# [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.

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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]

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# 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".*

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# *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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