Calendar No. 662

99TH CONGRESS
1ST SESSION

H. R. 3773

[Report No. 99–283]

IN THE SENATE OF THE UNITED STATES

DECEMBER 11 (legislative day, DECEMBER 9), 1985

Received; read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 20 (legislative day, MARCH 18), 1986

Ordered, that when reported by the Committee on Commerce, Science and Transportation, the bill be referred to the Committee on the Judiciary for a period not to exceed thirty calendar days to consider sections 4, 5, 6, and 7.

APRIL 21, 1986

Reported by Mr. DANFORTH, with amendment

[Strike out all after the enacting clause and insert the part printed in italic]

APRIL 21, 1986

Sequentially referred to the Committee on the Judiciary for a period not to extend beyond thirty calendar days, for the purpose of considering sections 4, 5, 6, and 7, pursuant to the order of March 20, 1986

MAY 21 (legislative day, MAY 19), 1986

Committee discharged; placed on the calendar

AN ACT

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Gov-

ernment-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes.

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

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Federal Technology Transfer Act of 1985".~~

~~SEC. 2. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.~~

~~The Stevenson-Wydler Technology Innovation Act of 1980 is amended by redesignating sections 12 through 15 as sections 15 through 18, and by inserting immediately after section 11 the following new section:~~

~~"SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.~~

~~"(a) GENERAL AUTHORITY.—Each Federal agency may permit the director of any of its Government-operated Federal laboratories—~~

~~"(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations including corporations, partnerships, and limited partnerships; industrial development organiza-~~

tions; public and private foundations; nonprofit organizations including universities; licensees of Federal inventions; or other persons; and

"(2) to negotiate licensing agreements under section 207 of title 35, United States Code, or under other authorities.

"(b) ENUMERATED AUTHORITY.—Under agreements described in subsection (a)(1), a Government-operated Federal laboratory shall have the authority (subject to subsection (c) of this section)—

"(1) to grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, or options thereto, in any invention made by a Federal employee, or made jointly by a Federal employee and an employee of the collaborating party, under the agreement, retaining such rights as the Federal laboratory deems appropriate; and

"(2) to waive in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made by a collaborating party or employee of a collaborating party under the agreement.

"(c) AGENCY PLAN.—(1)(A) Within 180 days after the election by any Federal agency to implement subsection (a), revised regulations or instructions for that agency's coopera-

tive research and development program shall be drafted or modified. The revised regulations or instructions need not apply to cooperative agreements entered into prior to the effective date of such regulations or instructions. Such revised regulations or instructions shall—

"(i) if they give the head of the agency or his designee an opportunity to disapprove or require the modification of any such agreement, provide a 30-day period beginning on the date the agreement is presented to him or her by the head of the laboratory concerned within which such action must be taken;

"(ii) give special consideration to small business firms, and consortia involving small business firms;

"(iii) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such invention will be manufactured substantially in the United States;

"(iv) establish employee standards of conduct for resolving potential conflicts of interest, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies

(including the agency with which the employee involved is or was formerly employed); and

"(v) contain other elements deemed appropriate by the agency.

"(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

"(C) If, in implementing subparagraph (A)(iv), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

"(2) Each agency shall maintain a record of all agreements entered into under this section.

"(d) DEFINITION.—As used in this section, the term 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the laboratory or laboratories will provide personnel, services, facilities, equipment, or other resources (but not funds to non-Federal parties) and the non-Federal party or parties will provide funds, personnel, services, facilities, equipment, or other re-

sources toward the conduct of specified research or development efforts which are consistent with the missions of the agency; except that such term does not include a procurement contract as that term is used in section 6303 of title 31, United States Code, or a cooperative agreement as that term is used in section 6305 of such title.

"(e) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

SEC. 3. ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

"(e) ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.—(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the 'Consortium') which shall be within the National Science Foundation and which, in cooperation with Federal laboratories and the private sector, shall—

"(A) develop and administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations, except that such techniques, courses, and materials may be administered only with the consent of the Federal laboratory concerned;

"(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

"(C) provide a clearinghouse for requests for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

"(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service; and

"(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

"(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

"(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

"(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

"(G) with the consent of any Federal laboratory, assist such laboratory to establish technical volunteer service programs for the purpose of providing technical assistance to communities related to such laboratory;

"(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations; and

"(I) establish advisory committees in each Federal laboratory consortium region composed of representatives from State and local governments, large and small business, universities, and other appropriate persons to advise on the effectiveness of the program (and

the members of any such advisory committee shall serve at no expense to the government).

"(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a representative appointed from each Federal agency with one or more member laboratories.

"(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

"(4) The Director of the National Science Foundation shall provide the Consortium on a reimbursable basis with administrative services, such as office space, personnel, and support services of the Foundation, as requested by the Consortium and approved by such Director.

"(5) Not later than one year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (6), concerning the activities of the Consortium and the expenditures made by it

under this subsection during the year for which the report is made.

"(6)(A) Subject to subparagraph (B), an amount equal to 0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Science Foundation at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Foundation to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

"(B) A transfer may be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

"(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

"(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, or 1991.

"(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, are authorized to provide such additional support for operations of the Consortium as they deem appropriate.".

~~SEC. 4. UTILIZATION OF FEDERAL TECHNOLOGY.~~

~~(a) RESPONSIBILITY FOR TECHNOLOGY TRANSFER.—~~ ~~Section 11(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(a)) is amended—~~

~~(1) by inserting "(1)" after "POLICY.—";~~ ~~and~~

~~(2) by adding at the end thereof the following new paragraphs:~~

~~"(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.~~

~~"(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.".~~

~~(b) RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—(1) Section 11(b) of such Act (15 U.S.C. 3710(b)) is amended—~~

~~(A) by striking out "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time" and inserting in lieu thereof "200 or more full-time scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions";~~

~~(B) by inserting immediately before the next to last sentence the following new sentence: "Further-~~

more, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.'';

(C) by striking out ''requirements set forth in (1) and/or (2) of this subsection'' in the next to last sentence and inserting in lieu thereof ''requirement set forth in clause (2) of the preceding sentence''; and

(D) by striking out ''either requirement (1) or (2)'' in the last sentence and inserting in lieu thereof ''such requirement''.

(2) Section 11(c) of such Act (15 U.S.C. 3710(c)) is amended—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

''(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;'';

(B) by inserting ''all'' before ''federally owned'' in paragraph (2);

(C) by striking out "the Center for the Utilization of Federal Technology" in paragraph (3) and inserting in lieu thereof "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer,"; and

(D) by striking out "in response to requests from State and local government officials" in paragraph (4) and inserting in lieu thereof "to State and local government officials".

(c) DISSEMINATION OF TECHNICAL INFORMATION.—Section 11(d) of such Act (15 U.S.C. 3710(d)) is amended—

(1) by striking out "(d)" and all that follows down through "shall—" and inserting in lieu thereof the following:

"(d) DISSEMINATION OF TECHNICAL INFORMATION.—The National Technical Information Service shall—";

(2) by striking out paragraph (2);

(3) by striking out "existing" in paragraph (3), and redesignating such paragraph as paragraph (2);

(4) by striking out paragraph (4) and inserting in lieu thereof the following:

"(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Con-

sortium for Technology Transfer to the extent that such requests need a response involving more than the published information available to the Service;";

(5) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(6) by striking out "(e)(4)" in subsection (4) as so redesignated and inserting in lieu thereof "(e)(3)".

(d) AGENCY REPORTING.—Section 11(f) of such Act (15 U.S.C. 3710(c)) (as redesignated by section 3(1) of this Act) is amended—

(1) by striking out "prepare biennially a report summarizing the activities" in the first sentence and inserting in lieu thereof "report annually to the Congress, as part of the agency's annual budget submission, on the activities"; and

(2) by striking out the second sentence.

