

Calendar No. 66299TH CONGRESS
1ST SESSION**H. R. 3773****[Report No. 99-283]****IN THE SENATE OF THE UNITED STATES**

DECEMBER 11 (legislative day, DECEMBER 9), 1985

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

MARCH 20 (legislative day, MARCH 18), 1986

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

APRIL 21, 1986

Reported by Mr. DANFORTH, with amendment

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

APRIL 21, 1986

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

MAY 21 (legislative day, MAY 19), 1986

Committee discharged; placed on the calendar

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

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. COOPERATIVE RESEARCH AND DEVELOPMENT**
7 **AGREEMENTS.**

8 The Stevenson-Wydler Technology Innovation Act of
9 1980 is amended by redesignating sections 12 through 15 as
10 sections 15 through 18, and by inserting immediately after
11 section 11 the following new section:

12 **"SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT**
13 **AGREEMENTS.**

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

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

1 tions; public and private foundations; nonprofit organi-
2 zations including universities; licensees of Federal in-
3 ventions; or other persons; and
4 “(2) to negotiate licensing agreements under sec-
5 tion 207 of title 35, United States Code, or under
6 other authorities.

7 “(b) ~~ЕНУМЕРИРОВАННО АУЩНОВАННО~~.—Under agreements
8 described in subsection (a)(1), a Government-operated Feder-
9 al laboratory shall have the authority (subject to subsection
10 (e) of this section)—

11 “(1) to grant or agree to grant in advance, to a
12 collaborating party, patent licenses or assignments, or
13 options thereto, in any invention made by a Federal
14 employee, or made jointly by a Federal employee and
15 an employee of the collaborating party, under the
16 agreement, retaining such rights as the Federal labora-
17 tory deems appropriate; and

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

23 “(e) AGENCY PLAN.—(1)(A) Within 180 days after the
24 election by any Federal agency to implement subsection (b),
25 revised regulations or instructions for that agency's opera-

1 tive research and development program shall be drafted or
2 modified. The revised regulations or instructions need not
3 apply to cooperative agreements entered into prior to the ef-
4 fective date of such regulations or instructions. Such revised
5 regulations or instructions shall—

6 “(i) if they give the head of the agency or his des-
7 ignee an opportunity to disapprove or require the modi-
8 fication of any such agreement, provide a 30-day
9 period beginning on the date the agreement is present-
10 ed to him or her by the head of the laboratory con-
11 cerned within which such action must be taken;

12 “(ii) give special consideration to small business
13 firms, and consortia involving small business firms;

14 “(iii) give preference to business units located in
15 the United States which agree that products embody-
16 ing inventions made under the cooperative research
17 and development agreement or produced through the
18 use of such invention will be manufactured substantial-
19 ly in the United States;

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

1 (including the agency with which the employee in-
2 volved is or was formerly employed); and
3 “(iv) contain other elements deemed appropriate
4 by the agency.

5 “(B) In any case in which the head of an agency or his
6 designee disapproves or requires the modification of an agree-
7 ment presented under this section, the head of the agency or
8 such designee shall transmit a written explanation of such
9 disapproval or modification to the head of the laboratory
10 concerned.

11 “(C) If, in implementing subparagraph (A)(iv), an
12 agency is unable to resolve potential conflicts of interest
13 within its current statutory framework, it shall propose nec-
14 essary statutory changes to be forwarded to its authorizing
15 committees in Congress.

16 “(2) Each agency shall maintain a record of all agree-
17 ments entered into under this section.

18 “(d) DEFINITION.—As used in this section, the term
19 ‘cooperative research and development agreement’ means
20 any agreement between one or more Federal laboratories and
21 one or more non-Federal parties under which the laboratory
22 or laboratories will provide personnel, services, facilities,
23 equipment, or other resources (but not funds to non-Federal
24 parties) and the non-Federal party or parties will provide
25 funds, personnel, services, facilities, equipment, or other re-

1 sources toward the conduct of specified research or develop-
2 ment efforts which are consistent with the missions of the
3 agency; except that such term does not include a procure-
4 ment contract as that term is used in section 6303 of title 31,
5 United States Code, or a cooperative agreement as that term
6 is used in section 6305 of such title.

7 **“(e) RELATIONSHIP TO OTHER LAWS.—Nothing in**
8 **this section is intended to limit or diminish existing authori-**
9 **ties of any agency.”**

10 **SEC. 2. ESTABLISHMENT OF FEDERAL LABORATORY CONSOR-**
11 **TIUM FOR TECHNOLOGY TRANSFER.**

12 Section 11 of the Stevenson-Wydler Technology Inno-
13 vation Act of 1980 (15 U.S.C. 2710) is amended—

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

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

18 **“(e) ESTABLISHMENT OF FEDERAL LABORATORY**
19 **CONSORTIUM FOR TECHNOLOGY TRANSFER.—(1) There is**
20 **hereby established the Federal Laboratory Consortium for**
21 **Technology Transfer (hereinafter referred to as the ‘Consorti-**
22 **um’) which shall be within the National Science Foundation**
23 **and which, in cooperation with Federal laboratories and the**
24 **private sector, shall—**

1 “(A) develop and administer techniques, training
2 courses, and materials concerning technology transfer
3 to increase the awareness of Federal laboratory em-
4 ployees regarding the commercial potential of laborato-
5 ry technology and innovations, except that such tech-
6 niques, courses, and materials may be administered
7 only with the consent of the Federal laboratory
8 concerned;

9 “(B) furnish advice and assistance requested by
10 Federal agencies and laboratories for use in their tech-
11 nology transfer programs (including the planning of
12 seminars for small business and other industry);

13 “(C) provide a clearinghouse for requests for tech-
14 nical assistance from States and units of local govern-
15 ments, businesses, industrial development organiza-
16 tions, not-for-profit organizations including universities,
17 Federal agencies and laboratories, and other persons,
18 and—

19 “(i) to the extent that such requests can be
20 responded to with published information available
21 to the National Technical Information Service,
22 refer such requests to that Service; and
23 “(ii) otherwise refer these requests to the
24 appropriate Federal laboratories and agencies;

1 “(D) facilitate communication and coordination
2 between Offices of Research and Technology Applica-
3 tions of Federal laboratories;

4 “(E) utilize (with the consent of the agency in-
5 volved) the expertise and services of the National Sci-
6 ence Foundation, the Department of Commerce, the
7 National Aeronautics and Space Administration, and
8 other Federal agencies, as necessary;

9 “(F) with the consent of any Federal laboratory,
10 facilitate the use by such laboratory of appropriate
11 technology transfer mechanisms such as personnel ex-
12 changes and computer-based systems;

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

17 “(H) facilitate communication and cooperation be-
18 tween Offices of Research and Technology Applica-
19 tions of Federal laboratories and regional, State, and
20 local technology transfer organizations; and

21 “(I) establish advisory committees in each Federal
22 laboratory consortium region composed of representa-
23 tives from State and local governments, large and
24 small business, universities, and other appropriate per-
25 sons to advise on the effectiveness of the program (and

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

3 “(2) The membership of the Consortium shall consist of
4 the Federal laboratories described in clause (1) of subsection
5 (b) and such other laboratories as may choose to join the
6 Consortium. The representatives to the Consortium shall in-
7 clude a senior staff member of each Federal laboratory which
8 is a member of the Consortium and a representative appoint-
9 ed from each Federal agency with one or more member
10 laboratories.

11 “(3) The representatives to the Consortium shall elect a
12 Chairman of the Consortium.

13 “(4) The Director of the National Science Foundation
14 shall provide the Consortium on a reimbursable basis with
15 administrative services, such as office space, personnel, and
16 support services of the Foundation, as requested by the Con-
17 sortium and approved by such Director.

