person other than a small business firm or nonprofit organization (as defined in section 201 of title 35, United States Code) where a purpose of the contract is the conduct of experimental, developmental, or research work; such term includes any assignment, substitution of parties or subcontract of any tier entered into or executed for the conduct of experimental, developmental, or research work in connection with the performance of that contract;

(2) "contractor" means any person or entity (other than a Federal agency, nonprofit organization, or small business firm, as defined in section 201 of title 35, United States Code) which is a party to the contract;

(3) "Director" means the Director of the Office of Management and Budget, or his designee;

(4) "Federal agency" means an executive agency

(as defined in section 105 of title 5, United States Code), and the military departments (as defined in section 102 of title 5, United States Code);

(5) "Government" means the Government of the United States of America;

(6) "invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35, United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.);

(7) "practical application" means to manufacture (in the case of a composition or product); to practice (in the case of a processor method); or to operate (in the case of a machine or system); in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms or through reasonable licensing arrangements;

(8) "Secretary" means the Secretary of Commerce; and

(9) "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a contract: Provided, That, in the case of a variety of plant, the date of determination (as defined in section 41(d) of the

Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of contract performance.

TITLE II—IMPLEMENTATION

RESPONSIBILITIES

SEC. 201. (a) *For the purpose of obtaining consistent application of the policies of this Act, the Secretary is authorized and directed to—*

(1) consult with and advise Federal agencies concerning the effective implementation and operation of the policies, purposes, and objectives of this Act;

(2) accumulate, analyze, and disseminate data obtained from Federal agencies; and

(3) perform such other duties as may be prescribed by the President or by statute.

(b) *For the purpose of assuring the effective management of Government-owned inventions, the Secretary is authorized to—*

(1) assist Federal agency efforts to promote the licensing and utilization of Government-owned inventions;

(2) assist Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and

(3) consult with and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization.

(c) Within 18 months after the date of enactment of this Act and every two years thereafter, the Secretary shall submit to Congress a report of activities pursuant to this Act. Such report shall include--

(1) relevant statistical data regarding the disposition of subject invention disclosures resulting from federally funded research and development, including those inventions disclosed by small businesses and nonprofit organizations;

(2) any legislative or administrative recommendations to better achieve the policy and purposes of this Act; and

(3) an analysis of impact of Federal policies on the purposes of this Act.

(d) The authorities conferred upon the Secretary by this section shall expire 7 years *following the effective date of this Act, unless renewed by action of Congress.*

TITLE III—ALLOCATIONS OF RIGHTS—GOVERNMENT CONTRACTORS

RIGHTS OF THE GOVERNMENT AND THE CONTRACTOR

SEC. 301. (a) Subject to subsection (c) of this section and to section 303 of this Act, each contractor may elect to retain title, either worldwide or in such countries as it may choose, to any subject invention; provided, however, that a Federal agency may limit or eliminate this right, place additional restrictions or conditions in the contract that go beyond those set forth in subsection (c) of this section, expand the rights of the Government to license or sublicense, and may alter or eliminate the contractor's right under subsection (c)(7) of this section if--

(1) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that this is necessary to protect the security of such activities; or

(2) the contractor is not located in the United States or does not have a place of business located in the United States, or is a foreign government; or

(3) the contract is entered into under a program that implements a formal international treaty, agreement, or arrangement, including, but not limited to, agreements of cooperation in science and technology or military agreements relating to weapons development or production, and it is determined by the agency that rights in the Government in any subject inventions beyond the license right provided in subsection (c)(3) of this section are necessary for the

agency to fulfill its obligations under the international treaty, agreement, or arrangement.

(4) the agency determines, on a case-by-case basis, that there are exceptional circumstances requiring such action--

(A) to better promote the policy and objectives of subsection 101(5) of this Act; or

(B) because for reasons of national security the commercialization of the technology should be discouraged, restricted, or otherwise controlled; provided, that at such time as the exceptional circumstances of this subparagraph (B) no longer exist, the contractor shall have the right to receive title to the invention, if it was obtained by the Federal agency, and to have any limitations or additional restrictions or conditions removed.

