DRAFT 7/2/76
As approved by the Executiv
Subcommittee at its 7/2/76
Meeting

94TH CONGRESS
2D SESSION

H.R.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

JUNE 1976

Mr. introduced the following bill; which was read twice and referred to the Committee on the

A BILL

NASA

To establish a uniform ~~national~~ Federal intellectual property policy covering allocation of ~~which includes~~ the patentable technology arising from Federally-sponsored research and development; to protect and encourage utilization of such technology and to furt the public interest of the United States domestically and abroad; and for other related purposes.

Be it enacted by the Senate and House of Representati of the United States of America in Congress assembled, That this Act, which may be cited as the "~~National~~ Federal Intellectual Property Policy Act of 1976", is hereby adopted in accordance with the authority granted by Article 1, Section 8, Clause 18 of the United States Constitution.

"Title I--~~NATIONAL~~ Federal INTELLECTUAL PROPERTY POLICY

"Sec.
"101. Findings.
"102. Declaration of purpose.

"Title II--~~FEDERAL COORDINATING COUNCIL AND COOPERATION OF FEDERAL AGENCIES~~ Amendment and Implementation of Functions of OSTP to include intellectual property matters

"Sec.
"201. ~~Federal Coordinating Council for Intellectual Property.~~
"202. Board for Intellectual Property.
"203. Staffing.

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"Title III--ALLOCATION OF PROPERTY RIGHTS IN INVENTIONS RESULTING FROM FEDERALLY-SPONSORED RESEARCH AND DEVELOPMENT

"CHAPTER 1.--INVENTIONS OF CONTRACTORS

"Sec.
"311. Criteria for the allocation of property rights in Subject Inventions.
"312. Other provisions.

"CHAPTER 2.--INVENTIONS OF FEDERAL EMPLOYEES

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"322. Criteria for the allocation of rights to inventions.
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"401. Authorities of Federal agencies.
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"Title I--~~NATIONAL~~ Federal INTELLECTUAL PROPERTY POLICY

"Sec.
"101. Findings.
"102. Declaration of purpose.

"§ 101. Findings.

"The Congress, recognizing the profound impact of science and technology on society and the interrelations of scientific, technological, economic, social, political, and institutional factors, hereby finds that:

"(a) The inventions in scientific and technological fields resulting from work performed under Federal research and development constitute a valuable national resource;

"(b) A Federal policy on the allocation of rights to inventions resulting from Federally-sponsored research and development should stimulate inventors, meet the needs of the Federal Government, recognize the equities of the Federal employee inventor and the Federal Government contractor, and serve the public interest; and

"(c) The public interest would be better served if greater efforts were made to obtain patent protection, both domestic and foreign, and to promote the interests of the United State and the commercial use of new technology resulting from Federally-sponsored research and development, both in the United States and foreign countries, as appropriate.

"Sec. 102. Declaration of purpose.

"It is the purpose of this Act to:

"(a) Establish a ~~uniform~~ Federal policy for ~~in matters~~ of intellectual property arising from Federally-sponsored research and development

Comm. PTO.

"(b) Provide for uniform implementation of the provisions of this Act, and to make a continuing effort to monitor such implementation;

"(c) To allocate rights to Federal employee inventions in an equitable manner;

"(d) To allocate rights to contractor inventions which result from Federally-sponsored research and development so as to

"(1) encourage the participation of the most qualified and competent contractors,

"(2) foster competition,

"(3) promote the widespread utilization of the inventions, and

"(4) reduce the administrative burdens, both for the Federal ~~Government~~ agencies and ~~the~~ its contractors;

"(e) To provide for a domestic and foreign protection and licensing program to obtain commercial utilization of Federally-owned inventions, with the objective of strengthening the Nation's economy and expanding its domestic and foreign markets; and

"(f) To amend all other Acts and abolish the Executive Orders regarding the allocation of rights to inventions which result from Federally-sponsored research and development and the licensing of Federally-owned patents.

To include Intellectual Property matters

Amendment and Application of Functions of Office of Science and Technology (OSTP)

"Title II--FEDERAL COORDINATING COUNCIL AND COOPERATION OF FEDERAL AGENCIES

"Sec. Federal Coordinating Council for Science, Engineering and Technology
"201. ~~Federal Coordinating Council for Intellectual Property.~~
"202. Board for Intellectual Property.
"203. Staffing.

