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SENATE

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ACTION: INTRODUCED BY MR. DOLE, et al.

By Mr. DOLE (for himself, Mr. LAXALT, and Mr. DECONCINI):

S. 64. A bill to amend title 35 of the United States Code for the purpose of creating a uniform policy and procedure concerning patent rights in inventions developed with Federal assistance, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, and Mr. DANFORTH):

S. 65. A bill to improve the transfer of technology from Government laboratories to the public and for other related purposes; to the Committee on the Judiciary.

UNIFORM PATENT PROCEDURES ACT AND THE FEDERAL LABORATORY TECHNOLOGY UTILIZATION ACT

Mr. DOLE. Mr. President, these two bills are designed to help promote productivity by clearing away many of the barriers that exist between federally funded research efforts and the commercialization of inventions resulting from those efforts.

Economic productivity is much like the weather: Everybody talks about it—corrective action is harder to come by. Some believe that the way to increase productivity is through more intervention by Federal planners. Others, like myself, have a sneaking suspicion that too much Federal bureaucracy has been a big part of the problem. I believe the answer lies not with more government, but with more reliance upon private entrepreneurship and academic experimentation. And we start by clearing away the unnecessary Federal legal and regulatory obstacles that crowd the path leading from a test tube, or a drawing board to the marketplace.

Five years ago, I was pleased to join our former colleague, Birch Bayh, in working to eliminate much of the tangle of bureaucratic brambles that impeded the ability of universities and small businesses to transform federally assisted research into a patented invention. Specifically, with the enactment of Public Law 96-517, we established, for the first time, a rule in favor of university and small business ownership of inventions developed. What's more, university and industry collaborative research is now at an all-time high, and whole new technologies, such as biotechnology, have flourished as a result.

Two years ago, President Reagan followed up with a memorandum instructing Federal agencies to apply the same criteria to all contractors, whenever possible. And I've returned to the field to propose the next logical step with the introduction of the Uniform Patent Procedures Act. Consistent with the President's directive, this bill would extend the principles of the 1980 law to large business contractors and repeal all existing laws which are inconsistent with those principles. Specifically, by establishing a clear and consistent presumption in favor of invention ownership for all contrac-

tors, the bill would eliminate once and for all the hodgepodge of agency patent requirements built up over the years and have the further effect, I believe, of luring research investments from large business with their specialized skills, technological expertise, and healthy respect for a dollar.

For a quarter of a century—just about as long as I've been in this city—efforts have been underway to develop a comprehensive, uniform Government patent policy. In this Congress, we have the opportunity to take the final major step by enacting this proposal which simply helps the free enterprise system to do what it does best: Produce new products the public seeks; create new jobs the public requires.

The impetus for the second bill I am introducing also derives from the 1980 Bayh-Doyle Act. Specifically, it is designed to enable the Federal laboratories to enter into the kinds of joint research and licensing arrangements that research universities have had such successful experiences with as a result of Public Law 96-517.

With about $17 billion going to the Federal laboratories, which employ nearly one-sixth of the Nation's research workers, there is broad agreement that ways must be found to increase the flow of technology from these labs to the private sector, yet as was indicated during hearings held last year by Senator MATHIAS' Subcommittee on Patents, Copyrights, and Trademarks on Government Patent Policy, too few labs are entering into the type of collaborative R&D arrangements with universities and business that are necessary to accomplish that goal. As Secretary Baldrige has emphasized, the basic stumbling block is that the labs perceive themselves as unable to enter into such joint efforts because of organizational and legal constraints.

As a consequence, this bill would expressly permit agency heads to authorize lab directors to undertake a wide range of cooperative R&D arrangements. The labs, for instance, could negotiate and issue patent licenses, assign ownership rights, and require outside parties to pay royalties for the right to use Government inventions. The bill also provides for direct payment of at least 15 percent of royalties so received to lab investors. The universities have found such royalty sharing to be a powerful incentive for inventors to contribute to commercialization efforts.

The labs would be able to keep royalties they receive after payments to investors, which should serve as an incentive for lab directors for outside collaboration on R&D leading to inventions of practical applications, consistent with the lab's mission.

The bill would further permit lab inventors to own their inventions if the Government has an insufficient interest in seeking its own patent. Finally, the bill would authorize the Secretary of Commerce to issue guidelines to help agencies make the best use of these new authorities.