(b)(1) Each determination required by subsection (a) of this section shall be in writing and, except in the case of paragraph (1) of subsection (a) of this section, the agency shall, with 30 days after the award of the applicable contract, file with the Secretary a copy of each such determination. In the case of a determination under subsection (a)(3) or (4) of this section, the

statement shall include an analysis supporting the determination and justifying the limitations and conditions being imposed. If the Secretary believes that any individual determination or pattern of determinations is contrary to the terms, policy, or objectives of this Act, the Secretary shall so advise the head of the agency concerned and the Director and recommend corrective actions.

(2) Whenever the Director has determined that one or more Federal agencies are utilizing the authority of subsection (a) (3) or (4) of this section is in a manner that is contrary to the terms, policy, or objectives of this Act, the Director is authorized to issue policies, procedures, and guidelines describing classes of situations in which agencies may not utilize the provisions of subsection (a) (3) or (4) of this section.

(c) In accordance with regulations to be issued by the Secretary, each contract shall employ a patent rights clause containing appropriate provisions to effectuate the following:

(1) that the contractor disclose each subject invention within a reasonable time after it is made;

(2) that, unless the Government has acquired the right to title under subsection (a) of this section--

(A) the contractor make a written election, as to

the retention of title to the subject invention within a reasonable time after disclosure under paragraph (1) of this subsection;

(B) the Government may, upon request, receive title to any subject invention in any countries in which the contractor has not elected to retain title within such time;

(C) a contractor electing to retain title to a subject invention will file patent applications within reasonable times; and;

(D) the Government may, upon request, receive title to any subject invention in any countries in which the contractor has failed to file patent applications within the reasonable times specified pursuant to subparagraph (C) of this subsection.

(3) that with respect to any subject invention to which a contractor elects to retain title, the United States shall have (unless additional rights have been taken under subsection (a) of this section) a nonexclusive, nontransferrable, irrevocable, paid-up license to make, use and sell the subject invention throughout the world by or on behalf of the United States.

(4) that the agency may require written reports on the commercial use or other forms of utilization or efforts toward obtaining commercial utilization made by the contractor or its licensees or assignees with respect to any subject invention to which the contractor elects title, pursuant

to this section *: Provided, That any such report, as well as any information on utilization or efforts toward obtaining utilization obtained as part of a proceeding under section* 303 *of this title, shall be treated by the Federal agency as commercial or financial information obtained from a person and privileged or confidential and not subject to disclosure under the Freedom of Information Act (5 U.S.C. 552); and*

(5) that the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, will include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention;

(6) that net royalties earned on subject inventions by a contractor operating a Government-owned, contractor-operated facility be used for scientific research and development consistent with the mission and objectives of such facility;

(7) that the contractor, in cases when it does not elect to retain title to a subject invention, shall retain a nonexclusive, royalty-free, paid-up, worldwide license, including the right to sublicense affiliates, subsidiaries, and existing licensees to whom the contractor is legally obligated to sublicense in any subject invention to which the Government obtains title, which license shall

be revocable only to the extent necessary for the Government to grant an exclusive license; provided, however, that the contractor shall not be entitled to such a license if the contractor has fraudulently failed to disclose the subject invention; and

(8) such other administrative requirements that the Secretary determines to be necessary to effecutate the rights of the Government as specified in this section and section 303 which are not inconsistent with this Act.

WAIVER

SEC. 302. (a) A Federal agency may at any time waive all or any part of the rights of the United States under section 301(c) or 303 of this title to any subject invention or class of subject inventions made or which may be made under a contract or class or contracts if the agency determines that—

(1) the interests of the United States and the general public will be best served thereby; or

(2) the contract involves cosponsored, cost-sharing or joint venture research or development and the contractor or other sponsor or joint venturer is required to make a substantial contribution of funds, facilities, or equipment to the work performed under the contract.

(b) The agency shall maintain a record, which shall be made public and periodically updated, of determinations made under subsection (a) of this section.

(c) In making determinations under subsection (a)(1) of this section, the agency shall consider at least the following objectives:

(1) encouraging wide availability to the public of the benefits of the experimental, developmental, or research programs in the shortest practicable time;

(2) promoting the commercial utilization of such inventions;

(3) encouraging participation by private persons (including the most highly qualified persons) in the Government-sponsored experimental, developmental, or research programs; and

(4) fostering competition and preventing the creation or maintenance of situations inconsistent with the antitrust laws of the United States.

