

1 as the agency deems appropriate) with other Federal
2 agencies, units of State or local government, industrial
3 organizations, universities, or other persons including
4 licensees of inventions owned by the Federal agency or
5 general partners of research and development limited
6 partnerships. Under such arrangements the laboratory
7 may—

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

11 (2) grant or agree to grant in advance to a
12 collaborating party, without regard to the provi-
13 sions of sections 208 and 209 of title 35, United
14 States Code, patent licenses or assignments, or
15 options thereto, in any invention made by a Gov-
16 ernment employee under the arrangement, retain-
17 ing such rights as the Federal agency deems ap-
18 propriate;

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

24 (b) negotiate licensing agreements under section
25 207 of title 35, United States Code, or other authori-

1 ties for Government-owned inventions made at the lab-
2 oratory and other inventions of Federal employees that
3 may be voluntarily assigned to the Government.

4 **SEC. 3. DISTRIBUTION OF ROYALTIES.**

5 (a) Any royalties or other income received by the labo-
6 ratory from the licensing or assignment of inventions under
7 section 2 of this Act or under section 207 of title 35, United
8 States Code, or other authority shall be disposed of as fol-
9 lows:

10 (1) At least 15 per centum of the royalties or
11 other income received each year by the laboratory on
12 account of any invention shall be paid to the inventor
13 or coinventors if they were employees of the agency at
14 the time the invention was made: *Provided*, That pay-
15 ments made under this subsection are in addition to the
16 regular pay of the employee and to any awards made
17 to that employee, and such payments shall not affect
18 the entitlement to or limit the amount of the regular
19 pay or other awards to which the employee is other-
20 wise entitled or eligible.

21 (2) The balance of any royalties or related income
22 earned during any fiscal year may be retained by the
23 laboratory up to an amount equal to 5 per centum of
24 the budget for that year of the laboratory involved:
25 *Provided*, That these funds must be used or obligated

1 by the end of the fiscal year subsequent to the one in
2 which they are received either (A) for mission-related
3 research and development of the laboratory, (B) to sup-
4 port development and education programs for employ-
5 ees of the laboratory, (C) to reward employees of the
6 laboratory for inventions of value to the Government
7 that will not produce royalties, (D) to further scientific
8 exchange to and from the laboratory, or (E) for pay-
9 ment of patenting costs and fees and other expenses in-
10 cidental to the administration and licensing of inven-
11 tions, including the fees or costs for the services of
12 other agencies or other persons or organizations for in-
13 vention management and licensing services. Any funds
14 not so used or obligated by that time shall be paid to
15 the Treasury of the United States. If the balance for
16 any laboratory exceeds 5 per centum of the annual
17 budget of the laboratory, then 75 per centum of the
18 excess shall be paid to the Treasury of the United
19 States and the remaining 25 per centum shall be used
20 for the purposes listed in (A)–(E), above, by the end of
21 the fiscal year subsequent to the one in which they
22 were received, and any funds not so used or obligated
23 by that time shall be paid to the Treasury of the
24 United States.

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

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

14 **SEC. 4. DUTIES OF THE SECRETARY.**

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

17 (1) develop and disseminate to appropriate agency
18 personnel techniques and procedures for Federal lab-
19 oratories and agencies to use on a voluntary basis to
20 aid in the early determination of the commercial poten-
21 tial of new technologies generated in performance of
22 Federal laboratory research;

23 (2) develop and administer training courses and
24 materials to increase the awareness of laboratory re-
25 searchers regarding the commercial potential of inven-

1 tions and to educate laboratory personnel in methods
2 and options for commercialization which are available
3 to the Federal laboratories, including research and de-
4 velopment limited partnerships;

5 (3) Develop and disseminate to appropriate
6 agency personnel model provisions for use on a volun-
7 tary basis in cooperative research and development ar-
8 rangements; and

9 (4) upon request, furnish advice and assistance to
10 laboratories concerning their cooperative research and
11 development program and projects.