§201. Federal Coordinating Council for Science, Engineering, and Technology

(a) The Federal Coordinating Council for Science, Engineering, and Technology (established by Title IV, P.L. 94-282) hereinafter referred to as the "Council" shall make recommendations to the Director of the Office of Science and Technology Policy (OSTP) hereinafter referred to as the "Director" with regard to:

"§ 201. Federal Coordinating Council for Intellectual Property.

"(a) There is hereby established within the Office of Science and Technology Policy (OSTP) a Federal Coordinating Council for Intellectual Property (hereinafter referred to as the "COUNCIL"). The COUNCIL shall be composed of representatives of Federal agencies which are involved with intellectual property policy, such Federal agencies to be designated by the Director of OSTP,* hereinafter referred to as the Director. The Director or his designee shall serve as Chairman of the COUNCIL.

"(b) The COUNCIL shall make recommendations to the Director with regard to --

"(1) Uniform and effective planning and administration of Federal programs pertaining to inventions, the use, ownership or licensing of patents, trademarks, copyrights, rights in technical data, and matters connected therewith. PTO

"(2) Uniform policies, regulations, guidelines and practices to carry out the provisions of this Act and other Federal Government objectives in the field of intellectual property.

"(3) Uniformity and effectiveness of interpretation and implementation by individual Federal agencies of the provisions of this Act and other Federal Government policies, regulations and practices.

Commerce

*Support material accompanying the draft bill would point out that the following agencies are now participating at the working level in the development of Federal Government patent policy and regulations: ERDA, USDA, DOC, Army, Navy, AF, HEW, DOI, DOJ, EPA, GSA, NASA, NSF, NRC, DOT.

"(b) Recommendations regarding matters set forth in paragraph (b) of this section which are made by the COUNCIL and adopted by the Director will be promulgated to the Federal agencies through appropriate channels.

"(c) In order to carry out the responsibilities set forth in paragraphs (a) and (b) of this section, the COUNCIL is authorized to --

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

"(2) Review on its own initiative, or upon request by a Federal agency, 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, trademarks, copyrights, rights in technical data, and matters connected therewith and the impact of such on Federal Government policy or uniform accomodation or implementation by Federal agencies.

"(5) Publish annually a report on COUNCIL efforts, findings and recommendations.

"(d) The COUNCIL shall perform such other related advisory duties as shall be assigned by the President or by the Director.

~~"S 202. Board~~ for Intellectual Property.

"The Director shall establish ~~or designate~~ a Board or Boards for Intellectual Property (hereinafter referred to as the "BOARD") as required, to make approvals and

determinations and to hear appeals as provided for in this Act. In exercising its authority and in developing its rules and procedures, the BOARD shall consult with the COUNCIL and such Federal agencies as may be appropriate. The BOARD may perform any and all acts, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of its functions. Decisions of the BOARD under Subsections 311.(b)(2)(C), (D), (E) and (F) of this Act, shall be appealable to the United States Court of Claims.

"s 203. Staffing.

The Director shall provide staff assistance for the COUNCIL and the BOARD, as appropriate.

"Title III--ALLOCATION OF PROPERTY RIGHTS IN INVENTIONS RESULTING FROM FEDERALLY-SPONSORED RESEARCH AND DEVELOPMENT

"CHAPTER 1.--INVENTIONS OF CONTRACTORS

"Sec.
"311. Criteria for the allocation of property rights in Subject Inventions.
"312. Other provisions.

"§ 311. Criteria for the allocation of property rights in Subject Inventions..

"The allocation of property rights in Subject Inventions shall be determined by uniform regulations, issued by the Administrator of General Services and the Secretary of Defense, employing a single patent rights clause in all instances except as may be provided in such regulations, subject to the minimum rights acquired under subparagraph 311.(b)(2), or as provided in paragraph 312.(c) below. Such a patent rights clause shall include provisions for the following:

"(a) Reporting requirements and declaration of intent.--The contractor shall promptly provide the sponsoring Federal agency with a disclosure of each Subject Invention which is or may be patentable under the laws of the United States. Each disclosure to the sponsoring Federal agency shall contain an election whether the contractor intends to file a patent application on the Subject Invention, and such election is to be accompanied by a declaration of the contractor's intent to commercialize or otherwise achieve the widespread utilization of the invention by the public. ~~If the~~ Federal Government contemplates publication or release of ~~information disclosing such invention it may allow a reasonable period of time~~ prior to publication or release in ~~order for~~ a patent application to be filed thereon.

NSF

Election may be made at a later time with permission of the sponsoring Federal Agency.