(d) With respect to contracts in which an agency invokes subsections (a)(1)-(4) of section 301, a Federal agency may, after a subject invention has been identified, waive any limits or additional restrictions or conditions placed on a contractor beyond those set forth in section 301(c) and section 303 and may allow the contractor to retain the license rights set forth in subsection (c)(12) of this section if such license rights were otherwise limited in the contract.

MARCH-IN-RIGHTS

SEC. 303 *(a) Where a contractor has elected to retain title to a subject invention under section* 301 *of this title, the Federal agency shall have the right (unless waived under section* 302 *of this title), pursuant to policies, procedures, and guidelines of* the Secretary and *subject to the provisions of subsection (b) of this section, to grant or require the contractor or his assignee to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, if the head of the agency or his designee determines that such action is necessary—*

(1) because the contractor, assignee, or licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(2) to alleviate serious health or safety needs which are not reasonably satisfied by the contractor, his assignees or licensees; or

(3) to meet requirements for public use specified by Federal regulation which are not reasonably satisfied by the contractor, his assignees or licensees.

(b) A determination made pursuant to this section shall not be considered a contract dispute and shall not be subject to the Contract Disputes Act (41 U.S.C. 601 et seq.). Any

contractor adversely affected by a determination under this section may, at any time within 60 days after the determination is issued, file a petiion the Unites States Claims Court, which shall have jurisdiction to determine the matter de novo and to affirm, reverse, or modify as appropriate, the determination of the Federal agency.

GENERAL PROVISIONS

SEC. 304.(a) If a contractor does not elect to retain worldwide title to a subject invention, the Federal agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor on such terms and conditions as deemed appropriate by the agecy and subject to section 303 of this Act.

(b) In any case when a Federal employee is a coinventor of any subject invention, the Federal agency employing such coninventor is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor subject to the same conditions set forth in this title as are applicable to the rights the contractor derived through its own contract.

BACKGROUND RIGHTS

SEC. 305. (a) *Nothing contained in this Act shall be construed to deprive the owner of any background patent or of such rights as the owner may have under such patent.*

(b) No contract shall contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and a written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

(c) A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for an agency hearing, and the contractor shall be given prompt notification of the determination by certified or registered mail.

TITLE IV -- PROTECTION OF GOVERNMENT-OWNED INVETIONS

DECISION TO SEEK PATENT PROTECTION

SEC. 401. (a) Prior to the filing of an initial application for patent on a Federally owned invention, the agency filing or having filed the application shall prepare a written determination with a justification that patent protection is being sought for one or more of the following reasons:

(1) Because the invention has commercial potential, the agency intends to promote such commercialization through a licensing or technology utilization program, and patenting will aid in promoting the commercialization of the invention; or

(2) Because the invention may be used in future Government programs and a patent is needed for defensive purposes; or

(3) because of other reasons.

(b) The analysis and justification in cases when filing is for defensive purposes shall include a discussion of the potential and likely future use of the invention in Government programs, the liklihood that others may be working in the same field, and why patenting is considered preferable to other alternatives such as publication.

MAINTENANCE OF PATENT PROTECTION

SEC. 402. No fees for the maintenance of any Government-owned patent shall be paid by any Government agency except after a written determination and justification that one of the reasons set forth in paragraphs (1)-(3) of subsection (a) of section 401 of this Act are applicable.

RESPONSIBILITIES

SEC. 403. (a) A copy of each determination and justification made under sections 401 and 402 of this Act shall be promptly submitted to the Secretary.

(b) Any determinations and justifications made under sections 401 and 402 of this Act to seek or maintain patent protection in order to promote commercialization shall be made by those offices established or elected to perform the functions set forth in Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, and any promotional or licensing efforts with respect to such inventions shall be conducted by such offices.

(c) The Secretary shall prepare guidelines for the format and contents of the justifications required under sections 401 and 402 which shall be followed by the agencies in preparing their determinations and justifications. The Secretary, after consultation with the agencies, shall also provide general guidelines on criteria to be used for selecting those inventions to patent in order to promote commercialization and on the circumstances in which defensive filing is considered cost-effective.

TITLE IV—MISCELLANEOUS

REPEAL OF EXISTING STATUTORY RESEARCH AND DEVELOPMENT AUTHORIZATIONS

SEC. 501. The following Acts are hereby amended as follows:

(1) Section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a)), is amended by striking the last sentence thereof.

(2) Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 951(c)) is amended by striking the last sentence thereof.