18 “(5) Not later than one year after the date of the enact-
19 ment of this subsection, and every year thereafter, the Chair-
20 man of the Consortium shall submit a report to the President,
21 to the appropriate authorization and appropriation commit-
22 tees of both Houses of the Congress, and to each agency with
23 respect to which a transfer of funding is made (for the fiscal
24 year or years involved) under paragraph (6), concerning the
25 activities of the Consortium and the expenditures made by it

1 under this subsection during the year for which the report is
2 made:

3 “(6)(A) Subject to subparagraph (B), an amount equal to
4 0.005 percent of that portion of the research and develop-
5 ment budget of each Federal agency that is to be utilized by
6 the laboratories of such agency for a fiscal year referred to in
7 subparagraph (B)(ii) shall be transferred by such agency to
8 the National Science Foundation at the beginning of the
9 fiscal year involved. Amounts so transferred shall be provided
10 by the Foundation to the Consortium for the purpose of ear-
11 ning out activities of the Consortium under this subsection.

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

14 “(i) the amount so transferred by that agency (as
15 determined under such subparagraph) would exceed
16 \$10,000; and

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

19 “(C) The heads of Federal agencies and their designees,
20 and the directors of Federal laboratories, are authorized to
21 provide such additional support for operations of the Consor-
22 tium as they deem appropriate.”

1 SEC. 4. UTILIZATION OF FEDERAL TECHNOLOGY.

2 (a) RESPONSIBILITY FOR TECHNOLOGY TRANSFER.—

3 Section 11(a) of the Stevenson-Wydler Technology Innova-
4 tion Act of 1980 (15 U.S.C. 3710(a)) is amended—

5 (1) by inserting "(1)" after "POLICY"; and

6 (2) by adding at the end thereof the following new
7 paragraphs:8 "(2) Technology transfer, consistent with mission re-
9 sponsibilities, is a responsibility of each laboratory science
10 and engineering professional.11 "(3) Each laboratory director shall ensure that efforts to
12 transfer technology are considered positively in laboratory job
13 descriptions, employee promotion policies, and evaluation of
14 the job performance of scientists and engineers in the
15 laboratory."16 (b) RESEARCH AND TECHNOLOGY APPLICATIONS OP-
17 PORTS.—(1) Section 11(b) of such Act (15 U.S.C. 3710(b)) is
18 amended—19 (A) by striking out "a total annual budget exceed-
20 ing \$20,000,000 shall provide at least one professional
21 individual full-time" and inserting in lieu thereof "200
22 or more full-time scientific, engineering, and related
23 technical positions shall provide one or more full-time
24 equivalent positions";25 (B) by inserting immediately before the next to
26 last sentence the following new sentence: "Further-

1 more, individuals filling positions in an Office of Re-
2 search and Technology Applications shall be included
3 in the overall laboratory/agency management develop-
4 ment program so as to ensure that highly competent
5 technical managers are full participants in the technol-
6 ogy transfer process.”;

7 (C) by striking out “requirements set forth in (1)
8 and/or (2) of this subsection” in the next to last sen-
9 tence and inserting in lieu thereof “requirement set
10 forth in clause (2) of the preceding sentence”; and

11 (D) by striking out “either requirement (1) or (2)”
12 in the last sentence and inserting in lieu thereof “such
13 requirement”;

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

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

18 “(1) to prepare application assessments for select-
19 ed research and development projects in which that
20 laboratory is engaged and which in the opinion of the
21 laboratory may have potential commercial applica-
22 tions;”;

23 (B) by inserting “all” before “federally owned” in
24 paragraph (2);

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

6 (D) by striking out "in response to requests from
7 State and local government officials" in paragraph (4)
8 and inserting in lieu thereof "to State and local gov-
9 ernment officials";

10 (e) DISSEMINATION OF TECHNICAL INFORMATION.—

11 Section 14(d) of such Act (45 U.S.C. 3710(d)) is amended—

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

15 "(d) DISSEMINATION OF TECHNICAL INFORMATION.—

16 The National Technical Information Service shall—";

17 (2) by striking out paragraph (2);

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

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

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

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

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

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

8 (d) AGENCY REPORTING.—Section 11(f) of such Act
9 (15 U.S.C. 2710(e)) (as redesignated by section 2(1) of this
10 Act) is amended—

11 (1) by striking out "prepare biennially a report
12 summarizing the activities" in the first sentence and
13 inserting in lieu thereof "report annually to the Con-
14 gress, as part of the agency's annual budget submis-
15 sion, on the activities"; and

16 (2) by striking out the second sentence.

17 (e) FUNCTIONS OF THE SECRETARY.—Section 11 of
18 such Act (as amended by the preceding provisions of this Act)
19 is further amended by adding at the end thereof the follow-
20 ing new subsection:

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

23 "~~(1)~~ make available to interested agencies the ex-
24 pertise of the Department of Commerce regarding the
25 commercial potential of inventions and methods and

1 options for commercialization which are available to
2 the Federal laboratories, including research and devel-
3 opment limited partnerships;
4 “(2) develop and disseminate to appropriate
5 agency and laboratory personnel model provisions for
6 use on a voluntary basis in cooperative research and
7 development arrangements; and
8 “(3) furnish advice and assistance, upon request,
9 to Federal agencies concerning their cooperative re-
10 search and development program and projects.”

11 SEC. 5. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECH-
12 NICAL PERSONNEL OF FEDERAL AGENCIES.

13 The Stevenson-Wydler Technology Innovation Act of
14 1980 (as amended by the preceding provisions of this Act) is
15 further amended by inserting after section 12 the following
16 new section:

17 “SEC. 12. REWARDS FOR SCIENTIFIC, ENGINEERING, AND

18 TECHNICAL PERSONNEL OF FEDERAL AGEN-
19 CIES.

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

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

6 “(2) exemplary activities that promote the domes-
7 tic transfer of science and technology developed within
8 the Federal Government and result in utilization of
9 such science and technology by American industry or
10 business, universities, State or local governments, or
11 other non-Federal parties.”

12 **SEC. 6. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL**
13 **AGENCIES.**

14 The Stevenson-Wydler Technology Innovation Act of
15 1980 (as amended by the preceding provisions of this Act) is
16 further amended by inserting after section 13 the following
17 new section:

18 **“SEC. 14. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDER-**
19 **AL AGENCIES.**

20 “(a) **IN GENERAL.**—(1) Except as provided in para-
21 graph (2), any royalties or other income received by a Feder-
22 al agency from the licensing or assignment of inventions
23 under agreements entered into under section 12, and from
24 inventions of Government-operated Federal laboratories li-
25 censed under section 207 of title 35, United States Code, or

1 under any other provision of law shall be retained by the
2 agency involved in the production of the income. Such funds
3 shall be transferred by the agency to its Government-operat-
4 ed laboratories, with the major share of the royalties or other
5 income from any invention going to the laboratory where the
6 invention occurred; and the funds so transferred to any such
7 laboratory may be used or obligated by that laboratory during
8 the fiscal year in which they are received or during the suc-
9 ceeding fiscal year—

10 “(A) for payment of expenses incidental to the ad-
11 ministration and licensing of inventions by that labora-
12 tory or by the agency with respect to inventions which
13 occurred at that laboratory, including the fees or other
14 costs for the services of other agencies, persons, or or-
15 ganizations for invention management and licensing
16 services;

17 “(B) to reward scientific, engineering, and techni-
18 cal employees of that laboratory as part of the
19 agency’s reward program established pursuant to the
20 preceding section of this Act; provided that any pay-
21 ment made under this paragraph shall be in addition to
22 the regular pay of the employee involved and to any
23 other awards made to that employee, and shall not
24 affect the entitlement of the employee to any regular
25 pay, annuity, or award to which he is otherwise enti-

1 ...ted or for which he is otherwise eligible or limit the
2 ...amount thereof;

3 ...“(C) to further scientific exchange among the gov-
4 ...ernment-operated laboratories of the agency; or
5 ...“(D) for scientific research and development, for
6 ...education and training of employees of that consistent
7 ...with the research and development mission and objec-
8 ...tives of the agency, and for other activities that in-
9 ...crease the licensing potential for transfer of the tech-
10 ...nology of the Government-operated laboratories of the
11 ...agency.

12 Any of such funds not so used or obligated by the end of the
13 fiscal year succeeding the fiscal year in which they are re-
14 ceived shall be paid into the Treasury of the United States.