~~Make~~ election time disclosure by Agency.

NSF

NASA

The Federal Government may withhold publication or release to the general public information disclosing such invention for a reasonable time in order for a patent application to be filed.

"(b) Minimum rights to the Federal Government and the public.--Each Federal agency shall acquire on behalf of the Federal Government at the time of contracting:

"(1) Where the contractor elects not to file a patent application on a Subject Invention in any country, title to such inventions, subject to any revocable or irrevocable nonexclusive license which the contractor may be permitted to retain; and

"(2) Where the contractor elects to file a patent application in accordance with subparagraph (c) of this section:

"(A) The right to require periodic written reports at reasonable intervals and particularly, when specifically requested by the Federal agency, reports on the commercial use or other form of utilization by the public that is being made or is intended to be made of any Subject Invention;

"(B) A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for the Federal Government any Subject Invention throughout the world by or on behalf of the Federal Government (including any Federal agency), and it may acquire additional rights to sublicense any State or domestic local government or to sublicense any foreign government pursuant to any existing or future treaty or agreement when the Federal agency determines it would be in the national interest to acquire such additional rights;

"(C) The right of the Federal agency to require the contractor to grant a nonexclusive, partially exclusive or exclusive license to a responsible applicant or applicants in any field of use of the Subject Invention upon terms reasonable under the circumstances, or to grant such licenses itself, or to require an assignment of the Subject Invention to the Federal Government, if the Federal agency determines such action is necessary because the contractor has not taken, or is not expected to take within a reasonable time, effective steps to commercialize or otherwise achieve utilization by the public of the subject invention in such field of use. Such determination of the Federal agency may be appealed to the BOARD.

"(D) The right of the BOARD to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the Federal agency should grant such a license itself, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing, if the BOARD determines, upon review of such material as the BOARD deems relevant, and after the contractor or such other interested person has had the opportunity to provide such relevant and material information as the BOARD may require, that such action is necessary:

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"(i) to alleviate health, safety, or welfare, provided the contractor and/or its licensees are not satisfying such needs consistent with conditions reasonable under the circumstances; or

"(ii) to the extent that the Subject Invention is required for public use by Federal regulation, provided the contractor and/or its licensees are not satisfying market needs created by the Federal regulations consistent with conditions reasonable under the circumstances.

"(E) The right of the BOARD to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the Federal agency should grant such a license itself, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing, if the BOARD determines, upon review of such material as the BOARD deems relevant, and after the contractor or other interested person has had the opportunity to provide such relevant and material information as the BOARD may require, that the exclusive rights to such Subject Invention in the contractor has tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates, or to create or maintain other situations inconsistent with the antitrust laws.

"(F) The right of the BOARD, commencing ten years from the date the Subject Invention was made or five years after first public use or on sale in the United States, whichever occurs first, (excepting that time before Federal regulatory agencies necessary to obtain premarket clearance) to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the Federal agency should grant such a license itself, following a hearing upon notice thereof to the public, upon a petition by a prospective licensee who has attempted unsuccessfully to obtain such a license from the contractor and justifying such a hearing, if the BOARD determines, in view of the factors set forth in paragraph 312.(b), that such licensing would best support the overall purposes of this Act.

"(3) Prior to any action pursuant to subparagraphs 311.(b)(2)(D), (E), and (F), the BOARD shall consult with the Federal agency involved.

"(c) Contractor's rights.--The contractor shall retain a defeasible title to only those Subject Inventions (including the right to license or assign all or part of its interests therein) on which the contractor files a United States patent application and declares its intent to commercialize or otherwise achieve the widespread utilization of the invention by the public. Such title in the contractor shall permit the contractor to retain exclusive commercial rights to the invention subject to all the rights granted to the Federal Government

in subparagraph (b)(2) above. The contractor's employee inventor may also retain the contractor's rights under this paragraph (c) with permission of the contractor at the discretion of the sponsoring Federal agency.

"§ 312. Other provisions.

"(a) Extension of contractor's exclusive commercial rights.--Each sponsoring Federal agency, for good cause shown by the contractor, may extend the period of the contractor's exclusive commercial rights provided for in subparagraph 311.(b)(2)(F) following notice to the public and an opportunity for filing written objections. The grant of such an extension shall be based upon a determination by the Federal agency, upon review of such material as it deems relevant, and after the contractor and any other interested persons have had an opportunity to provide such relevant and material information as the Federal agency may require, that such extension would best support the overall purposes of this Act. The Federal agency determination may be appealed to the BOARD by the contractor or an interested person involved in such determination.