(3) Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c)) is repealed.

(4) Section 12(a) of the National Science Foundation

Act of 1950 (42 U.S.C. 1871(a)) is repealed.

(5)(A) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) is repealed: Provided, however, That such section shall continue to be effective with respect to any application for a patent in which the statement under oath referred to in such section has been filed or requested to be filed by the Commissioner of Patents and Trademarks prior to the effective date of this Act.

(B) The item relating to section 152 in the table of contents of the Atomic Energy Act of 1954 is amended to read as follows:

"Sec. 152. Repealed.".

(6) The National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) is amended by—

(A) repealing section 305 thereof (42 U.S.C. 2457): Provided, however, That subsections (c), (d), and (e) of such section shall continue to be effective with respect to any application for patents in which the written statement referred to in subsection (c) of such section has been filed or requested to be filed by the Commissioner of Patents and Trademarks prior to the effective date of this Act;

(B) striking, in section 306(a) thereof (42 U.S.C. 2458(a)), "(as defined by section 305)", and by striking "the Inventions and Contributions Board, established under section 305 of this Act" and inserting in lieu thereof "an Inventions and Contributions Board which shall be established by the Administrator within the Administration";

(C) striking the period at the end of section 203(c) thereof (42 U.S.C. 2473(c)) and inserting in lieu thereof a semi-colon, and by adding at the end thereof the following new paragraph:

"(14) to provide effective contractual provisions for the reporting of the results of the activities of the Administration, including full and complete technical reporting of any innovation made in the course of or under any contract of the Administration: Provided, That no reporting of inventions pursuant to this paragraph shall be in conflict with or require the reporting of any subject invention earlier than required under section 301(c) of the Uniform Science and Technology Research and Development Utilization Act or its

implementing regulations or section 202(c)(1) of title 35 of the United States Code or its implementing regulations;";

(D) striking, in section 203(c) thereof (42 U.S.C. 2473(c)), the following: "(including patents and rights thereunder)"; and

(E) adding at the end of section 203 thereof (42 U.S.C. 2473) the following new subsection:

"(d) For the purposes of chapter 17 of title 35, United States Code, the Administration shall be considered a defense agency of the United States.".

(7) Section 6 of the Act of July 7, 1960 (30 U.S.C. 666), is repealed.

(8) Section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b) is amended by striking all after "utilization" and inserting in lieu thereof a period.

(9) Section 32 of the Arms Control and Disarmament Act (22 U.S.C. 2572) is repealed.

(10) Subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e)) is repealed.

(11) Subsections (a) through (k), (m), and (n) of section 9 of the Federal Nonnuclear Energy Research and Develop-

ment Act of 1974 (42 U.S.C. 5908) are repealed.

(12) Section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d)) is repealed.

(13) Section 3 of the Act of April 5, 1944 (30 U.S.C. 323), is repealed.

(14) Section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c)(3)) is repealed.

(15) Chapter 38 of title 35, United States Code, is amended—

(A) by adding "or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.)" immediately after "title" in section 201(d);

(B) by adding ": Provided, That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of contract performance" immediately after "agreement" in section 201(e);

(C) in section 202(a), (i) by amending clause (i) to read as follows: "(i) when the contractor is not located in the United States or does not have a place of business located in the United States", and (ii) by striking "or (iii)" and inserting in lieu thereof the following: ", (iii) when the funding agreement is entered

into under a program that implements a formal international agreement or arrangement of cooperation in science and technology, and rights in the Government greater than a nonexclusive license are necessary for the agency to fulfill its obligations under the international agreement or arrangement; or (iv)";

(D) by amending section 202(b) to read as follows:

"(b)(1) The rights of the Government under paragraph (a) of this section shall not be exercised by a Federal agency unless it first determines that at least one of the conditions identified in subparagraphs (i) through (iv) of paragraph (a) exists. Except in the case of paragraph (a)(iv), the agency shall file with the Secretary of Commerce, within 30 days after the award of the applicable funding agreement, a statement stating such determination. In the case of a determination under paragraphs (a) (ii) or (iii), the statement shall include an analysis justifying the determination. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions.