(e) FUNCTIONS OF THE SECRETARY.—Section 11 of such Act (as amended by the preceding provisions of this Act) is further is amended by adding at the end thereof the following new subsection:

"(g) FUNCTIONS OF THE SECRETARY.—The Secretary, in consultation with other Federal agencies, may—

"(1) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and

options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

"(2) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

"(3) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development program and projects.".

SEC. 5. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 12 the following new section:

"SEC. 13. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

"The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

"(1) inventions, innovations, or other outstanding scientific or technological contributions of value to the United States due to commercial applications or due to contributions to missions of the Federal agency or the Federal government, or

"(2) exemplary activities that promote the domestic transfer of science and technology developed within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.".

SEC. 6. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 13 the following new section:

"SEC. 14. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into under section 12, and from inventions of Government-operated Federal laboratories licensed under section 207 of title 35, United States Code, or

under any other provision of law shall be retained by the agency involved in the production of the income. Such funds shall be transferred by the agency to its Government-operated laboratories, with the major share of the royalties or other income from any invention going to the laboratory where the invention occurred; and the funds so transferred to any such laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the succeeding fiscal year—

"(A) for payment of expenses incidental to the administration and licensing of inventions by that laboratory or by the agency with respect to inventions which occurred at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for invention management and licensing services;

"(B) to reward scientific, engineering, and technical employees of that laboratory as part of the agency's reward program established pursuant to the preceding section of this Act; provided that any payment made under this paragraph shall be in addition to the regular pay of the employee involved and to any other awards made to that employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise enti-

tled or for which he is otherwise eligible or limit the amount thereof;

"(C) to further scientific exchange among the government-operated laboratories of the agency; or

"(D) for scientific research and development, for education and training of employees of that consistent with the research and development mission and objectives of the agency, and for other activities that increase the licensing potential for transfer of the technology of the Government-operated laboratories of the agency.

Any of such funds not so used or obligated by the end of the fiscal year succeeding the fiscal year in which they are received shall be paid into the Treasury of the United States.

"(2) If the royalties received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated for the purposes described in subparagraphs (A) through (C) of paragraph (1) during that fiscal year or the succeeding fiscal year. Any funds not so used or obligated shall be paid into the Treasury of the United States.

"(b) CERTAIN ASSIGNMENTS.—In the event that the invention involved was one assigned to the Federal agency—

"(1) by a contractor, grantee, or party to a cooperative agreement with the agency, or

"(2) by an employee of the agency who was not working in a Government-operated laboratory at the time the invention was made,

the agency unit that funded or employed the entity that made such assignment shall be considered to be a Government-operated laboratory for purposes of this section.

"(c) REPORTS.—In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.".

SEC. 7. MISCELLANEOUS AND CONFORMING AMENDMENTS.

(a) REPEAL OF NATIONAL INDUSTRIAL TECHNOLOGY BOARD.—Section 10 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3709) is repealed.

(b) CHANGES IN TERMINOLOGY OR ADMINISTRATIVE STRUCTURE.—(1) Section 3(2) of the Stevenson-Wydler Technology Innovation Act of 1980 is amended by striking out "centers for industrial technology" and inserting in lieu thereof "cooperative research centers".

(2) Section 4 of such Act is amended—

(A) by striking out "Industrial Technology" in paragraph (1) and inserting in lieu thereof "Productivity, Technology, and Innovation";

(B) by striking out " 'Director' means the Director of the Office of Industrial Technology" in paragraph (3) and inserting in lieu thereof " 'Assistant Secretary' means the Assistant Secretary for Productivity, Technology, and Innovation";

(C) by striking out "Centers for Industrial Technology" in paragraph (4) and inserting in lieu thereof "Cooperative Research Centers";

(D) by striking out paragraph (6), and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively; and

(E) by striking out "owned and funded" in paragraph (6) as so redesignated and inserting in lieu thereof "owned, leased, or otherwise used by a Federal agency and funded".

(3) Section 5(a) of such Act is amended by striking out "Industrial Technology" and inserting in lieu thereof "Productivity, Technology, and Innovation".

(4) Section 5(b) of such Act is amended by striking out "DIRECTOR" and inserting in lieu thereof "ASSISTANT SECRETARY", and by striking out "a Director of the Office" and

all that follows and inserting in lieu thereof "an Assistant Secretary for Productivity, Technology, and Innovation.".

(5) Section 5(c) of such Act is amended by striking out "the Director" each place it appears and inserting in lieu thereof "the Assistant Secretary".

(6) The heading of section 6 of such Act is amended to read as follows:

"SEC. 6. COOPERATIVE RESEARCH CENTERS."

(7) Section 6(a) of such Act is amended by striking out "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(8) Section 6(b)(1) of such Act is amended by striking out "basic and applied".

(9) Section 6(c) of such Act is amended to read as follows:

"(c) RESEARCH AND DEVELOPMENT UTILIZATION.—In the promotion of technology from research and development efforts by Centers under this section, chapter 18 of title 35, United States Code, shall apply to the extent not inconsistent with this section.".

(10) Section 6(f) of such Act is repealed.

(11) The heading of section 8 of such Act is amended by striking out "CENTERS FOR INDUSTRIAL TECHNOLOGY" and inserting in lieu thereof "COOPERATIVE RESEARCH CENTERS".

(12) Section 8(a) of such Act is amended by striking out "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(c) RELATED CONFORMING AMENDMENT.—Section 210 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1985, shall take precedence over the provisions of this chapter to the extent that they permit or require a disposition of rights in subject inventions which is inconsistent with such chapter.".

(d) ADDITIONAL DEFINITIONS.—Section 4 of such Act (as amended by subsection (b)(2) of this section) is further amended by adding at the end thereof the following new paragraphs:

"(8) 'Federal agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined in section 102 of such title.

"(9) 'Invention' means any invention or discovery which is or may be patentable or otherwise protected 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.).

"(10) 'Made' when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

"(11) 'Small business firm' means a small business concern as defined in section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.".

(c) REDESIGNATION OF SECTIONS TO REFLECT CHANGES MADE BY PRECEDING PROVISIONS.—(1) Such Act (as amended by the preceding provisions of this Act) is further amended by redesignating sections 11 through 18 as sections 10 through 17, respectively.

(2)(A) Section 5(d) of such Act is amended by inserting "(as then in effect)" after "sections 5, 6, 8, 11, 12, and 13 of this Act".

(B) Section 8(a) of such Act is amended by striking out the last sentence.

(C) Section 9(d) of such Act is amended by striking out "or 13" and inserting in lieu thereof "or 12".

(3) Section 13(a)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out

~~"section 12" in the matter preceding subparagraph (A) and inserting in lieu thereof "section 11".~~

That this Act may be cited as the "Federal Technology Transfer Act of 1986".

UTILIZATION OF FEDERAL TECHNOLOGY

SEC. 2. (a) Section 11(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(a)) is amended—

(1) by inserting "(1)" after "POLICY.—"; and

(2) by adding at the end thereof the following:

"(2) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.".

(b)(1) Section 11(b) of such Act (15 U.S.C. 3710(b)) is amended—

(A) by striking "a total amount budget exceeding $20,000,000 shall provide at least one professional individual full-time" and inserting in lieu thereof "200 or more full-time scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions";

(B) by striking "requirements set forth in (1) and/or (2) of this subsection" and inserting in lieu

thereof "requirement set forth in clause (2) of the preceding sentence"; and

(C) by striking "either requirement (1) or (2)" in the last sentence and inserting in lieu thereof "such requirement".