15 “(2) If the royalties received by an agency in any fiscal
16 year exceed 5 percent of the budget of the Government-oper-
17 ated laboratories of the agency for that year, 75 percent of
18 such excess shall be paid to the Treasury of the United
19 States and the remaining 25 percent may be used or obligat-
20 ed for the purposes described in subparagraphs (A) through
21 (C) of paragraph (1) during that fiscal year or the succeeding
22 fiscal year: Any funds not so used or obligated shall be paid
23 into the Treasury of the United States.

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

1 “(1) by a contractor, grantee, or party to a coop-
2 erative agreement with the agency; or
3 “(2) by an employee of the agency who was not
4 working in a Government-operated laboratory at the
5 time the invention was made;
6 the agency unit that funded or employed the entity that made
7 such assignment shall be considered to be a Government-
8 operated laboratory for purposes of this section.

9 “(c) REPORTS.—In making their annual budget submis-
10 sions Federal agencies shall submit, to the appropriate au-
11 thorization and appropriation committees of both Houses of
12 the Congress, summaries of the amount of royalties or other
13 income received and expenditures made (including inventor
14 awards) under this section.”

15 SEC. 7. MISCELLANEOUS AND CONFORMING AMENDMENTS.

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

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

24 (2) Section 4 of such Act is amended—

1 (A) by striking out "Industrial Technology" in
2 paragraph (1) and inserting in lieu thereof "Productivi-
3 ty, Technology, and Innovation";
4 (B) by striking out "Director" means the Direc-
5 tor of the Office of Industrial Technology" in para-
6 graph (2) and inserting in lieu thereof "Assistant Sec-
7 retary" means the Assistant Secretary for Productivity,
8 Technology, and Innovation";
9 (C) by striking out "Centers for Industrial Tech-
10 nology" in paragraph (4) and inserting in lieu thereof
11 "Cooperative Research Centers";
12 (D) by striking out paragraph (6), and redesignat-
13 ing paragraphs (7) and (8) as paragraphs (6) and (7);
14 respectively; and
15 (E) by striking out "owned and funded" in para-
16 graph (6) as so redesignated and inserting in lieu there-
17 of "owned, leased, or otherwise used by a Federal
18 agency and funded";
19 (2) Section 5(a) of such Act is amended by striking out
20 "Industrial Technology" and inserting in lieu thereof "Pro-
21 ductivity, Technology, and Innovation";
22 (4) Section 5(b) of such Act is amended by striking out
23 "DIRECTOR" and inserting in lieu thereof "ASSISTANT SEC-
24 RETARY", and by striking out "a Director of the Office" and

- 1 all that follows and inserting in lieu thereof "an Assistant
2 Secretary for Productivity, Technology, and Innovation."
3 (5) Section 6(e) of such Act is amended by striking out
4 "the Director" each place it appears and inserting in lieu
5 thereof "the Assistant Secretary".
6 (6) The heading of section 6 of such Act is amended to
7 read as follows:
8 "SEC. 6. COOPERATIVE RESEARCH CENTERS."
9 (7) Section 6(a) of such Act is amended by striking out
10 "Centers for Industrial Technology" and inserting in lieu
11 thereof "Cooperative Research Centers".
12 (8) Section 6(b)(1) of such Act is amended by striking
13 out "basic and applied".
14 (9) Section 6(c) of such Act is amended to read as
15 follows:
16 "(c) RESEARCH AND DEVELOPMENT UTILIZATION.—
17 In the promotion of technology from research and develop-
18 ment efforts by Centers under this section, chapter 18 of title
19 35, United States Code, shall apply to the extent not ineen-
20 sistent with this section."
21 (10) Section 6(f) of such Act is repealed.
22 (11) The heading of section 8 of such Act is amended by
23 striking out "CENTERS FOR INDUSTRIAL TECHNOLOGY" and
24 inserting in lieu thereof "COORDINATING RESEARCH AND
25 FUNDS".

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

4 (e) RELATED CONFORMING AMENDMENT.—Section
5 210 of title 35, United States Code, is amended by adding at
6 the end thereof the following new subsection:

7 "(e) The provisions of the Stevenson-Wydler Technolo-
8 gy Innovation Act of 1980, as amended by the Federal Tech-
9 nology Transfer Act of 1985, shall take precedence over the
10 provisions of this chapter to the extent that they permit or
11 require a disposition of rights in subject inventions which is
12 inconsistent with such chapter."

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

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

21 "(9) 'Invention' means any invention or discovery
22 which is or may be patentable or otherwise protected
23 under title 35, United States Code, or any novel
24 variety of plant which is or may be protectable under

1 the Plant Variety Protection Act (7 U.S.C. 2321 et
2 seq.).

3 “(10) ‘Made’ when used in conjunction with any
4 invention means the conception or first actual reduction
5 to practice of such invention.

6 “(11) ‘Small business firm’ means a small busi-
7 ness concern as defined in section 2 of Public Law 95-
8 536 (45 U.S.C. 632) and implementing regulations of
9 the Administrator of the Small Business Administra-
10 tion.”

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

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

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

21 (C) Section 9(d) of such Act is amended by striking out
22 “or 12” and inserting in lieu thereof “or 12”.

23 (3) Section 12(a)(1) of such Act (as redesignated by
24 paragraph (1) of this subsection) is amended by striking out

1 “section 12” in the matter preceding subparagraph (A) and
2 inserting in lieu thereof “section 11”.

3 *That this Act may be cited as the “Federal Technology*
4 *Transfer Act of 1986”.*

5 *UTILIZATION OF FEDERAL TECHNOLOGY*

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

9 *(1) by inserting “(1)” after “POLICY.—”; and*

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

11 *“(2) Each laboratory director shall ensure that efforts to*
12 *transfer technology are considered positively in laboratory job*
13 *descriptions, employee promotion policies, and evaluation of*
14 *the job performance of scientists and engineers in the labora-*
15 *tory.”.*

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

18 *(A) by striking “a total amount budget exceeding*
19 *\$20,000,000 shall provide at least one professional in-*
20 *dividual full-time” and inserting in lieu thereof “200*
21 *or more full-time scientific, engineering, and related*
22 *technical positions shall provide one or more full-time*
23 *equivalent positions”;*

24 *(B) by striking “requirements set forth in (1)*
25 *and/or (2) of this subsection” and inserting in lieu*

1 thereof "requirement set forth in clause (2) of the pre-
2 ceding sentence"; and

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

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

8 (A) by amending paragraph (1) to read as fol-
9 lows:

10 "(1) to prepare application assessments for select-
11 ed research and development projects in which that lab-
12 oratory is engaged and which in the opinion of the lab-
13 oratory may have potential commercial applications;";

14 (B) by striking "the Center for the Utilization of
15 Federal Technology" in paragraph (3) and inserting in
16 lieu thereof "the National Technical Information Serv-
17 ice, the Federal Laboratory Consortium for Technology
18 Transfer,"; and by striking "; and" inserting in lieu
19 thereof a semicolon;

20 (C) by striking "in response to requests from
21 State and local government officials." in paragraph (4)
22 and inserting in lieu thereof "to State and local gov-
23 ernment officials; and"; and

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

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

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

8 (1) by striking all from “(d)” through “shall—”
9 and inserting in lieu thereof the following:

10 “(d) DISSEMINATION OF TECHNICAL INFORMA-
11 TION.—The National Technical Information Service
12 shall—”;

13 (2) by striking paragraph (2);

14 (3) by striking “existing” in paragraph (3), and
15 redesignating such paragraph as paragraph (2);

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

18 “(3) receive requests for technical assistance from
19 State and local governments, respond to such requests
20 with published information available to the Service,
21 and refer such requests to the Federal Laboratory Con-
22 sortium for Technology Transfer to the extent that such
23 requests require a response involving more than the
24 published information available to the Service;”;

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

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

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

8 **ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM**

9 **FOR TECHNOLOGY TRANSFER**

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

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

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

16 “(e) **ESTABLISHMENT OF FEDERAL LABORATORY**
17 **CONSORTIUM FOR TECHNOLOGY TRANSFER.**—(1) There is
18 hereby established the Federal Laboratory Consortium for
19 Technology Transfer (hereinafter referred to as the ‘Consorti-
20 um’) which, in cooperation with Federal laboratories and pri-
21 vate sector, shall—