"(b) BOARD considerations. In determining whether the right to require licensing or the right of the Federal agency to license set forth in subparagraph 311.(b)(2)(F) should be exercised, the BOARD may consider, among others, the following type of factors, as appropriate:

"(1) The relative contributions of the Federal Government and the contractor or its assignees or licensees, if any, to the making and commercialization of the Subject Invention;

"(2) The relative contributions of the Federal Government and the contractor or its assignees or licensees, if any, to the field of technology to which the Subject Invention relates;

"(3) The degree to which utilization of the Subject Invention has satisfied the purposes of the program under which the Subject Invention was made;

"(4) The type and scope of the Subject Invention and the magnitude of the problem it solves;

"(5) The effect of such licensing on competition and widespread utilization of the Subject Invention;

"(6) The effect of such licensing on incentives to commercialize this and other Subject Inventions;

"(7) The extent to which the Subject Invention is concerned with the public health, safety or welfare; and

"(8) The effect of such licensing in assisting small businesses and minority business enterprises, as well as economically depressed, low-income, and labor surplus areas.

"When it is determined that the right to require licensing or the right of the Federal agency to license should be exercised, the BOARD may specify terms and conditions, including royalties to be charged, if any, and the duration and field of use of the license.

"(c) Alternative criteria ~~of~~ for the allocation of property rights in Subject Inventions. on-a-case-by-case basis

"(1) The Head of a Federal agency may deviate from the single patent rights clause normally used provided that

"(A) no deviation under this subparagraphs ~~312.(c)(1) and (c)(2)(A)~~ shall waive in whole or in part the minimum rights to be secured for the Federal Government set forth in subparagraph 311.(b)(2)(E), and

"(B) deviations made under this paragraph will be reported to the ~~Federal Coordinating Council for~~ Council and Publication Intellectual Property for review in accordance with its responsibility under Section 201.(b) of this Act.

This should be Council (?)

"(2) The BOARD may permit deviation on a class basis

"(A) for contracts involving cosponsored, cost sharing, or joint venture research when the contractor is required to make a substantial contribution of funds, facilities, or equipment to the work to be performed under the contract, and

NASA

(B) for contracts for the operation of Government facilities, and

"(C) for other special contracting situations such as Federal price or purchase supports and Federal loan or loan guarantees:

provided, that no deviation under subparagraph 312.(c)(2)(A) (B) or (C) shall waive in whole or in part the minimum rights to be secured for the Federal Government (set forth) in subparagraph 311.(b)(2)(E).

delete

"CHAPTER 2.--INVENTIONS OF FEDERAL EMPLOYEES

"Sec.
" 321. Reporting of inventions.
" 322. Criteria for the allocation of rights to inventions.
" 323. Application of criteria.
" 324. Review of Federal agency determinations.
" 325. Reassignment of rights.
" 326. Incentive Awards Program.
" 327. Conflict of interest.

"§ 321. Reporting of inventions.

"All inventions made by Federal employees while under the administrative jurisdiction of a Federal agency shall be reported to the designated authority of that Federal agency.

"§ 322. Criteria for the allocation of rights to inventions.

"Subject to prescribed rules and regulations issued by the Commissioner of the Patent and Trademark Office, each Federal agency shall determine the respective rights of the Federal Government and of the employee-inventor in and to any invention made by a Federal employee while under the administrative jurisdiction of such agency, in accordance with the following criteria:

"(a) The Federal ~~Government~~ agency shall obtain, subject to paragraph (c) of this section, the entire right, title and interest in and to all inventions made by any Federal employee which bear a relation to the duties of the employee-inventor, or are made in consequence of his employment;

"(b) A Federal employee shall be entitled to retain the entire right, title and interest in and to any invention made by the employee-inventor, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for the Federal Government any such invention throughout the world by or on behalf of the Federal Government (including any

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Federal agency) in any case where the invention does not bear a relation to the duties of the employee-inventor or was not made in consequence of his employment, but was made with a contribution by the Federal Government of facilities, equipment, materials, funds, or information, or of time or services of other Federal employees on official duty; and further, the Federal agency may acquire additional rights to sublicense any State or domestic local government or to sublicense any foreign government pursuant to any existing or future treaty or agreement where the Federal agency determines it would be in the national interest to acquire such additional rights;

"(c) The Federal employee may obtain the entire right, title and interest in and to an invention in any country, subject to the license and sublicensing rights set forth in paragraph (b) of this section, where the Federal agency determines that there is insufficient interest in the invention to justify seeking patent protection in that country, although the Federal Government may have taken title to the invention or may be entitled to the entire right, title and interest therein under paragraph (a) of this section, provided however, nothing in this paragraph shall prevent a Federal agency from publishing or dedicating to the public such an invention if it is in the public interest; and

"(d) A Federal employee shall be entitled to retain the entire right, title and interest in and to any invention made by the employee in any case not falling within paragraphs (a), (b), or (c) of this section.