(2) Section 11(c) of such Act (15 U.S.C. 3710(c)) is amended—

(A) by amending paragraph (1) to read as follows:

"(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;";

(B) by striking "the Center for the Utilization of Federal Technology" in paragraph (3) and inserting in lieu thereof "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer,", and by striking "; and" inserting in lieu thereof a semicolon;

(C) by striking "in response to requests from State and local government officials." in paragraph (4) and inserting in lieu thereof "to State and local government officials; and"; and

(D) by adding after paragraph (4) the following:

"(5) to participate, where feasible, in regional, State, and local government programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.".

(c) Section 11(d) of such Act (15 U.S.C. 3710(d)) is amended—

(1) by striking all from "(d)" through "shall—" and inserting in lieu thereof the following:

"(d) DISSEMINATION OF TECHNICAL INFORMATION.—The National Technical Information Service shall—";

(2) by striking paragraph (2);

(3) by striking "existing" in paragraph (3), and redesignating such paragraph as paragraph (2);

(4) by striking paragraph (4) and inserting in lieu thereof the following:

"(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;";

(5) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(6) by striking "(c)(4)" in paragraph (4), as so redesignated, and inserting in lieu thereof "(c)(3)".

(d) Section 11(e) of such Act (15 U.S.C. 3710(e)) is amended by striking "Center for the Utilization of Federal Technology" and inserting in lieu thereof "Secretary".

ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER

SEC. 3. Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710), is amended by section 2 of this Act, is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.—(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the 'Consortium') which, in cooperation with Federal laboratories and private sector, shall—

"(A) develop and, with the consent of the Federal laboratory concerned, administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory em-

ployees regarding the commercial potential of laboratory technology and innovations;

"(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

"(C) provide a clearinghouse, at the laboratory level, for requests for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations (including universities), Federal agencies and laboratories, and other persons, and—

"(i) to the extent that a response to such requests can be made with published information available to the National Technical Information Service, refer such requests to that Service; and

"(ii) otherwise refer such requests to the appropriate Federal laboratories and agencies;

"(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

"(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the

National Aeronautics and Space Administration, and other Federal agencies, as necessary;

"(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

"(G) with the consent of any Federal laboratory, assist such laboratory to establish programs, such as technical volunteer services, for the purpose of providing technical assistance to communities related to such laboratory; and

"(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations.

"(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a representative appointed from each Federal agency with one or more member laboratories.

"(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

"(4) The Director of the National Bureau of Standards shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Bureau, as requested by the Consortium and approved by such Director.

"(5) Not later than 1 year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (6), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made.

"(6)(A) Subject to subparagraph (B), an amount equal to 0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Bureau of Standards at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Bureau to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

"(B) A transfer may be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

"(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

"(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, or 1991.

"(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they consider appropriate.".

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 4. Section 11 of such Act (15 U.S.C. 3710), as amended by this Act, is further amended by adding at the end thereof the following:

"(g) FUNCTIONS OF THE SECRETARY.—(1) The Secretary, in consultation with other Federal agencies, may—

"(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to Federal laboratories, including research and development limited partnerships;

"(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for

use on a voluntary basis in cooperative research and development arrangements; and

"(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

"(2) Two years after the date of enactment of this subsection, and every 2 years thereafter, the Secretary shall submit a report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this Act. Other Federal agencies shall, to the extent permitted by law, provide the Secretary with all information necessary to prepare such reports.".

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

SEC. 5. The Stevenson-Wydler Technology Innovation Act of 1980 is amended by redesignating sections 12 through 15 as sections 15 through 18, respectively, and by inserting after section 11 the following:

"SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

"(a) GENERAL AUTHORITY.—(1) Each Federal agency may permit the director of any of its Government-operated Federal laboratories—

"(A) to enter into cooperative research and development arrangements (subject to such regulations or review procedures as the agency considers appropriate)

with other Federal agencies, units of State or local government, industrial organizations (including corporations, partnerships, and limited partnerships), public and private foundations, non-profit organizations (including universities), or other persons (including licensees of inventions owned by the Federal agency); and

"(B) to negotiate licensing agreements under section 207 of title 35, United States Code, or other authorities for Government-owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the Government.

"(2) Under arrangements entered into pursuant to paragraph (1), a laboratory may—

"(A) accept funds, services, and property from collaborating parties and provide services and property to collaborating parties;

"(B) grant or agree to grant in advance to a collaborating party patent licenses, assignments; or options thereto, in any invention made by a Federal employee under the arrangement, retaining such rights as the Federal agency considers appropriate;

"(C) waive, in whole or in part, any right of ownership which the Government may have under any other statute to any inventions made by a collaborating

party or employee of a collaborating party under the arrangement; and

"(D) to the extent consistent with any applicable agency requirements, permit employees or former employees to the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

"(3) Each agency shall maintain a record of all agreements entered into under this section.

"(b) DEFINITION.—As used in this section, the term—

"(1) 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government provides personnel, services, facilities, equipment, or other resources (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the agency, except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code; and

"(2) 'laboratory' means a facility or group of facilities owned, leased, or otherwise used by a Federal

agency, a substantial purpose of which is the performance of research and development by employees of the Federal Government.".

"(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES

SEC. 6. The Stevenson-Wydler Technology Innovation Act of 1980, as amended by this Act, is further amended by inserting after section 12 the following:

"SEC. 13. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

"(a) CASH AWARDS PROGRAM.—The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

"(1) inventions, innovations, or other outstanding scientific or technological contributions of value to the United States due to commercial applications or due to contributions to missions of the Federal agency or the Federal Government; and

"(2) exemplary activities that promote the domestic transfer of science and technology developed within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

"(b) PAYMENT OF ROYALTIES.—Any royalties or other income received by an agency from the licensing or assignment of inventions under this section or under section 207 of title 35, United States Code, or other authority shall be retained by the agency whose laboratory produced the invention, except that beginning with fiscal year 1988, such royalties or other income shall be subject to appropriations, and shall be disposed of as follows:

"(1) At least 15 percent of the royalties or other income received each year by the agency on account of any invention shall be paid to the inventor or coinventors if they were employees of the agency at the time the invention was made. Payments made under this paragraph are in addition to the regular pay of the employee and to any awards made to that employee, and such payments shall not affect the entitlement or limit the amount of the regular pay, annuity, or other awards to which the employee is otherwise entitled or for which the employee is otherwise eligible.

"(2) The balance of any royalties or related income earned during any fiscal year after paying the inventors' portions under paragraph (1) shall be transferred to the agency's Government-operated laboratories with a substantial percentage being returned to the laboratories whose inventions produced the royalties or income. Such royalties or income may be retained by the laboratory up to the limits specified in this paragraph, and used—

"(A) for mission-related research and development of the laboratory;

"(B) to support development and education programs for employees of the laboratory;

"(C) to reward employees of the laboratory for contributing to the development of new technologies and assisting in the transfer of technology to the private sector, and for inventions of value to the Government that will not produce royalties;

"(D) to further scientific exchange to and from the laboratory; and

"(E) for payment of patenting costs and fees and other expenses incidental to promoting, administering, and licensing inventions, including the fees or costs for services of other agencies or

other persons or organizations for invention management and licensing services.

If the balance for any laboratory after paying the inventors' shares under paragraph (1) exceeds 5 percent of the annual budget of the laboratory, 75 percent of the excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the purposes listed in subparagraphs (A) through (E), by the end of the fiscal year subsequent to the one in which they were received. Any funds not so used or obligated by the end of such fiscal year shall be paid to the Treasury of the United States.

"(c) ASSIGNED INVENTIONS.—If the invention was one assigned to the agency either (1) by a contractor, grantee, or the recipient of a cooperative agreement of the agency, or (2) by an employee of the agency that was not working in the laboratory at the time the invention was made, the agency unit that funded or employed or assigned the assignee shall, for purposes of this section, be considered to be a laboratory.