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

1 *ployees regarding the commercial potential of labora-*
2 *tory technology and innovations;*

3 “(B) furnish advice and assistance requested by
4 Federal agencies and laboratories for use in their tech-
5 nology transfer programs (including the planning of
6 seminars for small business and other industry);

7 “(C) provide a clearinghouse, at the laboratory
8 level, for requests for technical assistance from States
9 and units of local governments, businesses, industrial
10 development organizations, not-for-profit organizations
11 (including universities), Federal agencies and laborato-
12 ries, and other persons, and—

13 “(i) to the extent that a response to such re-
14 quests can be made with published information
15 available to the National Technical Information
16 Service, refer such requests to that Service; and

17 “(ii) otherwise refer such requests to the ap-
18 propriate Federal laboratories and agencies;

19 “(D) facilitate communication and coordination
20 between Offices of Research and Technology Applica-
21 tions of Federal laboratories;

22 “(E) utilize (with the consent of the agency in-
23 volved) the expertise and services of the National Sci-
24 ence Foundation, the Department of Commerce, the

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

3 *“(F) with the consent of any Federal laboratory,*
4 *facilitate the use by such laboratory of appropriate*
5 *technology transfer mechanisms such as personnel ex-*
6 *changes and computer-based systems;*

7 *“(G) with the consent of any Federal laboratory,*
8 *assist such laboratory to establish programs, such as*
9 *technical volunteer services, for the purpose of provid-*
10 *ing technical assistance to communities related to such*
11 *laboratory; and*

12 *“(H) facilitate communication and cooperation be-*
13 *tween Offices of Research and Technology Applications*
14 *of Federal laboratories and regional, State, and local*
15 *technology transfer organizations.*

16 *“(2) The membership of the Consortium shall consist of*
17 *the Federal laboratories described in clause (1) of subsection*
18 *(b) and such other laboratories as may choose to join the*
19 *Consortium. The representatives to the Consortium shall in-*
20 *clude a senior staff member of each Federal laboratory which*
21 *is a member of the Consortium and a representative ap-*
22 *pointed from each Federal agency with one or more*
23 *member laboratories.*

24 *“(3) The representatives to the Consortium shall elect a*
25 *Chairman of the Consortium.*

1 “(4) *The Director of the National Bureau of Standards*
2 *shall provide the Consortium, on a reimbursable basis, with*
3 *administrative services, such as office space, personnel, and*
4 *support services of the Bureau, as requested by the Consor-*
5 *tium and approved by such Director.*

6 “(5) *Not later than 1 year after the date of the enact-*
7 *ment of this subsection, and every year thereafter, the Chair-*
8 *man of the Consortium shall submit a report to the President,*
9 *to the appropriate authorization and appropriation commit-*
10 *tees of both Houses of the Congress, and to each agency with*
11 *respect to which a transfer of funding is made (for the fiscal*
12 *year or years involved) under paragraph (6), concerning the*
13 *activities of the Consortium and the expenditures made by it*
14 *under this subsection during the year for which the report is*
15 *made.*

16 “(6)(A) *Subject to subparagraph (B), an amount equal*
17 *to 0.005 percent of that portion of the research and develop-*
18 *ment budget of each Federal agency that is to be utilized by*
19 *the laboratories of such agency for a fiscal year referred to in*
20 *subparagraph (B)(ii) shall be transferred by such agency to*
21 *the National Bureau of Standards at the beginning of the*
22 *fiscal year involved. Amounts so transferred shall be provided*
23 *by the Bureau to the Consortium for the purpose of carrying*
24 *out activities of the Consortium under this subsection.*

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

3 “(i) the amount so transferred by that agency (as
4 determined under such subparagraph) would exceed
5 \$10,000; and

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

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

12 FUNCTIONS OF THE SECRETARY OF COMMERCE

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

16 “(g) FUNCTIONS OF THE SECRETARY.—(1) The Sec-
17 retary, in consultation with other Federal agencies, may—

18 “(A) make available to interested agencies the
19 expertise of the Department of Commerce regarding the
20 commercial potential of inventions and methods and
21 options for commercialization which are available to
22 Federal laboratories, including research and develop-
23 ment limited partnerships;

24 “(B) develop and disseminate to appropriate
25 agency and laboratory personnel model provisions for

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

3 "(C) furnish advice and assistance, upon request,
4 to Federal agencies concerning their cooperative re-
5 search and development programs and projects.

6 "(2) Two years after the date of enactment of this sub-
7 section, and every 2 years thereafter, the Secretary shall
8 submit a report to the President and the Congress on the use
9 by the agencies and the Secretary of the authorities specified
10 in this Act. Other Federal agencies shall, to the extent per-
11 mitted by law, provide the Secretary with all information
12 necessary to prepare such reports."

13 **COOPERATIVE RESEARCH AND DEVELOPMENT**

14 **AGREEMENTS**

15 *SEC. 5. The Stevenson-Wydler Technology Innovation*
16 *Act of 1980 is amended by redesignating sections 12 through*
17 *15 as sections 15 through 18, respectively, and by inserting*
18 *after section 11 the following:*

19 **"SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT**

20 **AGREEMENTS.**

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

24 "(A) to enter into cooperative research and devel-
25 opment arrangements (subject to such regulations or
26 review procedures as the agency considers appropriate)

1 with other Federal agencies, units of State or local
2 government, industrial organizations (including corpo-
3 rations, partnerships, and limited partnerships), public
4 and private foundations, non-profit organizations (in-
5 cluding universities), or other persons (including
6 licensees of inventions owned by the Federal agency);
7 and

8 “(B) to negotiate licensing agreements under sec-
9 tion 207 of title 35, United States Code, or other au-
10 thorities for Government-owned inventions made at the
11 laboratory and other inventions of Federal employees
12 that may be voluntarily assigned to the Government.

13 “(2) Under arrangements entered into pursuant to para-
14 graph (1), a laboratory may—

15 “(A) accept funds, services, and property from col-
16 laborating parties and provide services and property to
17 collaborating parties;

18 “(B) grant or agree to grant in advance to a col-
19 laborating party patent licenses, assignments; or
20 options thereto, in any invention made by a Federal
21 employee under the arrangement, retaining such rights
22 as the Federal agency considers appropriate;

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

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

3 “(D) to the extent consistent with any applicable
4 agency requirements, permit employees or former em-
5 ployees to the laboratory to participate in efforts to
6 commercialize inventions they made while in the serv-
7 ice of the United States.

8 “(3) Each agency shall maintain a record of all agree-
9 ments entered into under this section.

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

11 “(1) ‘cooperative research and development agree-
12 ment’ means any agreement between one or more Fed-
13 eral laboratories and one or more non-Federal parties
14 under which the Government provides personnel, serv-
15 ices, facilities, equipment, or other resources (but not
16 funds to non-Federal parties) and the non-Federal par-
17 ties provide funds, personnel, services, facilities, equip-
18 ment, or other resources toward the conduct of specified
19 research or development efforts which are consistent
20 with the missions of the agency, except that such term
21 does not include a procurement contract or cooperative
22 agreement as those terms are used in sections 6303,
23 6304, and 6305 of title 31, United States Code; and

24 “(2) ‘laboratory’ means a facility or group of
25 facilities owned, leased, or otherwise used by a Federal

1 *agency, a substantial purpose of which is the perform-*
2 *ance of research and development by employees of the*
3 *Federal Government.”*

4 *“(c) RELATIONSHIP TO OTHER LAWS.—Nothing in*
5 *this section is intended to limit or diminish existing authori-*
6 *ties of any agency.”*

7 *REWARDS FOR SCIENTIFIC, ENGINEERING, AND*
8 *TECHNICAL PERSONNEL OF FEDERAL AGENCIES*

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

12 *“SEC. 13. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECH-*
13 *NICAL PERSONNEL OF FEDERAL AGENCIES.*

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

21 *“(1) inventions, innovations, or other outstanding*
22 *scientific or technological contributions of value to the*
23 *United States due to commercial applications or due to*
24 *contributions to missions of the Federal agency or the*
25 *Federal Government; and*