Mr. President, America's future demands the liberation of her keenest intellects and broadest imaginations. Over and over, throughout our history, our system of free enterprise, with its incentives and rewards for the new and innovative, has replaced what was adequate for one generation with what is superior for the next. Far better than government, that system can explore new realms of possibility. But it cannot compete with foreign challenges with one hand tied behind its back. With these bills, I propose to untie a few knots.

Mr. President, I ask that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 64

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Uniform Patent Procedures Act of 1985"

SEC. 2. (a) Title 35 of the United States Code is amended by adding after chapter 18, as redesignated herein, a new chapter as follows:

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

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

"§ 212. Policy and objectives

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

"§ 213. Definitions

"As used in this chapter, the term—

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

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

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

"(4) 'Federal agency' means an executive agency (as defined in section 105 of title 5, United States Code), and the military departments (as defined in section 102 of title 5, United States Code);

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

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

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

"(8) 'Secretary' means the Secretary of Commerce or his or her designee; and

"(9) 'subject invention' means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a contract: *Provided*, That, in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of contract performance.

"§ 214. Responsibilities

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

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

"§ 215. Disposition of rights

"(a) Subject to subsection (c) of this section and to section 216 of this title, each contractor may elect to retain title, either worldwide or in such countries as it may choose, to any subject invention: *Provided, however*, That a Federal agency may, at the time of contracting, limit or eliminate this right, place additional restrictions or conditions on the contract that go beyond those set forth in subsection (c) of this section, expand the rights of the Government to license or sublicense, and alter or eliminate the contractor's right under paragraph (6) of subsection (c) of this section if—

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

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

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

"(4) it is determined that 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 weapons related programs and all contract limitations under this subpara-

graph are limited to inventions occuring under the above two programs of the Department of Energy.

"(b)(1) Each determination required by subsection (a) of this section shall be in writing and, except in the case of paragraph (1) of subsection (a) of this section, the agency shall, within thirty days after the award of the applicable contract, file with the Secretary a copy of each such determination. In the case of a determination under subsection (a)(3) of this section, the statement shall include an analysis supporting the determination and justifying the limitations and conditions being imposed. If the Secretary believes that any individual determination or pattern of determinations is contrary to the terms, policy, or objectives of this Act, the Secretary shall so advise the head of the agency concerned and the Administrator and recommend corrective actions.

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

"(c) In accordance with the regulations issued by the Secretary, each contract that the Government or any Federal agency acting on behalf of the Government may enter into shall employ a patent rights clause containing appropriate provisions to effectuate the following:

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

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

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

"(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontranferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: *Provided*, That the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreement relating to weapons development and production.";

"(5) that the agency may require written reports on the commerical use or other forms of utilization or efforts toward obtaining commercial utilization made by the contractor or its licensees or assignees with respect to any subject invention to which the contractor elects title, pursuant to this section: *Provided*, That any such report, as well as any information on utilization of efforts toward obtaining utilization obtained as part of a proceeding under section 216 of this title, shall be treated by the Federal agency as commercial or financial information obtained from a person and privileged or confidential and not subject to disclosure under the Freedom of Information Act (5 U.S.C. 552);

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

"(7) that the contractor, in cases when it does not elect to retain title to a subject invention, shall retain a nonexclusive, royalty free, paid-up, worldwide license, including the right to sublicense affiliates, subsidiaries, and existing licensees to whom the contractor is legally obligated to sublicense in any subject invention to which the Government obtains title, which license shall be revocable only to the extent necessary for the Government to grant an exclusive license: *Provided, however*, That the contractor shall not be entitled to such a license if the contractor has fraudulently failed to disclose the subject invention; and

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

"(d)(1) A Federal agency may, at any time, waive all or any part of the rights of the United States under this section or section 216 of this title to any subject invention or class of subject inventions made or which may be made under a contract or class of contracts if the agency determines that—

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

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

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

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

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

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

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

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

"(4) With respect to contracts in which an agency invokes paragraphs (1) through (4) of subsection (a) of section 215, a Federal agency may, after a subject invention has been identified, waive any limits or additional restrictions or conditions placed on a contractor beyond those set forth in sections 215 and 216 and may allow the contractor to retain the license rights set forth in subsection (c)(7) of this section if such license rights were otherwise limited in the contract.