"(d) REPORTS.—In making their annual budget submissions, Federal agencies shall submit to the appropriate authorization and appropriations committees of both Houses of the Congress summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.".

EMPLOYEE ACTIVITIES

SEC. 7. The Stevenson-Wydler Technology Innovation Act of 1980, as amended by this Act, is further amended by inserting after section 13 the following:

"SEC. 14. EMPLOYEE ACTIVITIES.

"(a) IN GENERAL.—If a Federal agency which has the right of ownership to an invention under this Act does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency may allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid up license to practice or have practiced the invention throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

"(b) DEFINITION.—For purposes of this section, Federal employees include 'special Government employees' as defined in section 202 of title 18, United States Code.

"(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

MISCELLANEOUS AND CONFORMING AMENDMENTS

SEC. 8. (a) Section 10 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3709) is repealed.

(b)(1) Section 3(2) of such Act (15 U.S.C. 3702(2)) is amended by striking "centers for industrial technology" and inserting in lieu thereof "cooperative research centers".

(2) Section 4 of such Act (15 U.S.C. 3703) is amended—

(A) by striking "Industrial Technology" in paragraph (1) and inserting in lieu thereof "Productivity, Technology, and Innovation";

(B) by striking "'Director' means the Director of the Office of Industrial Technology" in paragraph (3) and inserting in lieu thereof "'Assistant Secretary' means the Assistant Secretary for Productivity, Technology, and Innovation";

(C) by striking "Centers for Industrial Technology" in paragraph (4) and inserting in lieu thereof "Cooperative Research Centers";

(D) by striking paragraph (6), and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively; and

(E) by striking "owned and funded" in paragraph (6), as so redesignated, and inserting in lieu

thereof "owned, leased, or otherwise used by a Federal agency and funded".

(3) Section 5(a) of such Act (15 U.S.C. 3704(a)) is amended by striking "Industrial Technology" and inserting in lieu thereof "Productivity, Technology, and Innovation".

(4) Section 5(b) of such Act (15 U.S.C. 3704(b)) is amended by striking "DIRECTOR" and inserting in lieu thereof "ASSISTANT SECRETARY", and by striking all from "a Director of the Office" and inserting in lieu thereof "an Assistant Secretary for Productivity, Technology, and Innovation.".

(5) Section 5(c) of such Act (15 U.S.C. 3704(c)) is amended by striking "the Director" each place it appears and inserting in lieu thereof "the Assistant Secretary".

(6) The heading of section 6 of such Act is amended to read as follows:

"SEC. 6. COOPERATIVE RESEARCH CENTERS.".

(7) Section 6(a) of such Act (15 U.S.C. 3705(a)) is amended by striking "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(8) Section 6(b)(1) of such Act (15 U.S.C. 3705(b)(1)) is amended by striking "basic and applied".

(9) Section 6(e) of such Act (15 U.S.C. 3705(e)) is amended to read as follows:

"(e) RESEARCH AND DEVELOPMENT UTILIZATION.—In the promotion of technological innovation and commercialization of research and development efforts by Centers under this section, chapter 18 of title 35, United States Code, shall apply.".

(10) Section 6(f) of such Act (15 U.S.C. 3705(f)) is repealed.

(11) The heading of section 8 of such Act is amended by striking "CENTERS FOR INDUSTRIAL TECHNOLOGY" and inserting in lieu thereof "COOPERATIVE RESEARCH CENTERS".

(12) Section 8(a) of such Act (15 U.S.C. 3707(a)) is amended by striking "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(c) Section 4 of such Act (15 U.S.C. 3703), as amended by subsection (b)(2) of this section, is further amended by adding at the end thereof the following:

"(8) 'Federal agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments, as defined in section 102 of such title.

"(9) 'Invention' means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel varie-

ty of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

"(10) 'Made', when used in conjunction with any invention, means the conception or first actual reduction to practice of such invention.".

(d)(1) Such Act (as amended by this Act) is further amended by redesignating sections 11 through 18 as sections 10 through 17, respectively.

(2)(A) Section 5(d) of such Act (15 U.S.C. 3704(d)) is amended by inserting "(as then in effect)" after "Act" the second time it appears.

(B) Section 8(a) of such Act (15 U.S.C. 3707(a)) is amended by striking the last sentence.

(C) Section 9(d) of such Act (15 U.S.C. 3708(d)) is amended by striking "or 13" and inserting in lieu thereof "10, or 14".

Calendar No. 662

99TH CONGRESS
2D SESSION

H. R. 3773

[Report No. 99-283]

AN ACT

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes.

MAY 21 (legislative day, MAY 19), 1986

Committee discharged; placed on the calendar

[COMMITTEE PRINT]

JULY 27, 1984

Showing Bill As Reported From Subcommittee

98TH CONGRESS
2D SESSION

H. R. 5003

To establish a uniform Federal system for management, protection, and utilization of the results of federally sponsored scientific and technological research and development, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1984

Mr. FUQUA (for himself, Mr. BROWN of California, Mr. WALGREN, Mr. BOUCHER, Mr. SENSENBRENNER, and Mr. GREGG) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Science and Technology

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 1, 1984]

A BILL

To establish a uniform Federal system for management, protection, and utilization of the results of federally sponsored scientific and technological research and development, and for other purposes.

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

That this Act may be cited as the "Uniform Science and Technology Research and Development Utilization Act".

TABLE OF CONTENTS

TITLE I—POLICY

Sec. 101. Findings.

TITLE II—IMPLEMENTATION

Sec. 201. Functions of the Federal Coordinating Council on Science, Engineering, and Technology.
Sec. 202. Functions of the Secretary of Commerce.

TITLE III—ALLOCATION OF RIGHTS

Sec. 301. Rights of the Government and the contractor.
Sec. 302. Waiver.
Sec. 303. March-in rights.
Sec. 304. Background rights.

TITLE IV—MISCELLANEOUS

Sec. 401. Definitions.
Sec. 402. Amendments to other Acts.
Sec. 403. Relationship to antitrust laws.
Sec. 404. Effective date.

TITLE I—POLICY

FINDINGS

SEC. 101. The Congress, recognizing the profound impact of science and technology, finds and declares that—

(1) the United States has recently experienced a decline in 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 public for such investment;

(3) inventions resulting from Government-sponsored research and development constitute a valuable national resource which should be developed in a manner consistent with the public interest and the equities of the respective parties; and

(4) there is a need for the establishment and implementation of a flexible Government-wide policy to increase the utilization of the results of Government-sponsored 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 in the United States and foreign countries, and recognize the equities of the contracting parties.

TITLE II—IMPLEMENTATION

FUNCTIONS OF THE FEDERAL COORDINATING COUNCIL ON SCIENCE, ENGINEERING, AND TECHNOLOGY

SEC. 201. (a)(1) The Federal Coordinating Council for Science, Engineering, and Technology (established by section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) and reestablished by Executive Order 12039) (hereinafter in

this section referred to as the "Council") shall make recommendations to the Director of the Office of Science and Technology Policy (or his designee) and to the Secretary with regard to uniform policies, guidelines, and practices to carry out the provisions of this Act.

(2) For the purpose of assuring effective management of Government-owned or funded inventions, the Secretary of Commerce shall chair a committee of the Council to formulate the recommendations required by this subsection. Such committee shall also include but not be limited to representatives of each Federal agency with a major research and development program. When adopted by the Director any such recommendations shall be transmitted to Federal agencies through appropriate channels, including those provided in section 202(6).