1 “(2) *exemplary activities that promote the domes-*
2 *tic transfer of science and technology developed within*
3 *the Federal Government and result in utilization of*
4 *such science and technology by American industry or*
5 *business, universities, State or local governments, or*
6 *other non-Federal parties.*

7 “(b) *PAYMENT OF ROYALTIES.—Any royalties or*
8 *other income received by an agency from the licensing or as-*
9 *signment of inventions under this section or under section*
10 *207 of title 35, United States Code, or other authority shall*
11 *be retained by the agency whose laboratory produced the in-*
12 *vention, except that beginning with fiscal year 1988, such*
13 *royalties or other income shall be subject to appropriations,*
14 *and shall be disposed of as follows:*

15 “(1) *At least 15 percent of the royalties or other*
16 *income received each year by the agency on account of*
17 *any invention shall be paid to the inventor or coinven-*
18 *tors if they were employees of the agency at the time*
19 *the invention was made. Payments made under this*
20 *paragraph are in addition to the regular pay of the em-*
21 *ployee and to any awards made to that employee, and*
22 *such payments shall not affect the entitlement or limit*
23 *the amount of the regular pay, annuity, or other*
24 *awards to which the employee is otherwise entitled or*
25 *for which the employee is otherwise eligible.*

1 “(2) The balance of any royalties or related
2 income earned during any fiscal year after paying the
3 inventors’ portions under paragraph (1) shall be trans-
4 ferred to the agency’s Government-operated laboratories
5 with a substantial percentage being returned to the lab-
6 oratories whose inventions produced the royalties or
7 income. Such royalties or income may be retained by
8 the laboratory up to the limits specified in this para-
9 graph, and used—

10 “(A) for mission-related research and devel-
11 opment of the laboratory;

12 “(B) to support development and education
13 programs for employees of the laboratory;

14 “(C) to reward employees of the laboratory
15 for contributing to the development of new technol-
16 ogies and assisting in the transfer of technology to
17 the private sector, and for inventions of value to
18 the Government that will not produce royalties;

19 “(D) to further scientific exchange to and
20 from the laboratory; and

21 “(E) for payment of patenting costs and fees
22 and other expenses incidental to promoting, ad-
23 ministering, and licensing inventions, including
24 the fees or costs for services of other agencies or

1 other persons or organizations for invention man-
2 agement and licensing services.

3 If the balance for any laboratory after paying the in-
4 ventors' shares under paragraph (1) exceeds 5 percent
5 of the annual budget of the laboratory, 75 percent of
6 the excess shall be paid to the Treasury of the United
7 States and the remaining 25 percent shall be used for
8 the purposes listed in subparagraphs (A) through (E),
9 by the end of the fiscal year subsequent to the one in
10 which they were received. Any funds not so used or ob-
11 ligated by the end of such fiscal year shall be paid to
12 the Treasury of the United States.

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

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

1 *EMPLOYEE ACTIVITIES*

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

5 *"SEC. 14. EMPLOYEE ACTIVITIES.*

6 *"(a) IN GENERAL.—If a Federal agency which has the*
 7 *right of ownership to an invention under this Act does not*
 8 *intend to file for a patent application or otherwise to promote*
 9 *commercialization of such invention, the agency may allow*
 10 *the inventor, if the inventor is a Government employee or*
 11 *former employee who made the invention during the course of*
 12 *employment with the Government, to retain title to the inven-*
 13 *tion (subject to reservation by the Government of a nonexclu-*
 14 *sive, nontransferrable, irrevocable, paid up license to practice*
 15 *or have practiced the invention throughout the world by or on*
 16 *behalf of the Government). In addition, the agency may con-*
 17 *dition the inventor's right to title on the timely filing of a*
 18 *patent application in cases when the Government determines*
 19 *that it has or may have a need to practice the invention.*

20 *"(b) DEFINITION.—For purposes of this section, Feder-*
 21 *al employees include 'special Government employees' as de-*
 22 *finied in section 202 of title 18, United States Code.*

23 *"(c) RELATIONSHIP TO OTHER LAWS.—Nothing in*
 24 *this section is intended to limit or diminish existing authori-*
 25 *ties of any agency."*

1 MISCELLANEOUS AND CONFORMING AMENDMENTS

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

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

7 (2) Section 4 of such Act (15 U.S.C. 3703) is amend-
8 ed—

9 (A) by striking "Industrial Technology" in para-
10 graph (1) and inserting in lieu thereof "Productivity,
11 Technology, and Innovation";

12 (B) by striking "Director" means the Director of
13 the Office of Industrial Technology" in paragraph (3)
14 and inserting in lieu thereof "'Assistant Secretary'
15 means the Assistant Secretary for Productivity, Tech-
16 nology, and Innovation";

17 (C) by striking "Centers for Industrial Technolo-
18 gy" in paragraph (4) and inserting in lieu thereof
19 "Cooperative Research Centers";

20 (D) by striking paragraph (6), and redesignating
21 paragraphs (7) and (8) as paragraphs (6) and (7), re-
22 spectively; and

23 (E) by striking "owned and funded" in para-
24 graph (6), as so redesignated, and inserting in lieu

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

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

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

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

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

17 **"SEC. 6. COOPERATIVE RESEARCH CENTERS."**

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

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

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

1 “(e) *RESEARCH AND DEVELOPMENT UTILIZATION.*—
 2 *In the promotion of technological innovation and commercial-*
 3 *ization of research and development efforts by Centers under*
 4 *this section, chapter 18 of title 35, United States Code, shall*
 5 *apply.*”

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

8 “(11) The heading of section 8 of such Act is amended by
 9 striking “*CENTERS FOR INDUSTRIAL TECHNOLOGY*” and
 10 inserting in lieu thereof “*COOPERATIVE RESEARCH CEN-*
 11 *TERS*”.

12 “(12) Section 8(a) of such Act (15 U.S.C. 3707(a)) is
 13 amended by striking “*Centers for Industrial Technology*”
 14 and inserting in lieu thereof “*Cooperative Research Cen-*
 15 *ters*”.

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

19 “(8) ‘*Federal agency*’ means any executive
 20 agency as defined in section 105 of title 5, United
 21 States Code, and the military departments, as defined
 22 in section 102 of such title.

23 “(9) ‘*Invention*’ means any invention or discovery
 24 which is or may be patentable or otherwise protected
 25 under title 35, United States Code, or any novel varie-

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

3 *“(10) ‘Made’, when used in conjunction with any*
4 *invention, means the conception or first actual reduc-*
5 *tion to practice of such invention.”.*

6 *(d)(1) Such Act (as amended by this Act) is further*
7 *amended by redesignating sections 11 through 18 as sections*
8 *10 through 17, respectively.*

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

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

14 *(C) Section 9(d) of such Act (15 U.S.C. 3708(d)) is*
15 *amended by striking “or 13” and inserting in lieu thereof*
16 *“10, or 14”.*

Calendar No. 662

99TH CONGRESS
2D SESSION

H. R. 3773

[Report No. 99-283]

AN ACT

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

MAY 21 (legislative day, MAY 19), 1986

Committee discharged; placed on the calendar

[COMMITTEE PRINT]

JULY 27, 1984

Showing Bill As Reported From Subcommittee

98TH CONGRESS
2D SESSION

H. R. 5003

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1984

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

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

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

TABLE OF CONTENTS

TITLE I—POLICY

Sec. 101. Findings.