"(e) If a contractor does not elect to retain worldwide title to a subject invention, the Federal agency may consider and, after consultation with the contractor, grant request for retention of rights by the inventor on such terms and conditions as the agency deems appropriate, subject to section 216 of this Act.

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

"§ 216. March-in-rights

"(a) Where a contractor has elected to retain title to a subject invention under section 215 of this title, the Federal agency shall have the right (unless waived under subsection (d) of section 215 of this title), pursuant to policies, procedures, and guidelines of the Secretary and subject to the provisions of subsection (b) of this section, to grant or require the contractor or his assignee or exclusive licensee to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, if the head of the agency or his designee determines that such action is necessary—

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

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

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

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

"§ 217. Background rights

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

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

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

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

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

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

(1) by deleting everything in subsection 210(c) between the word "authorized" and the period at the end of that subsection.

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

"(g) A Federal agency may at any time waive all or any part of the rights of the United States under paragraphs (c)(4) through (8) of this section, section 203, and section 204 of this chapter, to any subject inventions made under a funding agreement or class of funding agreements if the agency determines (1) that the interests of the United States and the general public will be best served thereby; or (2) the funding agreement involves cosponsored, cost sharing or joint venture research or venturer is required to make or has made a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement. The agency shall maintain a record, which shall be available to the public and periodically updated, of determinations made under this paragraph. In making such determinations under clause (A) of this paragraph, the agency shall consider at least the following objectives:

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

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

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

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

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

(c) Section 406(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c)) is repealed.

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

(e)(1) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) is repealed: *Provided, however,* That such section shall continue to be effective with respect to any application for a patent in which the statement under oath referred to in such section has been filed or requested to be filed by the Commissioner of Patents and Trademarks prior to the effective date of this Act.

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

"Sec. 152. Repealed".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Section 806(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1228(d)) is amended by striking the first two sentences thereof.

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

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

(u) Section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 173j) is repealed.

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

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

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

"Sec. 173. Repealed.".

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

Sec. 5. (a) This Act shall take effect six months after the date of enactment of this Act.

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

Sec. 6. Within twenty-four months after the date of enactment of this Act and every two years thereafter, the Secretary of Commerce shall submit to Congress a report of the implementation of chapters 18 and 19 of title 35, United States Code, including any recommendations for legislative or administrative changes to better achieve the policies and objectives of such chapters.

S. 65

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 "Federal Laboratory Technology Utilization Act of 1985."

Sec. 2. Cooperative research and development arrangements.

Each Federal agency is authorized to permit laboratories of the agency to—

(a) enter into cooperative research and development arrangements (subject to such review procedures as the agency deems appropriate) with other Federal agencies, units of State or local government, industrial organizations, universities, or other persons including licensees of inventions owned by the Federal agency or general partners of research and development limited partnerships. Under such arrangements the laboratory may—

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

(2) grant or agree to grant in advance to a collaborating party, without regard to the provisions of 35 USC 208 and 209 patent licenses or assignments, or options thereto, in any invention made by a government employee under the arrangement, retaining such rights as the Federal agency deems appropriate;

(3) waive, in whole or in part, any right of ownership which the Government may have under any other statute to any inventions made by a collaborating party or employee of a collaborating party under the arrangement; and

(b) negotiate licensing agreements under 35 USC 207 or other authorities for government owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the government.

Sec. 3. Distribution of Royalties.

(a) Any royalties or other income received by the laboratory from the licensing or assignment of inventions under section 2 of this Act or under 35 USC 207 or other authority shall be disposed of as follows:

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

(2) The balance of any royalties or related income earned during any fiscal year may be retained by the laboratory up to an amount equal to 5 percent of the budget for that year of the laboratory involved; provided that these funds must be used or obligated by the end of the fiscal year subsequent to the one in which they are received either (A) for mission-related research and development of the laboratory, (B) to support development and education programs for employees of the laboratory, (C) to reward employees of the laboratory for inventions of value to the Government that will not produce royalties, (D) to further scientific exchange to and from the laboratory, or (E) for payment of patenting costs and fees and other expenses incidental to the administration and licensing of inventions, including the fees or costs for the services of other agencies or other persons or organizations for invention management and licensing services. Any funds not so used or obligated by that time shall be paid to the Treasury of the United States. If the balance for any laboratory exceeds 5 percent of the annual budget of the laboratory, then 75 percent of the excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the purposes listed in (A)-(E), above, by the end of the fiscal year subsequent to the one in which they were received, and any funds not so used or obligated by that time shall be paid to the Treasufy of the United States.