(b) In order to carry out the responsibilities set forth in subsection (a), the Council may—

(1) acquire data and reports from Federal agencies on the interpretation and implementation of this Act and related policies, regulations, and practices;

(2) review Federal agency implementation of the provisions of this Act;

(3) analyze, on a continuing basis, data acquired by the Council;

(4) consider problems and developments in the fields of inventions, patents, and matters connected therewith and the impact thereof on Government policy or uniform accommodation or implementation by Federal agencies; and

(5) publish annually a report on Council efforts, findings, and recommendations made under this section, which report shall include—

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

(B) any recommendations for changes in law to better achieve the purposes of this Act; and

(C) an analysis of Federal policies related to this Act.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 202. For the purpose of assuring the effective management of Government-owned inventions, the Secretary may—

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

(2) assist Federal agencies in seeking and maintaining protection on inventions in foreign countries,

including the payment of fees and costs connected therewith;

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

(4) publish notification of all Government-owned inventions that are available for licensing or assignment;

(5) evaluate inventions referred to him by Federal agencies, and patent applications filed thereon, in order to identify those inventions with the greatest commercial potential and to insure promotion and utilization by the public of inventions so identified; and

(6) initiate regulations and revisions thereof which shall be promulgated by the Director of the Office of Management and Budget after full consideration of agency and public comments.

TITLE III—ALLOCATION OF RIGHTS

RIGHTS OF THE GOVERNMENT AND THE CONTRACTOR

SEC. 301. (a) Subject to subsection (c) and to section 303, each contractor may elect to retain worldwide title to any subject invention. Where not in violation of existing treaties or laws of the United States, a Federal agency may, at the time of contracting, limit or eliminate this right, place additional restrictions or conditions in the contract that go

beyond those set forth in subsection (c), expand the rights of the Government to license or sublicense, or alter or eliminate the contractor's right under subsection (c)(7), 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;

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

(3) the contract is related to or associated with an international treaty, agreement, memorandum of understanding, or other arrangement with a foreign government including (but not limited to) agreements of cooperation in science and technology and military agreements related 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) are necessary for the agency to fulfill its obligations under the international treaty, agreement, memorandum of understanding, or arrangement;

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

(5) the contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or nuclear weapons related programs; however, all contractual limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs.

(b) Each determination made by a Federal agency under subsection (a) shall be in writing and copies of those made under subsection (a)(4) shall be filed with the Federal Coordinating Council for Science, Engineering, and Technology. In the case of a determination under subsection (a)(4), the statement shall include an analysis supporting the determination and justifying the limitations and conditions being imposed. If the contractor believes that a determination is contrary to the terms, policy, or objectives of this Act, or constitutes an abuse of discretion by the agency, the determination shall be subject to section 303(b). Whenever the Director of the Office of Management and Budget has determined that one or more Federal agencies are utilizing the authority of subsection (a)(4) in a manner that is contrary to

the terms, policy, or objectives of this Act, he may promulgate regulations under section 202(6) which establish policies, procedures, and guidelines describing classes of situations in which agencies may not utilize the provisions of subsection (a)(4).

(c) In accordance with regulations which shall be promulgated under section 202(6), each contract under which the contractor may elect to retain title to a subject invention shall include a patent rights clause containing such provisions as may be necessary and appropriate to effectuate the following rights and requirements:

(1) The contractor shall disclose each subject invention to the contracting Federal agency within a reasonable time after it is made and the Government may receive title, upon request, to any subject invention not disclosed within such reasonable time.

(2) Unless the Government has acquired the right to title in accordance with subsection (a)—

(A) the contractor shall make a written election to retain title to the subject invention within a reasonable time after disclosure under paragraph (1);

(B) the Federal agency may consider and, with the consent of the contractor, grant requests for retention of rights by the inventor in any

country in which the contractor has not elected title on such terms and conditions as may be deemed appropriate by the agency and subject to section 303;

(C) a contractor electing to retain title in any country to a subject invention shall file a patent application in the elected country within a reasonable time; and

(D) the Government may receive title to any subject invention in any countries in which the contractor or inventor fails to elect or has elected not to retain title or has failed to file a patent application in accordance with this paragraph.

(3) With respect to any subject invention to which a contractor elects to retain title, the Government shall have (in addition to any rights that have been taken under subsection (a))—

(A) a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the subject invention throughout the world by or on behalf of the Government;

(B) if provided in the contract, such additional rights to sublicense any foreign government or international organization pursuant to any existing or future treaty or agreement; and

(C) the right to require the contractor, inventor, or assignee to license another person to practice a subject invention on reasonable terms if—

(i) such licensing is necessary to permit lawful commercial manufacture, use, or sale by a third party of a specified end item of a major, multiyear research and development project of the Department of Energy or the National Aeronautics and Space Administration and such subject invention was made during research and development activities directly related to that project;

(ii) a similar product or process is not commercially available as a reasonable substitute for the licensing; and

(iii) such right is specified in the contract.

(4) The Federal agency shall require, in accordance with regulations which shall be promulgated under section 202(6), at least one written report during the first 3 years after issuance of the patent to a contractor or inventor and may require other written reports on the efforts to obtain commercial utilization made by the contractor, inventor, licensee, or assignee with respect to any subject invention to which the con-

tractor elects title pursuant to this section, except 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, shall be treated by the agency as a trade secret or as commercial or financial information obtained from a person and privileged or confidential and not subject to disclosure under section 552 of title 5, United States Code.

(5) The contractor or inventor, in the event a United States patent application is filed by it or on its behalf or by any assignee, shall 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) The balance of any royalties or income earned on subject inventions by the contractor operating a Government-owned, contractor-operated facility up to a total equal to 5 percent of that facility's annual budget (if the invention was conceived or first actually reduced to practice in the facility and if the contractor elects to retain the funds) shall, after payment of patenting costs, licensing costs, and other expenses (including payments to inventors), be used by such contractor for scientific research and development consist-

ent with the mission and objectives of such facility, including activities that increase the licensing potential of other inventions of the facility, with any such royalties or income in excess of 5 percent of the facility's budget returned to the Treasury; and to the extent practical the licensing of the inventions involved shall be administered by contractor employees on location at the facility.

(7) The contractor, in cases when it has the choice under subsection (a) to retain title to a subject invention but does not elect to retain title, may 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 limited or revocable only to the extent necessary for the Government to grant an exclusive license; except that the contractor shall not be entitled to such a license if the contractor has willfully failed to disclose the subject invention.

(8) A transfer by the contractor of rights in any subject invention shall be subject to the rights of the Government provided by this section and sections 302, 303, and 304.

(9) The clause may impose any other administrative requirements which may be necessary to effectuate rights of the Government and the contractor as specified in this Act, to the extent not inconsistent with this Act.

WAIVER

SEC. 302. (a) In accordance with regulations which shall be promulgated under section 202(6), a Federal agency may, at any time, waive all or any part of the rights of the Government under sections 301 and 303 in any subject invention or class of subject inventions which are or may be made under a contract of the agency if the agency determines that the interests of the Government and the general public will be best served thereby, including but not limited to instances where—

(1) the contract involves cosponsored, cost-shared, 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, personnel, data, or equipment to the work performed under the contract, or

(2) the conditions justifying acquisition of title by the Government under section 301(a) no longer exist or do not apply in the case of the subject invention.

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

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

(A) Encouraging the wide availability to the public of the benefits of Government-sponsored research and development in the shortest practicable time.

(B) Promoting the commercial utilization of inventions made under Government funding agreements.

(C) Encouraging participation by highly qualified private persons in Government-sponsored research and development programs.

(D) Fostering competition and preventing the creation or maintenance of situations inconsistent with the antitrust laws.

(d) When an agency waives all or part of its rights in an invention under subsection (a)(2), the contractor shall be permitted to take title subject to this section and sections 301(c), 303, and 304 of this Act.