TITLE II—IMPLEMENTATION

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

TITLE III—ALLOCATION OF RIGHTS

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

TITLE IV—MISCELLANEOUS

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

TITLE I—POLICY

FINDINGS

3

4 **SEC. 101. The Congress, recognizing the profound**

5 **impact of science and technology, finds and declares that—**

6

7 (1) the United States has recently experienced a

8 decline in industrial innovation and productivity which

9 adversely affects domestic productivity, the rate of eco-

10 nomic growth, the level of employment, the balance of

11 trade, and the attainment of other national goals;

12 (2) the national support of scientific and techno-

13 logical research and development is indispensable to

14 sustained growth and economic stability, and it is in

1 the national interest to maximize the benefits to the
 2 public for such investment;

3 (3) inventions resulting from Government-spon-
 4 sored research and development constitute a valuable
 5 national resource which should be developed in a
 6 manner consistent with the public interest and the eq-
 7 uities of the respective parties; and

8 (4) there is a need for the establishment and im-
 9 plementation of a flexible Government-wide policy to
 10 increase the utilization of the results of Government-
 11 sponsored research and development, and this policy
 12 should promote the progress of science and the useful
 13 arts, encourage the efficient commercial utilization of
 14 technological developments and discoveries, guarantee
 15 the protection of the public interest in the United
 16 States and foreign countries, and recognize the equities
 17 of the contracting parties.

18 TITLE II—IMPLEMENTATION

19 FUNCTIONS OF THE FEDERAL COORDINATING COUNCIL

20 ON SCIENCE, ENGINEERING, AND TECHNOLOGY

21 SEC. 201. (a)(1) The Federal Coordinating Council for
 22 Science, Engineering, and Technology (established by sec-
 23 tion 401 of the National Science and Technology Policy, Or-
 24 ganization, and Priorities Act of 1976 (42 U.S.C. 6651)
 25 and reestablished by Executive Order 12039) (hereinafter in

1. *this section referred to as the "Council") shall make recom-*
2. *mendations to the Director of the Office of Science and Tech-*
3. *nology Policy (or his designee) and to the Secretary with*
4. *regard to uniform policies, guidelines, and practices to carry*
5. *out the provisions of this Act.*

6. (2) *For the purpose of assuring effective management of*
7. *Government-owned or funded inventions, the Secretary of*
8. *Commerce shall chair a committee of the Council to formu-*
9. *late the recommendations required by this subsection. Such*
10. *committee shall also include but not be limited to representa-*
11. *tives of each Federal agency with a major research and devel-*
12. *opment program. When adopted by the Director any such*
13. *recommendations shall be transmitted to Federal agencies*
14. *through appropriate channels, including those provided in*
15. *section 202(6).*

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

18. (1) *acquire data and reports from Federal agen-*
19. *cies on the interpretation and implementation of this*
20. *Act and related policies, regulations, and practices;*

21. (2) *review Federal agency implementation of the*
22. *provisions of this Act;*

23. (3) *analyze, on a continuing basis, data acquired*
24. *by the Council;*

1 (4) consider problems and developments in the
2 fields of inventions, patents, and matters connected
3 therewith and the impact thereof on Government policy
4 or uniform accommodation or implementation by Fed-
5 eral agencies; and

6 (5) publish annually a report on Council efforts,
7 findings, and recommendations made under this sec-
8 tion, which report shall include—

9 (A) relevant statistical data regarding the
10 disposition of subject invention disclosures result-
11 ing from Government-sponsored research and de-
12 velopment, including those inventions disclosed by
13 small businesses and nonprofit organizations;

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

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

18 FUNCTIONS OF THE SECRETARY OF COMMERCE

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

22 (1) assist Federal agency efforts to promote the li-
23 censing and utilization of Government-owned inven-
24 tions;

25 (2) assist Federal agencies in seeking and main-
26 taining protection on inventions in foreign countries,

1 including the payment of fees and costs connected
2 therewith;

3 (3) consult with and advise Federal agencies as to
4 areas of science and technology research and develop-
5 ment with potential for commercial utilization;

6 (4) publish notification of all Government-owned
7 inventions that are available for licensing or assign-
8 ment;

9 (5) evaluate inventions referred to him by Federal
10 agencies, and patent applications filed thereon, in order
11 to identify those inventions with the greatest commer-
12 cial potential and to insure promotion and utilization
13 by the public of inventions so identified; and

14 (6) initiate regulations and revisions thereof
15 which shall be promulgated by the Director of the
16 Office of Management and Budget after full consider-
17 ation of agency and public comments.

18 TITLE III—ALLOCATION OF RIGHTS

19 RIGHTS OF THE GOVERNMENT AND THE CONTRACTOR

20 SEC. 301. (a) Subject to subsection (c) and to section
21 303, each contractor may elect to retain worldwide title to
22 any subject invention. Where not in violation of existing
23 treaties or laws of the United States, a Federal agency may,
24 at the time of contracting, limit or eliminate this right, place
25 additional restrictions or conditions in the contract that go

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

4 (1) it is determined by a Government authority
5 which is authorized by statute or Executive order to
6 conduct foreign intelligence or counterintelligence ac-
7 tivities that this is necessary to protect the security of
8 such activities;

9 (2) the contractor is not located in the United
10 States or does not have a place of business located in
11 the United States, is a foreign government, or is sub-
12 ject to the control of a foreign government;

13 (3) the contract is related to or associated with an
14 international treaty, agreement, memorandum of un-
15 derstanding, or other arrangement with a foreign gov-
16 ernment including (but not limited to) agreements of
17 cooperation in science and technology and military
18 agreements related to weapons development or produc-
19 tion, and it is determined by the agency that rights in
20 the Government in any subject inventions beyond the
21 license right provided in subsection (c)(3) are neces-
22 sary for the agency to fulfill its obligations under the
23 international treaty, agreement, memorandum of un-
24 derstanding, or arrangement;

1 (4) the agency determines, on a case by case
2 basis, that there are exceptional circumstances requir-
3 ing such action; or

4 (5) the contract includes the operation of a Gov-
5 ernment-owned, contractor-operated facility of the De-
6 partment of Energy primarily dedicated to that De-
7 partment's naval nuclear propulsion or nuclear weap-
8 ons related programs; however, all contractual limita-
9 tions under this subparagraph on the contractor's right
10 to elect title to a subject invention are limited to inven-
11 tions occurring under the above two programs.

12 (b) Each determination made by a Federal agency
13 under subsection (a) shall be in writing and copies of those
14 made under subsection (a)(4) shall be filed with the Federal
15 Coordinating Council for Science, Engineering, and Tech-
16 nology. In the case of a determination under subsection
17 (a)(4), the statement shall include an analysis supporting the
18 determination and justifying the limitations and conditions
19 being imposed. If the contractor believes that a determination
20 is contrary to the terms, policy, or objectives of this Act, or
21 constitutes an abuse of discretion by the agency, the determi-
22 nation shall be subject to section 303(b). Whenever the Di-
23 rector of the Office of Management and Budget has deter-
24 mined that one or more Federal agencies are utilizing the
25 authority of subsection (a)(4) in a manner that is contrary to

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

6 *(c) In accordance with regulations which shall be pro-*
7 *mulgated under section 202(6), each contract under which*
8 *the contractor may elect to retain title to a subject invention*
9 *shall include a patent rights clause containing such provi-*
10 *sions as may be necessary and appropriate to effectuate the*
11 *following rights and requirements:*

12 *(1) The contractor shall disclose each subject in-*
13 *vention to the contracting Federal agency within a rea-*
14 *sonable time after it is made and the Government may*
15 *receive title, upon request, to any subject invention not*
16 *disclosed within such reasonable time.*

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

19 *(A) the contractor shall make a written elec-*
20 *tion to retain title to the subject invention within*
21 *a reasonable time after disclosure under para-*
22 *graph (1);*

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

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

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

9 (D) the Government may receive title to any
10 subject invention in any countries in which the
11 contractor or inventor fails to elect or has elected
12 not to retain title or has failed to file a patent ap-
13 plication in accordance with this paragraph.

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

18 (A) a nonexclusive, nontransferable, irrevoc-
19 able, paid-up license to practice or have practiced
20 the subject invention throughout the world by or
21 on behalf of the Government;

22 (B) if provided in the contract, such addi-
23 tional rights to sublicense any foreign government
24 or international organization pursuant to any ex-
25 isting or future treaty or agreement; and

1 (C) the right to require the contractor, inven-
2 tor, or assignee to license another person to prac-
3 tice a subject invention on reasonable terms if—

4 (i) such licensing is necessary to permit
5 lawful commercial manufacture, use, or sale
6 by a third party of a specified end item of a
7 major, multiyear research and development
8 project of the Department of Energy or the
9 National Aeronautics and Space Adminis-
10 tration and such subject invention was made
11 during research and development activities
12 directly related to that project;

13 (ii) a similar product or process is not
14 commercially available as a reasonable sub-
15 stitute for the licensing; and

16 (iii) such right is specified in the con-
17 tract.