"(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that one or more Federal agencies are utilizing the authority of subparagraphs (i) through (iii) of paragraph (a) of this section in a manner that is contrary to the policies and objectives of this chapter, the Administrator is authorized to issue regulations describing classes of situations in which agencies may not exercise the authorities of those subparagraphs.";

(E) by amending subparagraphs (1), (2), and (3) of section 202(c) to read as follows:

"(1) That the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

"(2) That the contractor make a written election within 2 years after disclosure to the Federal agency (or such additional time as may be approved by the Federal agency) whether the contractor will retain title to a subject invention: Provided, That, in any case where publication, on sale, or public use, has initiated the 1 year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Federal agency to a date that is not more than sixty days prior to

the end of the statutory period: And provided further, That the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times.

"(3) That a contractor electing rights in a subject invention agrees to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.";

(F) by adding the following new paragraph at the end of section 202:

"(g) A Federal agency may at any time waive all or any part of the rights of the United States under paragraphs (c) (4) through (8) of this section, section 203, and section 204 of this chapter, to any subject invention or class of subject inventions made or which may be made under a funding agreement or class of funding agreements if the agency determines (A) that the interests of the United States and the general public will be best served thereby; or (B) the funding agreement involves cosponsored, cost sharing or joint venture

research or development when the contractor or other sponsor or joint venturer is required to make or has made a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement. The agency shall maintain a record, which shall be made public and periodically updated, of determinaitons made under this paragraph. In making such determinations under clause (A) of this paragraph, the agency shall consider at least the following objectives:

"(1) encouraging the wide availability to the public of the benefits of the experimental, developmental, or research programs in the shortest practicable time;

"(2) promoting the commercial utilization of such inventions;

"(3) encouraging participation by private persons, including the most highly qualified persons, in Government-sponsored experimental, developmental, or research programs; and

"(4) fostering competition preventing the creation or maintenance of other situations inconsistent with the antitrust laws.";

(G) by striking "may" in section 202(c)(5) and inserting in lieu thereof "as well as any information on utilization or efforts at obtaining utilization ob-

tained as part of a proceeding under section 203 of this chapter shall";

(H) by striking clause (B) in section 202(c)(7) and redesignating clauses (C) and (D) of such section as clauses (B) and (C), respectively;

(I) by adding at the end of section 203 the following:

"A determination pursuant to this section shall not be considered a contract dispute and shall not be subject to the Contract Disputes Act (41 U.S.C. 601 et seq.). Any contractor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within 60 days after the determination is issued, file a petition in the United States Claims Court, *which shall have jurisdiction to determine the matter de novo and to affirm, reverse, or modify as appropriate, the determination of the Federal agency.";*

(J) by amending section 206 to read as follows:

"The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter."; and

(J) by amending section 209 by striking subsection (c)(2); by redesignating subsection (c)(3) as subsection (c)(2); and by striking all in paragraph (d) after "objections" and inserting in lieu thereof a

period.

(16) Section 6(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3705(e)) is repealed.

(17) Section 10(a) of the Act of June 29, 1935 (7 U.S.C. 427i(a)) is amended by striking the last sentence thereof.

(18) Section 427(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(b)) is amended by striking the last sentence thereof.

(19) Section 306(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1226(d)) is amended by striking the first two sentences thereof.

(20) Section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d)) is repealed.

(21) Section 6(b) of the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978 (42 U.S.C. 5585(b)) is amended by striking "7, 8, and 9" and inserting in lieu thereof "7 and 8".

(22) Section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178j) is repealed.

(23) Section 408 of the Water Research and Development Act of 1978 (42 U.S.C. 7879) is repealed.

(24) (A) Section 173 of the United States Synthetic Fuels Corporation Act of 1980 (42 U.S.C. 8773) is repealed.

(B) The item relating to section 173 in the table of contents of the Energy Security Act (42 U.S.C. 8701 et seq.) is amended to read as follows:

"Sec. 173. Repealed.".

RELATIONSHIP TO ANTITRUST LAWS

SEC. 502. Nothing in this Act shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law of the United States.

EFFECTIVE DATE

SEC. 503. (a) This Act shall take effect 6 months after the date of enactment of this Act.

(b) After the effective date of this Act, each Federal agency is authorized, notwithstanding any other law governing the disposition of rights in subject inventions, to allow a contractor or an inventor to retain title to subject inventions made under contracts awarded prior to the effective date of this Act, subject to the same terms and conditions as would apply under this Act had the contract been entered into after the effective date of this Act.