(3) In the event the invention was one assigned to the agency either (i) by a contractor, grantee, or the holder of a cooperative agreement of the agency or (ii) by an employee of the agency that was not working in a laboratory at the time the invention was made, then for purposes of this section the agency unit that funded or employed the assignee shall be considered to be a laboratory.

(b) Agencies shall report annually to the appropriate oversight and appropriations committees of the Senate and House of Representatives detailing the amount of royalties or other income referred to in subsection 3(a) received and the expenditure of such royalties or income.

SEC. 4. Duties of the Secretary.

(a) The Secretary of Commerce, in consultation with other Federal agencies, shall—

(1) develop and disseminate to appropriate agency personnel techniques and procedures for Federal laboratories and agencies to use on a voluntary basis to aid in the early determination of the commercial potential of new technologies generated in performance of Federal laboratory research;

(2) develop and administer training courses and materials to increase the awareness of laboratory researchers regarding the commercial potential of inventions and to educate laboratory personnel in methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

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

(4) upon request, furnish advice and assistance to laboratories concerning their cooperative research and development programs and projects.

(b) Two years after the date of enactment of this Act and every two years thereafter the Secretary shall submit a report to the President and the Congress on the use by the agencies and the Secretary of the authorities under this Act. Other Federal agencies shall cooperate with the Secretary in providing information necessary to prepare the reports.

SEC. 5. Employee activities.

(a) It shall be the policy of the Government to encourage the efforts of Government employees or former employees to obtain commercialization of inventions made by them while they were in the service of the United States, and it shall not be a violation of the provisions of 18 USC 207 for former employees or the partners of employees to negotiate licenses or cooperative research and development arrangements relating to such inventions with Federal agencies, including the agency with which the employee is or was formerly employed. Federal employees or former employees who receive royalty payments or participate (whether as a principal of, a consultant to, or an employee of an organization that is attempting to commercialize the invention, or otherwise) in efforts to commercialize their inventions shall not, because of such receipt or participation, be deemed to be in violation of section 201, 203, 205, 207, 208, or 209 of Title 18 of the United States Code. In the case of an active employee of the Government, this section is not intended to negate any requirements which the agency may have concerning the need for approval of outside employment to prevent substandard levels of performance.

(b) Upon the request of a Government employee or former employee who made an invention during the course of his employment with the Government to which the Government has the right of ownership, the agency shall allow the inventor to retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid up license to practice or have practiced the invention throughout the world by or on behalf of the Government) unless the agency intends to file for a patent application in order to promote commercialization of the invention. However, such a request need not be granted if this would be inconsistent with the obligations of the Government to other parties under a cooperative research and development arrangement or otherwise or if the agency intends to transfer its ownership rights to another party that was a co-inventor or which employed a co-inventor of the invention. In addition, the agency may condition the inventor's title on the timely filing of a patent application or statutory invention registration in cases when the Government determines that it has or may have a need to practice the invention.

(c) For purposes of this section, Federal employees include "special Government employees" as defined at 18 USC 202.

SEC. 6. Definitions.

As used in this Act—

(1) "cooperative research and development arrangement" means any agreement, but not a procurement contract as that term is used at 31 USC 6303, between one or more Federal agencies and one or more non-Federal parties under which the agency (or agencies collectively) through one or more laboratories provides personnel, services, facilities, equipment, or other resources (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources towards the conduct of specified research or development efforts which are consistent with the missions of the agency.

(2) "Federal agency" means any executive agency as defined at 5 USC 105 and the military departments as defined at 5 USC 102;

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

(4) "laboratory" means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research and development by Government employees;

(5) "made" when used in conjunction with "inventions" means conceived or first actually reduced to practice; and

(6) "Secretary" means the Secretary of Commerce or his or her designee or delegee.

SEC. 7. Relationship to other laws.

Nothing in this Act is intended to limit or diminish existing authorities of any agency.

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