18 (4) The Federal agency shall require, in accord-
19 ance with regulations which shall be promulgated
20 under section 202(6), at least one written report during
21 the first 3 years after issuance of the patent to a con-
22 tractor or inventor and may require other written re-
23 ports on the efforts to obtain commercial utilization
24 made by the contractor, inventor, licensee, or assignee
25 with respect to any subject invention to which the con-

1 *tractor elects title pursuant to this section, except that*
2 *any such report, as well as any information on utiliza-*
3 *tion or efforts toward obtaining utilization obtained as*
4 *part of a proceeding under section 303, shall be treated*
5 *by the agency as a trade secret or as commercial or fi-*
6 *nancial information obtained from a person and privi-*
7 *leged or confidential and not subject to disclosure*
8 *under section 552 of title 5, United States Code.*

9 (5) *The contractor or inventor, in the event a*
10 *United States patent application is filed by it or on its*
11 *behalf or by any assignee, shall include within the*
12 *specification of such application and any patent issu-*
13 *ing thereon a statement specifying that the invention*
14 *was made with Government support and that the Gov-*
15 *ernment has certain rights in the invention.*

16 (6) *The balance of any royalties or income earned*
17 *on subject inventions by the contractor operating a*
18 *Government-owned, contractor-operated facility up to a*
19 *total equal to 5 percent of that facility's annual budget*
20 *(if the invention was conceived or first actually re-*
21 *duced to practice in the facility and if the contractor*
22 *elects to retain the funds) shall, after payment of pat-*
23 *enting costs, licensing costs, and other expenses (in-*
24 *cluding payments to inventors), be used by such con-*
25 *tractor for scientific research and development consist-*

1 ent with the mission and objectives of such facility, in-
2 cluding activities that increase the licensing potential
3 of other inventions of the facility, with any such royal-
4 ties or income in excess of 5 percent of the facility's
5 budget returned to the Treasury; and to the extent
6 practical the licensing of the inventions involved shall
7 be administered by contractor employees on location at
8 the facility.

9 (7) The contractor, in cases when it has the choice
10 under subsection (a) to retain title to a subject inven-
11 tion but does not elect to retain title, may retain a non-
12 exclusive, royalty-free, paid-up, worldwide license (in-
13 cluding the right to sublicense affiliates, subsidiaries,
14 and existing licensees to whom the contractor is legally
15 obligated to sublicense) in any subject invention to
16 which the Government obtains title, which license shall
17 be limited or revocable only to the extent necessary for
18 the Government to grant an exclusive license; except
19 that the contractor shall not be entitled to such a li-
20 cense if the contractor has willfully failed to disclose
21 the subject invention.

22 (8) A transfer by the contractor of rights in any
23 subject invention shall be subject to the rights of the
24 Government provided by this section and sections 302,
25 303, and 304.

1 (9) *The clause may impose any other administra-*
 2 *tive requirements which may be necessary to effectuate*
 3 *rights of the Government and the contractor as speci-*
 4 *fied in this Act, to the extent not inconsistent with this*
 5 *Act.*

6 WAIVER

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

16 (1) *the contract involves cosponsored, cost-shared,*
 17 *or joint venture research or development and the con-*
 18 *tractor or other sponsor or joint venturer is required to*
 19 *make a substantial contribution of funds, facilities,*
 20 *personnel, data, or equipment to the work performed*
 21 *under the contract, or*

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

1 (b) The Federal agency shall maintain a record, which
2 shall be made public and periodically updated, of determina-
3 tions made under subsection (a).

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

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

9 (B) Promoting the commercial utilization of in-
10 ventions made under Government funding agreements.

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

14 (D) Fostering competition and preventing the cre-
15 ation or maintenance of situations inconsistent with
16 the antitrust laws.

17 (d) When an agency waives all or part of its rights in
18 an invention under subsection (a)(2), the contractor shall be
19 permitted to take title subject to this section and sections
20 301(c), 303, and 304 of this Act.

21 **MARCH-IN RIGHTS AND NOTIFICATION OF AVAILABILITY**
22 **FOR LICENSING**

23 **SEC. 303.** (a) Where a contractor or inventor has elect-
24 ed to retain title to a subject invention under section 301 or
25 302, the Federal agency shall have the right, in accordance
26 with regulations which shall be promulgated under section

1 202(6), and subject to the provisions of subsection (b), to re-
 2 quire the contractor or his assignee or the inventor or his
 3 assignee to grant a nonexclusive, partially exclusive, or ex-
 4 clusive license to a responsible applicant or applicants, upon
 5 terms reasonable under the circumstances, if the head of the
 6 agency (or his designee) determines that such action is neces-
 7 sary—

8 (1) because the contractor, inventor, assignee, or
 9 licensee has not taken, or is not expected to take within
 10 a reasonable time, effective steps to achieve the practi-
 11 cal application of the subject invention;

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

15 (3) to meet requirements for public use specified
 16 by Federal regulation which are not reasonably satis-
 17 fied by the contractor, inventor, assignee or licensee.

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

21 (2) An administrative appeals procedure shall be estab-
 22 lished by regulations promulgated under section 202(6).

23 (3) Any contractor, inventor, assignee, or exclusive li-
 24 censee adversely affected by a determination under this sec-

1 tion may, at any time within sixty days after the determina-
2 tion is issued—

3 (A) file an appeal under the appeals procedure es-
4 tablished pursuant to paragraph (2), or

5 (B) file a petition in the United States Claims
6 Court which shall have jurisdiction to determine the
7 matter de novo and to affirm, reverse, or modify as ap-
8 propriate, the determination of the Federal agency.

9 (4) In cases described in paragraphs (1) and (3) of sub-
10 section (a), the agency's determination shall be held in abey-
11 ance pending the exhaustion of any appeal described in para-
12 graph (3).

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

16 (2) If the head of an agency (or his designee) deter-
17 mines, on the basis of information contained in the report
18 required to be filed with the agency by a contractor or inven-
19 tor under section 301(c)(4), that such contractor or inventor
20 has failed to meet the minimum standards prescribed pursu-
21 ant to paragraph (1) and the invention has potential commer-
22 cial value, such agency head (or designee) shall refer interest-
23 ed parties to the patent holder of such invention through the
24 licensing program of such agency or the National Technology
25 Information Service.

1 *BACKGROUND RIGHTS*

2 *SEC. 304. (a) Nothing contained in this Act shall be*
3 *construed to deprive the owner of any background patent of*
4 *such rights as the owner may have under such patent.*

5 *(b) No contract shall contain a provision allowing a*
6 *Federal agency to require the licensing to third parties of*
7 *inventions owned by the contractor that are not subject inven-*
8 *tions unless such provision has been approved, and a written*
9 *justification has been signed, by the head of the agency (or*
10 *his designee). Any such provision shall clearly state whether*
11 *the licensing may be required in connection with the practice*
12 *of a subject invention, a specifically identified work object, or*
13 *both. The head of the agency may not delegate the authority*
14 *to approve such provisions or to sign the justification re-*
15 *quired for such provisions to a program level lower than As-*
16 *stant Secretary in the case of a Department or Assistant*
17 *Administrator or comparable official in the case of any other*
18 *agency.*

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

1 *the contract and that such action is necessary to achieve the*
2 *practical application of the subject invention or work object.*
3 *Any such determination shall be on the record after an oppor-*
4 *tunity for an agency hearing in which the contractor has the*
5 *right to participate and the contractor shall be given prompt*
6 *notification of the determination by certified or registered*
7 *mail.*

8 *TITLE IV—MISCELLANEOUS*

9 *DEFINITIONS*

10 *SEC. 401. As used in this Act (other than in section*
11 *402)—*

12 *(1) the term "person" means any person as de-*
13 *finied in section 1 of title 1, United States Code;*

14 *(2) the term "Government" means the Govern-*
15 *ment of the United States of America;*