"§ 323. Application of criteria.

"(a) In applying the criteria of section 322 to the facts and circumstances relating to the making of any particular invention,

"(1) it shall be presumed that an invention falls within the criteria of paragraph (a) of section 322 when made by an employee who is employed or assigned to (A) invent or improve or perfect any art, machine, manufacture, or composition of matter, (B) conduct or perform research, development work, or both, (C) supervise, direct, coordinate, or review Federally-financed or conducted research, development work, or both, or (D) act in a liaison capacity among Federal or non-Federal agencies, or individuals engaged in such work; and

"(2) it shall be presumed that an invention falls within the criteria of paragraph (b) of section 322 when made by any other employee.

"(b) Either presumption of paragraph (a) of this section may be rebutted by the facts or circumstances attendant upon the conditions under which any particular invention is made.

"§ 324. Review of Federal agency determinations.

"Federal agency determinations regarding the respective rights of the Federal Government and the employee-inventor are to be reviewed in accordance with prescribed rules and regulations ~~where~~ issued by the Commissioner of the Patent and Trademark Office

"(1) the Federal agency determines not to acquire all right, title and interest in an invention, or

"(2) the employee-inventor who is aggrieved by the determination requests such a review.

GSA — Commerce PTO

"§ 325. Reassignment of rights.

"Where a Federal agency finds on the basis of new evidence that it has acquired rights in an invention greater than the Federal Government is entitled to assert under the criteria of section 322, the Federal agency shall adjust such inequity by granting greater rights to the employee-inventor necessary to correct the inequity.

"§ 326. Incentive Awards Program.

"(a) Incentive Awards may be granted to Federal employee inventors in order to:

"(1) Monetarily reward or otherwise recognize Federal employees for inventions; and

"(2) Stimulate inventive creativeness and encourage Federal employees to disclose their inventions and thus to enhance the transfer and utilization of related technology.

"(b) These awards shall be granted pursuant to the provisions of Title 5, Chapter 45 and Title 10, Chapter 57, and in accordance with implementing regulations thereunder except as modified herein. Existing statutory provisions for awards shall remain unaffected by this section.

"(c) The amount of the award for an invention will be based on:

"(1) The extent to which the invention advances the state of the art;

"(2) The scope of the application of the invention;

"(3) The importance of the invention in terms of its value and benefits to the Federal Government; and

"(4) The extent to which the invention has achieved utilization by the public.

"(d) Awards for an invention of up to $10,000 may be granted by the Head of a Federal agency. Awards in excess of $10,000 but not in excess of $50,000 may be granted

"(1) for civilian employees by the Head of the Federal agency with the approval of the Civil Service Commission,

"(2) for members of the Armed Forces with the approval of the Secretary of Defense, and

"(3) for members of the United States Coast Guard when not operating as a service in the Navy with the approval of the Secretary of Transportation,

upon recommendation that the invention is highly exceptional and unusually outstanding. Awards in excess of $50,000 may be made in those instances where the Head of the Federal agency, based upon the value and benefit of the inventor's contribution, recommends to the Chairman of the Civil Service Commission and the Director of the Office of Management and Budget that a Presidential award be made. Upon endorsement of both the Chairman of the Civil Service Commission and the Director of the Office of Management and Budget and approval by the President, an award in excess of $50,000 and an honorary recognition, may be granted as deemed appropriate.

"(e) A cash award under this section is in addition to the regular pay of the recipient. Acceptance of a cash award under this section constitutes an agreement that any use by the Federal Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Federal Government by the recipient, his heirs, or assigns.

"(f) A cash award and expense for honorary recognition of a Federal employee-inventor shall be paid from the fund or appropriation of the Federal agency primarily benefiting. The Head of the Federal agency shall determine the amount to be paid by each Federal agency for Federal agency awards and the President shall determine the amount of the award to be paid by each Federal agency for Presidential awards made under paragraph (d) of this section.

"(g) Nothing contained in this section shall be construed to limit the discretionary power of the Federal agency to grant or not grant an incentive award under this section.