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

18 **SEC. 5. EMPLOYEE ACTIVITIES.**

19 (a) It shall be the policy of the Government to encour-
20 age the efforts of Government employees or former employ-
21 ees to obtain commercialization of inventions made by them
22 while they were in the service of the United States, and it
23 shall not be a violation of the provisions of section 207 of title
24 18, United States Code, for former employees or the partners
25 of employees to negotiate licenses or cooperative research

1 and development arrangements relating to such inventions
2 with Federal agencies, including the agency with which the
3 employee is or was formerly employed. Federal employees or
4 former employees who receive royalty payments or partici-
5 pate (whether as a principal of, a consultant to, or an em-
6 ployee of an organization that is attempting to commercialize
7 the invention, or otherwise) in efforts to commercialize their
8 inventions shall not, because of such receipt or participation,
9 be deemed to be in violation of section 201, 203, 205, 207,
10 208, or 209 of title 18 of the United States Code. In the case
11 of an active employee of the Government, this section is not
12 intended to negate any requirements which the agency may
13 have concerning the need for approval of outside employment
14 to prevent substandard levels of performance.

15 (b) Upon the request of a Government employee or
16 former employee who made an invention during the course of
17 his employment with the Government to which the Govern-
18 ment has the right of ownership, the agency shall allow the
19 inventor to retain title to the invention (subject to reservation
20 by the Government of a nonexclusive, nontransferable, irrev-
21 ocable, paid up license to practice or have practiced the in-
22 vention throughout the world by or on behalf of the Govern-
23 ment) unless the agency intends to file for a patent applica-
24 tion in order to promote commercialization of the invention.
25 However, such a request need not be granted if this would be

1 inconsistent with the obligations of the Government to other
2 parties under a cooperative research and development ar-
3 rangement or otherwise, or if the agency intends to transfer
4 its ownership rights to another party that was a coinventor or
5 which employed a coinventor of the invention. In addition,
6 the agency may condition the inventor's title on the timely
7 filing of a patent application or statutory invention registra-
8 tion in cases when the Government determines that it has or
9 may have a need to practice the invention.

10 (c) For purposes of this section, Federal employees in-
11 clude "special Government employees" as defined at section
12 202 of title 18, United States Code.

13 **SEC. 6. DEFINITIONS.**

14 As used in this Act—

15 (1) "cooperative research and development ar-
16 rangement" means any agreement, but not a procure-
17 ment contract as that term is used at section 6303 of
18 title 31, United States Code, between one or more
19 Federal agencies and one or more non-Federal parties
20 under which the agency (or agencies collectively)
21 through one or more laboratories provides personnel,
22 services, facilities, equipment, or other resources (but
23 not funds to non-Federal parties) and the non-Federal
24 parties provide funds, personnel, services, facilities,
25 equipment, or other resources toward the conduct of

1 specified research or development efforts which are
2 consistent with the missions of the agency.

3 (2) "Federal agency" means any executive agency
4 as defined at section 105 of title 5, United States
5 Code, and the military departments as defined at sec-
6 tion 102 of title 5, United States Code;

7 (3) "invention" means any invention under title
8 35 of the United States Code, or any novel variety of
9 plant which is or may be protectable under the Plant
10 Variety Protection Act (7 U.S.C. 2321 et seq.);

11 (4) "laboratory" means a facility or group of fa-
12 cilities owned, leased, or otherwise used by a Federal
13 agency, a substantial purpose of which is the perform-
14 ance of research and development by Government
15 employees;

16 (5) "made" when used in conjunction with "in-
17 ventions" means conceived or first actually reduced to
18 practice; and

19 (6) "Secretary" means the Secretary of Com-
20 merce or his or her designee or delegee.

21 **SEC. 7. RELATIONSHIP TO OTHER LAWS.**

22 Nothing in this Act is intended to limit or diminish ex-
23 isting authorities of any agency.