MARCH-IN RIGHTS AND NOTIFICATION OF AVAILABILITY FOR LICENSING

SEC. 303. (a) Where a contractor or inventor has elected to retain title to a subject invention under section 301 or 302, the Federal agency shall have the right, in accordance with regulations which shall be promulgated under section

202(6), and subject to the provisions of subsection (b), to require the contractor or his assignee or the inventor 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, inventor, assignee, or licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve the practical application of the subject invention;

(2) to alleviate serious health or safety needs which are not reasonably satisfied by the contractor, inventor, assignee or licensee; or

(3) to meet requirements for public use specified by Federal regulation which are not reasonably satisfied by the contractor, inventor, assignee or licensee.

(b)(1) A determination made pursuant to this section or section 301(a)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. 601 et seq.).

(2) An administrative appeals procedure shall be established by regulations promulgated under section 202(6).

(3) Any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this sec-

tion may, at any time within sixty days after the determination is issued—

(A) file an appeal under the appeals procedure established pursuant to paragraph (2), or

(B) 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.

(4) In cases described in paragraphs (1) and (3) of subsection (a), the agency's determination shall be held in abeyance pending the exhaustion of any appeal described in paragraph (3).

(c)(1) Minimum standards for the commercialization of inventions by contractors and inventors shall be established by regulations promulgated under section 202(6).

(2) If the head of an agency (or his designee) determines, on the basis of information contained in the report required to be filed with the agency by a contractor or inventor under section 301(c)(4), that such contractor or inventor has failed to meet the minimum standards prescribed pursuant to paragraph (1) and the invention has potential commercial value, such agency head (or designee) shall refer interested parties to the patent holder of such invention through the licensing program of such agency or the National Technology Information Service.

BACKGROUND RIGHTS

SEC. 304. (a) Nothing contained in this Act shall be construed to deprive the owner of any background patent 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, and a written justification has been signed, by the head of the agency (or his designee). Any such provision shall 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 head of the agency may not delegate the authority to approve such provisions or to sign the justification required for such provisions to a program level lower than Assistant Secretary in the case of a Department or Assistant Administrator or comparable official in the case of any other agency.

(c) A Federal agency shall not require the licensing of third parties under any such provision unless the head of the agency (or his designee who is responsible for the program and who holds as a minimum the rank of Assistant Secretary, Assistant Administrator, or its equivalent) determines that the use of the invention by others is necessary for the practice of a subject invention or for use of a work object of

the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination shall be on the record after an opportunity for an agency hearing in which the contractor has the right to participate and the contractor shall be given prompt notification of the determination by certified or registered mail.

TITLE IV—MISCELLANEOUS

DEFINITIONS

SEC. 401. As used in this Act (other than in section 402)—

(1) the term "person" means any person as defined in section 1 of title 1, United States Code;

(2) the term "Government" means the Government of the United States of America;

(3) the term "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);

(4) the term "small business firm" means a small business concern as defined in section 2 of the Small Business Act (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration; and

(5) the term "nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 and exempt from taxation under section 501(a) of such Code, or any nonprofit, scientific, or educational organization qualified under a State nonprofit organization statute;

(6) the term "contract" means any contract, grant, or cooperative agreement entered into between a Federal agency (other than the Tennessee Valley Authority) and any person other than a small business firm or nonprofit organization where a purpose of the contract is the conduct of experimental, developmental, or research work; and 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; but does not mean any agreement or arrangement entered into between a private entity and the operator of a Government-owned contractor-operated facility;

(7) the term "contractor" means any person or entity (other than a Federal agency, nonprofit organi-

zation, or small business firm) which is a party to a contract;

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

(9) the term "Director" means the Director of the Office of Science and Technology Policy, or his designee;

(10) the term "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.);

(11) the term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a contract, except that in the case of a sexually propagated 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;

(12) the term "practical application" with respect to any invention means the manufacture (in the case of a composition or product), practice (in the case of a process or method), or operation (in the case of a ma-

chine or system) of such invention 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;

(13) the term "antitrust law" means the laws included within the definition of the term "antitrust laws" in section 1 of the Clayton Act (15 U.S.C. 12), as amended;

(14) the term "background patent" means a domestic patent covering an invention or a discovery (A) which is not a subject invention, (B) which is owned or controlled by the contractor at any time through completion of the contract, and (C) which the contractor but not the Government has the right to license to others without obligation to pay royalties thereon;

(15) the term "United States" includes the territories, possessions, and the District of Columbia;

(16) the term "inventor" with regard to a subject invention means a person who is or will be listed as an inventor on the patent for said invention when filed in the United States Patent and Trademark Office; and

(17) the term "Government-owned, contractor-operated facility" includes all federally funded research and development centers.

AMENDMENTS TO OTHER ACTS

SEC. 402. 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); 60 Stat. 1090) is amended by striking out the last sentence.

(2) Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 951(c); 83 Stat. 742) is amended by striking out the last sentence.

(3) Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721) is repealed.

(4) Section 12(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360) is repealed.

(5) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943) is repealed; except that such section shall continue to be effective with respect to (A) 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 ef-

fective date of this Act, and (B) any right retained by the Government under sections 301(a)(4) and (5) of this Act.

(6) The National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.; 72 Stat. 426) is amended—

(A) by striking out section 305 (42 U.S.C. 2457); except 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) by striking out "(as defined by section 305)" in section 306(a) (42 U.S.C. 2458(a)) and by striking out "the Inventions and Contributions Board, established under section 305 of this Act" in such section and inserting in lieu thereof "an Invention and Contributions Board which shall be established by the Administrator within the Administration";

(C) by adding at the end of section 203(c) (42 U.S.C. 2473(c)) the following new paragraph:

"(14) to provide effective contractual provisions for the prompt and effective reporting of the results of the activities of the Administration, including full and complete technical reporting of any invention, discovery, improvement, or innovation which may be made in the performance of any work under any contract of the Administration, whether or not patentable under title 35, United States Code.";

(D) by adding at the end of section 203 (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."; and

(E) by adding at the end of title III the following new section:

"USE OF PATENTED INVENTIONS

"SEC. 311. (a) Any object intended for launch, launched, or assembled in outer space shall be considered a vehicle for purpose of section 272 of title 35, United States Code (35 U.S.C. 272).

"(b) The use or manufacture of any patented invention incorporated in a space vehicle launched by the United States Government for a person other than the United States shall not be considered to be a use or manufacture by or for the United States within the meaning of section 1498(a) of title 28, United States Code (28 U.S.C. 1498(a)), unless the

Administration gives an express authorization or consent for such use or manufacture.".

(7) Section 6 of the Act of July 7, 1960 (30 U.S.C. 666; 74 Stat. 337) is amended by striking out the first sentence.

(8) Section 4 of the Helium Act (50 U.S.C. 167b; 74 Stat. 920) is amended by striking out 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; 75 Stat. 634) is repealed.

(10) Section 302(e) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5) is repealed.

(11)(A) Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908; 88 Stat. 1887) is amended to read as follows:

"SEC. 9. The Administration shall be considered a defense agency of the United States for purposes of chapter 17 of title 35, United States Code."

(B) The heading for such section 9 is amended to read as follows:

"ADMINISTRATION TREATED AS DEFENSE AGENCY FOR PURPOSES OF SECRECY OF INVENTIONS".

(12) Section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 88 Stat. 1211) is repealed.

(13) Section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191) is repealed.

(14)(A) Section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c)(3); 90 Stat. 2829) is repealed.

(B) Section 8004(c)(2) of such Act is amended by striking out "notwithstanding section 6981(c)(3) of this title".