" 328. Conflict of interest.

"Determinations of an appointing official pursuant to section 208(b) of Title 18, United States Code, regarding the promotion of a Federal employee's invention by such employee shall be subject to ~~review by the Civil Service Commission under~~ regulations prescribed by the Commission.

Any amount received as an award under this section shall be exempt from any Federal, State or local income tax.

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NASA

Civil Service (HEW)

HEW

S 327. Income sharing from patent licenses

In addition to awards as provided in S. 326, in instances where a Federal agency grants income bearing patent licenses for an invention, such Federal agency may share the income received with the employee-inventor,

(deleted Federal - not necessary)

"Title IV--DOMESTIC AND FOREIGN PROTECTION AND LICENSING OF FEDERALLY-OWNED INVENTIONS

"Sec.
"401. Authorities of Federal agencies.
"402. Authorities of the Department of Commerce in cooperation with other Federal agencies.
"403. Authorities of General Services Administration.
"404. Grants of an exclusive or partially exclusive license.

"§ 401. Authorities of Federal agencies.

"The Federal agencies are authorized:

"(a) To apply for, obtain and maintain patents or other forms of protection in the United States and in foreign countries on selected inventions in which the Federal Government owns a right, title or interest;

"(b) To promote the licensing of inventions covered by Federally-owned patent applications, patents or other forms of protection obtained with the objective of maximizing utilization by the public of the inventions covered thereby.

"(c) To grant nonexclusive, exclusive, or partially exclusive licenses under Federally-owned patent applications, patents or other forms of protection obtained royalty-free or for royalties or other consideration, and on such terms and conditions including the grant to the licensee of the right to ~~sue for infringement~~ enforcement pursuant to the provisions of Title 35 Chapter 28 United States Code, as deemed appropriate in the public interest. NASA

"(d) To make market surveys and other investigations for determining the potential of inventions for domestic and foreign licensing and other forms of utilization; to acquire technical information and engage in negotiations and other activities for promoting the licensing and other forms of utilization of Federally-owned inventions, patents, or other forms of protection obtained; and to demonstrate the practicability of the invention for

the purpose of enhancing their marketability and public utilization.

"(f) To undertake the above and all other suitable and necessary steps to protect and administer rights to inventions on behalf of the Federal Government either directly or through contract;

"(g) To transfer custody and administration, in whole or in part, to the Department of Commerce or to other Federal agencies, of the right, title or interest in any invention for the purpose of administering the authorities set forth in paragraphs (a) through (d) above, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471); and

"(h) To designate the Department of Commerce as recipient of any or all funds received from fees, royalties or other management of Federally-owned inventions authorized under this Act.

"§ 402. Authorities of the Department of Commerce in cooperation with other Federal agencies.

"The Department of Commerce is authorized in cooperation with other Federal agencies:

"(a) To coordinate a program for assisting all Federal Government agencies in carrying out the authorities set forth in § 401 above;

"(b) To publish notification of all Federally-owned inventions that are available for licensing;

"(c) To evaluate inventions referred 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;

Is this paragraph necessary in light of NASA's new (e)?

(e) To withhold publication or release to the public information disclosing any invention in which the Federal Government owns a right title or interest for a reasonable time we order for patent protection to be obtained thereon.

NASA

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

"(e) To accept custody and administration, in whole or in part, of the right, title and interest in any invention for the purposes set forth in paragraphs 401.(a) through (d) above, with the approval of the Federal agency concerned without regard to the provisions of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 471);

"(f) To receive funds from fees, royalties or other management of Federally-owned inventions authorized under this Act; provided, however, that such funds will be used only for the purpose of this Act; and

"(g) To undertake these and such other functions either directly or through contracts as are necessary and appropriate to accomplish the purposes of Title IV of this Act.

"S 403. Authorities of the General Services Administration.

"The Administrator of General Services is authorized to promulgate regulations specifying the terms and conditions upon which any Federally-owned invention may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

"S 404. Grants of an exclusive or partially exclusive license.

"(a) Federal agencies may grant exclusive or partially exclusive licenses in any invention covered by a Federally-owned domestic patent or patent application only if, after notice to the public and opportunity for filing written objections, it is determined that:

"(1) The interests of the Federal Government and the public will best be served by the proposed

license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

"(2) The desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

"(3) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

"(4) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

provided that, a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

"(b) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, Federal agencies may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application

or patent after notice to the public and opportunity for filing written objections; provided that, a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

"(c) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

"(d) Any grant of an exclusive or partially exclusive license shall contain such terms and conditions as the Federal agency may determine to be appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

"(1) Periodic written reports at reasonable intervals, and when specifically requested by the Federal agency on the extent of the commercial or other use by the public that is being made or is intended to be made of the invention;

"(2) A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for the Federal Government the licensed invention throughout the world by or on behalf of the Federal Government (including any Federal agency), and the additional right to sublicense any State or domestic local government or to sublicense any foreign government pursuant to any existing or future treaty or agreement if the Federal agency determines it would be in the national interest to retain such additional rights; and

"(3) The right in the Federal agency to terminate such license in whole or in part unless the licensee demonstrates to the satisfaction of the Federal agency that the licensee has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial commercial or other use of the invention by the public.

"(4) The right in the Federal agency, commencing three years after the grant of a license, to require the licensee to grant a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances and in appropriate circumstances to terminate the license in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing, if the Federal agency determines, upon review of such material as it deems relevant, and after the licensee, or other interested person, has had the opportunity to provide such relevant and material information as the Federal agency may require, that such license has tended substantially to lessen competition or to result in undue concentration in any section of the country in any line of commerce to which the licensed technology relates or to create or maintain other situations inconsistent with the antitrust laws.

"Title V--MISCELLANEOUS

"CHAPTER 1.--OTHER RELATED PROVISIONS

"Sec.
"511. Definitions.
"512. Relationship to antitrust laws.

"§ 511. Definitions

"As used in this Act--

"(a) The term 'Federal agency' means an 'executive agency' as defined by Section 105 of Title 5, United States Code, and the military departments defined by Section 102 of Title 5, United States Code.

"(b) The term 'Federal employees' means all employees as defined in 5 U.S.C. 2105 and members of the uniformed services shall be subject to the provisions of this Act.

"(c) The term 'contract' means any contract or grant entered into between any Federal agency and any person for the performance of experimental, developmental, or research work substantially funded by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any tier entered into for the performance of experimental, developmental, or research work under a contract.

"(d) The term 'contractor' means any person and any public or private corporation, partnership, firm, association, institution, or other entity that is a party to the contract.

"(e) The term 'invention' means any invention or discovery and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable or otherwise protectable under the laws of the United States.

"(f) The term 'Subject Invention' means any invention or discovery of the contractor conceived or first actually reduced to practice in the course of or under a contract.

"(g) The term 'practical application' means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine or system, and, in each case, under such conditions as to establish that the invention is being worked and that its benefits are available to the public either on reasonable terms or through reasonable licensing arrangements.

"(h) The term 'person' means any individual, partnership, corporation, association, institution, or other entity.

"(i) The term 'made', when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"(j) The term 'antitrust law' means--

"(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

"(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.) as amended;

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

"(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation to provide revenue for the Federal Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

"(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

§ 512. Relationship to Antitrust Laws.

"Nothing in this Act shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under the Antitrust Laws.

"CHAPTER 2.--AMENDMENT TO OTHER ACTS

"Sec.
"521. Identified Acts Amended.

"S 521. Identified Acts Amended.

"The following identified Acts are hereby amended as set forth below:

"(a) Section 10(a) of the Act of June 29, 1935, as added by Title 1 of the Agricultural Research and Marketing Act of August 14, 1946

"Section 10(a) of the Act of June 29, 1935, as added by Title 1 of the Act of August 14, 1946 (60 Stat. 1085) is amended by striking out the following: 'Any contracts made pursuant to this authority shall contain requirements making the results of research and investigations available to the public through dedication, assignment to the Government, or such other means as the Secretary shall determine.' (Amends 7 U.S.C.427i(a).)

"(b) Section 205(a) of the Agricultural Research and Marketing Act of August 14, 1946

"Section 205(a) of the Act of August 14, 1946 (60 Stat. 1090, as amended) is amended by striking out the following language: 'Any contract made pursuant to this section shall contain requirements making the result of such research and investigations available to the public by such means as the Secretary of Agriculture shall determine.' (Amends 7 U.S.C. 1624(a).)

"(c) Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969

"Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173; 83 Stat. 742) is amended by striking out the following language thereof: 'No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses,

products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the public interest) be available to the general public.' (Amends 30 U.S.C. 951(c).)

"(d) Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966

"Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (P.L. 89-563; 80 Stat. 721) is repealed. (Amends 15 U.S.C. 1395(c).)