(15) Chapter 18 of title 35, United States Code, is amended—

(A) by inserting ", but does not mean any agreement or arrangement entered into between a private entity person and the operator of a Government-owned, contractor-operated facility" immediately before the period at the end of section 201(b);

(B) by inserting "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);

(C) by inserting ", except that in the case of a sexually propagated 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);

(D) 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 or is subject to the control of a foreign government"; and

(ii) by striking "or (iii)" and inserting in lieu thereof the following: ", (iii) when the funding agreement is related to or associated with an international treaty, agreement, memorandum of understanding, or other arrangement with a foreign government 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 greater

than a nonexclusive license are necessary for the agency to fulfill its obligations under the international treaty, agreement, memorandum of understanding, or other arrangement, (iv) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or nuclear weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs, or (v)";

(E) by adding at the end of section 202(b) the following new paragraphs:

"(4) If the contractor believes that a determination is contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency, the determination shall be subject to section 203(d).

"(5) Whenever the Director of the Office of Management and Budget has determined that one or more Federal agencies are utilizing the authority of section 202(a)(ii) in a manner that is contrary to the policies and objectives of this

chapter, he may promulgate regulations under section 206 which establish policies, procedures, and guidelines describing classes of situations in which agencies may not exercise the authorities of that section.";

(F)(i) by amending paragraphs (1), (2), and (3) of section 202(c) to read as follows:

"(1) A requirement that the contractor disclose each subject invention to the contracting 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) A requirement 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, except that (A) in any case where publication, on sale, or public use has initiated the one 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 60 days prior to the end of the statutory period, and (B) 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 time.

"(3) A requirement 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.";

(ii) by amending paragraph (4) of section 202(c) by inserting "(A)" after "(4)", and by adding at the end thereof the following new subparagraph:

"(B) the right to require the contractor, inventor, or assignee to license another person to practice a subject invention on reasonable terms if—

"(i) such licensing is necessary to permit lawful commercial manufacture, use or sale by a third party of a specified end item of a major, multiyear research and development project of the Department of Energy or the National Aeronau-

tics and Space Administration and such subject invention was made during research and development activities directly funded under that project;

"(ii) a similar product or process is not commercially available as a reasonable substitute for the licensing; and

"(iii) such right is specified in the contract.";

(G) by striking out "may" in section 202(c)(5) and inserting in lieu thereof "as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall";

(H) by amending paragraph (7) of section 202(c) to read as follows:

"(7) In the case of a nonprofit organization—

"(A) a requirement that the contractor share royalties with the inventor, and

"(B) a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payments of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education.";

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

"(9) The balance of any royalties or income earned on subject inventions by the contractor operating a Government-owned, contractor-operated facility up to a total equal to 5 percent of that facility's annual budget (if the invention was conceived or first actually reduced to practice in the facility and if the contractor elects to retain the funds) shall, after payment of patenting costs, licensing costs, and other expenses (including payments to inventors), be used by such contractor for scientific research and development consistent with the mission and objectives of such facility, including activities that increase the licensing potential of other inventions of the facility, with any such royalties or income in excess of 5 percent of the facility's budget returned to the Treasury; and to the extent practical the licensing of the inventions involved shall be administered by contractor employees on location at the facility.".

(J) by adding the following new subsection at the end of section 202:

"(g)(1) A Federal agency may at any time waive all or any part of the rights of the United States, under sections 202, 203, and 204 of this chapter, to any subject inventions

made under a funding agreement or class of funding agreements if the agency determines that the interests of the United States and the general public will be best served thereby including, but not limited to, instances where—

"(A) the funding agreement involves cosponsored, cost shared, or joint venture research or development and the contractor or other sponsor or joint venturer is required to make or has made a substantial contribution of funds, facilities, personnel, data, or equipment to the work performed under the funding agreement, or

"(B) the conditions justifying acquisition of title by the Government under section 202(a) no longer exist or do not apply in the case of the subject invention.

The agency shall maintain a record, which shall be made public and periodically updated, of determinations made under this paragraph.

"(2) In making determinations under paragraph (1)(A) of this subsection, the agency shall consider at least the following objectives:

"(A) Encouraging the wide availability to the public of the benefits of Government-sponsored research and development in the shortest practicable time.

"(B) Promoting the commercial utilization of inventions made under Government funding agreements.

"(C) Encouraging participation by highly qualified private persons in Government-sponsored research and development programs.

"(D) Fostering competition and preventing the creation or maintenance of situations inconsistent with the antitrust laws.";

(K) by adding at the end of section 203 the following new sentences:

"A determination pursuant to this section or section 202(b)(1) shall not be subject to the Contract Disputes Act (41 U.S.C. 601 et seq.). An administrative appeals procedure shall be established by regulations promulgated by the Director of the Office of Management and Budget in accordance with section 206. Any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file an appeal under the appeals procedure established pursuant to the preceding sentence or 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. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals under the preceding sentence.";

(L) by adding at the end of the chapter the following new sections:

"§ 212. Assignment of title or rights

"Subject to regulations promulgated under section 206, upon a determination that to do so is in the best interests of the Government, an agency may assign title or other rights to an invention to a person where such title or rights are held by the Government under such terms and conditions as will encourage the domestic commercial use of such technology.

"§ 213. Disposition of rights in educational awards

"No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.";

(M) by adding at the end of the table of sections for the chapter the following new items:

"212. Assignment of title or rights.
"213. Disposition of rights in educational awards."; and

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

"§ 206. Uniform clauses and regulations

"The Secretary of Commerce may initiate the regulations and revisions thereto and standard funding agreement provisions, required to implement sections 202 through 204, to be promulgated by the Director of the Office of Manage-

ment and Budget after full consideration of agency and public comment.".

(16) Section 6(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3705(e); 94 Stat. 2313) is repealed.

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

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

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

(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 inserting "as amended" after "this title".

(22) Section 12 of the Critical Agricultural Materials Act (7 U.S.C. 178j) is repealed.

RELATIONSHIP TO ANTITRUST LAWS

SEC. 403. Nothing in this Act shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defense to actions, under any antitrust law.

EFFECTIVE DATE

SEC. 404. (a) This Act shall take effect six months after the date of the enactment of this Act.

(b) After the effective date of this Act, each Federal agency may allow a contractor or an inventor to retain title to any subject inventions made under contracts awarded prior to the effective date of this Act, subject to the same terms and conditions as those which would apply under this Act had the contract been entered into after the effective date of this Act.

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98TH CONGRESS
1ST SESSION

S. 2171

To amend title 35 of the United States Code for the purpose of creating a uniform policy and procedure concerning patent rights in inventions developed with Federal assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18 (legislative day, NOVEMBER 14), 1983

Mr. DOLE (for himself, Mr. LAXALT, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 35 of the United States Code for the purpose of creating a uniform policy and procedure concerning patent rights in inventions developed with Federal assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Patent Procedures Act of 1983".

SEC. 2. (a) Chapter 38 of title 35, United States Code, as added by Public Law 96–517 (94 Stat. 3018), is redesignated as chapter 18 of such title and all references to such chapter 38 shall be considered references to chapter 18.

(b) Part II of title 35, United States Code, is amended by inserting chapter 18, as redesignated herein, after chapter 17 of such title.

(c) The table of chapters for title 35 is amended by redesignating chapter 38 as chapter 18 and inserting such chapter and section designations at the end of part II.

SEC. 3. (a) Section 35 of the United States Code is amended by adding after chapter 18, as redesignated herein, a new chapter as follows:

"CHAPTER 19—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE BY OTHER THAN SMALL BUSINESS FIRMS OR NONPROFIT ORGANIZATIONS

"Sec.
"212. Policy and objectives.
"213. Definitions.
"214. Responsibilities.
"215. Disposition of rights.
"216. March-in rights.
"217. Background rights.