"(e) Section 12 of the National Science Foundation Act of 1950

"Section 12 of the National Science Foundation Act of 1950 (P.L. 90-407, 82 Stat. 360) is repealed. (Amends 42 U.S.C. 1871(a).)

"(f) Section 152 of the Atomic Energy Act of 1954

"Section 152 of the Atomic Energy Act of 1954 (P.L. 83-703; 68 Stat. 943) is repealed. (Amends 42 U.S.C. 2182.)

"(g) The National Aeronautics and Space Act of 1958

"The National Aeronautics and Space Act of 1958 (P.L. 85-568; 72 Stat. 426; as amended) is amended by --

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

"(2) striking out the following language in subsection 306(a) thereof: (1) '(as defined by section 305)'; and (2) 'the Inventions and Contributions Board, established under section 305 of this Act' and inserting in lieu thereof the following language: 'an Inventions and Contributions Board which shall be established by the Administrator within the Administration' (amends 42 U.S.C. 2458);

"(3) inserting at the end of section 203.(c) thereof the following new subparagraph: '(15) To provide effective contractual provisions for the reporting of the results of the activities of the Administration, including full and complete technical reporting of any innovation made in the course of or under any contract of the Administration.'

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"(4) inserting at the end of section 203 thereof the following new subsection: '(d) For the purposes of chapter 17 of title 35 of the United States Code the Administration shall be considered a defense agency of the United States.' (amends 42 U.S.C. 2478); and

"(5) striking out the following from section 203 thereof: '(including patents and rights thereunder)'. (Amends 42 U.S.C. 2473.)

"(h) Section 6 of the Coal Research and Development Act of 1960

"Section 6 of the Coal Research and Development Act of 1960 (P.L. 86-599; 74 Stat. 337) is repealed. (Amends 30 U.S.C. 666.)

"(i) Section 4 of Helium Act of Amendments of 1960

"Section 4 of Helium Act Amendments of 1960 (P.L. 86-777; 74 Stat. 920) is amended by striking out the

following language thereof: 'Provided, however, that all research contracted for, sponsored, cosponsored, or authorized under authority of this Act shall be provided for in such a manner that all information, uses, products, processes, patents, and other developments resulting from such research developed by Government expenditure will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be available to the general public: And provided further, that nothing contained herein shall be construed as to deprive the owner of any background patent relating thereto to such rights as he may have thereunder.' (Amends 50 U.S.C. 167b.)

"(j) Subsection (b) of Section 4 of the Saline Water Conversion Act of 1961

"Subsection (b) of section 4 of the Saline Water Conversion Act of 1961 (P.L. 87-295; 75 Stat. 628) is repealed. (Amends 42 U.S.C. 1954(b).)

"(k) Section 32 of the Arms Control and Disarmament Act of 1961

"Section 32 of the Arms Control and Disarmament Act of 1961 (P.L. 87-297; 75 Stat. 634) is repealed. (Amends 22 U.S.C. 2572.)

"(l) Section 303 of the Water Resources Act of 1964

"Section 303 of the Water Resources Act of 1964 (P.L. 88-379, 78 Stat. 332) is repealed. (Amends 42 U.S.C. 1961c-3.)

"(m) Subsection (e) of Section 302 of the Appalachian Regional Development Act of 1965

"Subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (P.L. 89-4; 79 Stat.5; as amended) is repealed. (Amends 40 U.S.C. App. 302(e).)

"(n) Subsection (c) of Section 204 of the Solid Waste Disposal Act

"Subsection (c) of section 203 of the Solid Waste Disposal Act (P.L. 89-272; 79 Stat. 997) is repealed. (Amends 42 U.S.C. 3253(c).)

"(o) Section 216 of Title 38, United States Code

"Section 216 of Title 38, United States Code, is amended by deleting subsection (a)(2) thereof and by redesignating subsection (a)(3) thereof as '(a)(2)'. (Amends 38 U.S.C. 216(a)(2).)

"(p) Section 9 of Federal Nonnuclear Energy Research and Development Act of 1974

"Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, Public Law 93-577, is repealed except for paragraph (1) of Section 9.

"(q) Reserved.

"(r) Reserved.

"(s) Reserved.

"(t) Reserved.

"CHAPTER 3.--EFFECTIVE DATE PROVISION

"Sec.
"531. Effective date of Act.

"This Act shall take effect on the first day of the seventh month beginning after the date of enactment of this Act, except that section ____ shall take effect immediately and regulations implementing this Act may be issued prior to such day.