"§ 212. Policy and objectives

"In addition to the policy and objectives set forth in section 200 of this title, it is the further policy and objective of the Congress to ensure that all inventions made with Federal support are used in a manner to promote free competition and enterprise.

"§ 213. Definitions

"As used in this chapter, the term—

"(1) 'Administrator' means the Administrator of the Office of Federal Procurement Policy or his or her designee;

"(2) '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 this title) 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;

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

"(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 this title, 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 or his or her designee; 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.

"§ 214. Responsibilities

"(a) The Secretary is authorized to issue regulations which may be made applicable to all Federal agencies implementing the provisions of this chapter, and the Secretary shall proscribe standard patent rights provisions for use under this chapter. The regulations and the standard patent rights provisions shall be subject to public comment before their issuance.

"(b) In order to obtain consistent practices under this chapter and chapter 18 of this title, the Secretary is authorized and directed (i) to consult with and advise Federal agencies concerning the effective and consistent implementation of these chapters, and (ii) to obtain from the agencies information and data relating to agency practices under these chapters.

"§ 215. Disposition of rights

"(a) Subject to subsection (c) of this section and to section 216 of this title, 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, at the time of contracting, limit or eliminate this right, place additional restrictions or conditions on 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 alter or eliminate the contractor's right under paragraph (6) of subsection (c) 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;

"(2) it is determined that 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) it is determined, on a case-by-case basis, that there are exceptional circumstances requiring such action to better promote the policies and objectives of sections 200 and 212 of this title.

"(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, within thirty 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) 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 Sec-

retary shall so advise the head of the agency concerned and the Administrator and recommend corrective actions.

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

"(c) In accordance with the regulations to be issued by the Secretary, after public comment, each contract that the Government or any Federal agency acting on behalf of the Government may enter into 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 and that, upon request, the contractor will assign the Government title to any subject invention not disclosed within such time;

"(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: *Provided*, That the contract may provide for such additional rights, including the right to assign or have assigned foreign patent rights in the invention, as determined by

the agency as necessary for meeting the obligations of the United States under any treaty or other international agreement, arrangement of cooperation, memorandum of understanding, or similar international arrangement, including military agreements relating to weapons development and production;

"(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 of efforts toward obtaining utilization obtained as part of a proceeding under section 216 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);

"(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 inven-

tion was made with Government support and that the Government has certain rights in the invention;

"(6) 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

"(7) such other administrative requirements that the Secretary determines to be necessary to effectuate the rights of the Government as specified in this chapter, which are not inconsistent with this chapter.

"(d) Agencies are authorized to include awards to inventors to stimulate reporting of subject inventions as an allowable element of cost if such reporting results in the agency initiating a statutory invention disclosure, the filing of a patent application, or issuance of a patent.

"(e)(1) A Federal agency may, at any time, waive all or any part of the rights of the United States under this section

or section 216 of this title to any subject invention or class of subject inventions made or which may be made under a contract or class of contracts if the agency determines that—

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

"(B) 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.

"(2) The agency shall maintain a record, which shall be available to the public and periodically updated, of determinations made under paragraph (1) of this subsection.

"(3) In making determinations under paragraph (1) of this subsection, the agency shall consider at least the following objectives:

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

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

"(C) encouraging participation by private persons (including the most highly qualified persons) in the

Government-sponsored experimental, developmental, or research programs; and

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

"(4) With respect to contracts in which an agency invokes paragraphs (1) through (3) of subsection (a) of section 215, 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 sections 215 and 216 and may allow the contractor to retain the license rights set forth in subsection (c)(6) of this section if such license rights were otherwise limited in the contract.

"(f) 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 the agency deems appropriate, subject to section 216 of this Act.

"(g) In any case when a Federal employee is a coinventor of any subject invention, the Federal agency employing such coinventor 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.

"§ 216. March-in rights

"(a) Where a contractor has elected to retain title to a subject invention under section 215 of this title, the Federal agency shall have the right (unless waived under subsection (d) of section 215 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 contractors, 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 sixty days after the date 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.

"§ 217. Background rights

"(a) Nothing contained in this chapter 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 such 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 contract and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be made 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.".

(b) The table of chapters for title 35, United States Code, is amended by adding immediately after the item relating to chapter 18 as redesignated herein the following:

"19. Patent rights in inventions made with Federal assistance by other than small business firms or nonprofit organizations.".

(c) Chapter 18 of title 35, United States Code, as redesignated herein, is amended—

(1) 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);

(2) 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);

(3) in section 202(a), 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

(4) 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 (iii) of paragraph (a) exists. Except in the case of paragraph (a)(iii), the agency shall file with the Secretary of Commerce, within thirty days after the award of the applicable funding agreement, a copy of such determination. In the case of a determination under paragraph (a)(ii), 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 Fed-

eral agencies are utilizing the authority of subparagraph (i) or (ii) 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.";

(5) by amending subparagraphs (1), (2), (3), and (4) 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 two 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 one 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.

"(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: *Provided*, That the funding agreement may provide for such additional rights, including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United

States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreements relating to weapons development and production.".

(6) 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 inventions made under a funding agreement or class of funding agreements if the agency determines (1) that the interests of the United States and the general public will be best served thereby; or (2) the funding agreement involves cosponsored, cost sharing or joint venture research or 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 available to the public and periodically updated, of determinations 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, developmen-

tal, or research program 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

(7) by striking out "may" in section 202(c)(5) and inserting in lieu thereof "as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall";

(8) by striking out "and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sales of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention" in clause (A) of section 202(c)(7) and by striking out clause (B) of section 202(c)(7) and redesignating clauses (C) and (D) of such section as clauses "(B)" and "(C)", respectively;

(9) 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 sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the manner de novo and to affirm, reverse, or modify as appropriate, the determination of the Federal agency.";

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

"§ 206. Uniform clauses and regulations

"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. The regulations and the standard funding agreement shall be subject to public comment before their issuance.";

(11) by amending section 207 by adding the following new paragraph at the end thereof:

"For the purpose of assuring the effective management of Government-owned inventions, the Secretary is authorized to—

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

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

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

(12) by amending section 208 by striking out "Administrator of General Services" and inserting in lieu thereof "Secretary of Commerce";

(13) by amending section 209—

(A) by striking out subsection (c)(2);

(B) by redesignating subsection (c)(3) as subsection (c)(2); and

(C) by striking out all in paragraph (d) after "objections" and inserting in lieu thereof a period; and

(14) by adding "of the United States" in section 211 after "law".

SEC. 3. (a) Section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a)), is amended by striking out the last sentence thereof.

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

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

(d) Section 12(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a)) is repealed.

(e)(1) 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.

(2) 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".

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

(1) repealing subsections (a)–(h) and (j) of 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 request-

ed to be filed by the Commissioner of Patents and Trademarks prior to the effective date of this Act;

(2) striking out 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"; and

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

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

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

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

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

(k) Subsections (a) through (k), (m), and (n) of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) are repealed.

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

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

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

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

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

(q) 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.

(r) 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.

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

(t) 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".

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

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

(w)(1) Section 173 of the United States Synthetic Fuels Corporation Act of 1980 (42 U.S.C. 8773) is repealed.

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

"Sec. 173. Repealed.".

SEC. 4. Nothing in this Act shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defense to actions, under any antitrust law of the United States.

SEC. 5. (a) This Act shall take effect six 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.

SEC. 6. Within twenty-four months after the date of enactment of this Act and every two years thereafter, the Secretary of Commerce shall submit to Congress a report of the implementation of chapters 18 and 19 of title 35, United

States Code, including any recommendations for legislative or administrative changes to better achieve the policies and objectives of such chapters.

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