16 *(3) the term "Federal agency" means an Execu-*
17 *tive agency (as defined in section 105 of title 5, United*
18 *States Code), and the military departments (as defined*
19 *in section 102 of title 5, United States Code);*

20 *(4) the term "small business firm" means a small*
21 *business concern as defined in section 2 of the Small*
22 *Business Act (15 U.S.C. 632) and implementing reg-*
23 *ulations of the Administrator of the Small Business*
24 *Administration; and*

1 (5) the term "nonprofit organization" means a
2 university or other institution of higher education or
3 an organization of the type described in section
4 501(c)(3) of the Internal Revenue Code of 1954 and
5 exempt from taxation under section 501(a) of such
6 Code, or any nonprofit, scientific, or educational orga-
7 nization qualified under a State nonprofit organization
8 statute;

9 (6) the term "contract" means any contract,
10 grant, or cooperative agreement entered into between a
11 Federal agency (other than the Tennessee Valley Au-
12 thority) and any person other than a small business
13 firm or nonprofit organization where a purpose of the
14 contract is the conduct of experimental, developmental,
15 or research work; and such term includes any assign-
16 ment, substitution of parties, or subcontract of any tier
17 entered into or executed for the conduct of experimen-
18 tal, developmental, or research work in connection with
19 the performance of that contract; but does not mean
20 any agreement or arrangement entered into between a
21 private entity and the operator of a Government-owned
22 contractor-operated facility;

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

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

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

5 (9) the term "Director" means the Director of the
6 Office of Science and Technology Policy, or his desig-
7 nee;

8 (10) the term "invention" means any invention or
9 discovery which is or may be patentable or otherwise
10 protectable under title 35, United States Code, or any
11 novel variety of plant which is or may be protectable
12 under the Plant Variety Protection Act (7 U.S.C.
13 2321 et seq.);

14 (11) the term "subject invention" means any in-
15 vention of a contractor conceived or first actually re-
16 duced to practice in the performance of work under a
17 contract, except that in the case of a sexually propagat-
18 ed variety of plant the date of determination (as de-
19 fined in section 41(d) of the Plant Variety Protection
20 Act (7 U.S.C. 2401(d))) must also occur during the
21 period of contract performance;

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

1 machine or system) of such invention under such condi-
2 tions as to establish that the invention is being utilized
3 and that its benefits are, to the extent permitted by law
4 or Government regulations, available to the public on
5 reasonable terms or through reasonable licensing ar-
6 rangements;

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

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

18 (15) the term "United States" includes the terri-
19 tories, possessions, and the District of Columbia;

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

1 (17) the term "Government-owned, contractor-op-
2 erated facility" includes all federally funded research
3 and development centers.

4 AMENDMENTS TO OTHER ACTS

5 SEC. 402. The following Acts are hereby amended as
6 follows:

7 (1) Section 205(a) of the Act of August 14, 1946
8 (7 U.S.C. 1624(a); 60 Stat. 1090) is amended by
9 striking out the last sentence.

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

14 (3) Section 106(c) of the National Traffic and
15 Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c);
16 80 Stat. 721) is repealed.

17 (4) Section 12(a) of the National Science Foun-
18 dation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360)
19 is repealed.

20 (5) Section 152 of the Atomic Energy Act of
21 1954 (42 U.S.C. 2182; 68 Stat. 943) is repealed;
22 except that such section shall continue to be effective
23 with respect to (A) any application for a patent in
24 which the statement under oath referred to in such sec-
25 tion has been filed or requested to be filed by the Com-
26 missioner of Patents and Trademarks prior to the ef-

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

4 *(6) The National Aeronautics and Space Act of*
5 *1958 (42 U.S.C. 2451 et seq.; 72 Stat. 426) is*
6 *amended—*

7 *(A) by striking out section 305 (42 U.S.C.*
8 *2457); except that subsections (c), (d), and (e) of*
9 *such section shall continue to be effective with re-*
10 *spect to any application for patents in which the*
11 *written statement referred to in subsection (c) of*
12 *such section has been filed or requested to be filed*
13 *by the Commissioner of Patents and Trademarks*
14 *prior to the effective date of this Act;*

15 *(B) by striking out “(as defined by section*
16 *305)” in section 306(a) (42 U.S.C. 2458(a)) and*
17 *by striking out “the Inventions and Contributions*
18 *Board, established under section 305 of this Act”*
19 *in such section and inserting in lieu thereof “an*
20 *Invention and Contributions Board which shall*
21 *be established by the Administrator within the*
22 *Administration”;*

23 *(C) by adding at the end of section 203(c)*
24 *(42 U.S.C. 2473(c)) the following new para-*
25 *graph:*

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

9 (D) by adding at the end of section 203 (42
10 U.S.C. 2473) the following new subsection:

11 “(d) For the purposes of chapter 17 of title 35, United
12 States Code, the Administration shall be considered a defense
13 agency of the United States.”; and

14 (E) by adding at the end of title III the fol-
15 lowing new section:

16 “USE OF PATENTED INVENTIONS

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

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

1 Administration gives an express authorization or consent for
2 such use or manufacture.”

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

6 (8) Section 4 of the Helium Act (50 U.S.C.
7 167b; 74 Stat. 920) is amended by striking out all
8 after “utilization” and inserting in lieu thereof a
9 period.

10 (9) Section 32 of the Arms Control and Disarma-
11 ment Act (22 U.S.C. 2572; 75 Stat. 634) is repealed.

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

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

19 “SEC. 9. The Administration shall be considered a de-
20 fense agency of the United States for purposes of chapter 17
21 of title 35, United States Code.”

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

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

3 (12) Section 5(d) of the Consumer Product
4 Safety Act (15 U.S.C. 2054(d); 88 Stat. 1211) is re-
5 pealed.

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

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

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

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

16 (A) by inserting ", but does not mean any
17 agreement or arrangement entered into between a
18 private entity person and the operator of a Gov-
19 ernment-owned, contractor-operated facility" im-
20 mediately before the period at the end of section
21 201(b);

22 (B) by inserting "or any novel variety of
23 plant which is or may be protectable under the
24 Plant Variety Protection Act (7 U.S.C. 2321 et
25 seq.)" immediately after "title" in section 201(d);

1 (C) by inserting “, except that in the case of
2 a sexually propagated variety of plant, the date of
3 determination (as defined in section 41(d) of the
4 Plant Variety Protection Act (7 U.S.C. 2401(d)))
5 must also occur during the period of contract per-
6 formance” immediately after “agreement” in sec-
7 tion 201(e);

8 (D) in section 202(a)—

9 (i) by amending clause (i) to read as
10 follows: “(i) when the contractor is not locat-
11 ed in the United States or does not have a
12 place of business located in the United
13 States or is subject to the control of a foreign
14 government”; and

15 (ii) by striking “or (iii)” and inserting
16 in lieu thereof the following: “, (iii) when the
17 funding agreement is related to or associated
18 with an international treaty, agreement,
19 memorandum of understanding, or other ar-
20 rangement with a foreign government includ-
21 ing (but not limited to) agreements of coop-
22 eration in science and technology or military
23 agreements relating to weapons development
24 or production, and it is determined by the
25 agency that rights in the Government greater

1 *than a nonexclusive license are necessary for*
2 *the agency to fulfill its obligations under the*
3 *international treaty, agreement, memoran-*
4 *dum of understanding, or other arrangement,*
5 *(iv) when the funding agreement includes the*
6 *operation of a Government-owned, contrac-*
7 *tor-operated facility of the Department of*
8 *Energy primarily dedicated to that Depart-*
9 *ment's naval nuclear propulsion or nuclear*
10 *weapons related programs and all funding*
11 *agreement limitations under this subpara-*
12 *graph on the contractor's right to elect title to*
13 *a subject invention are limited to inventions*
14 *occurring under the above two programs, or*
15 *(v)";*

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

18 *"(4) If the contractor believes that a determination is*
19 *contrary to the policies and objectives of this chapter or con-*
20 *stitutes an abuse of discretion by the agency, the determina-*
21 *tion shall be subject to section 203(d).*

22 *"(5) Whenever the Director of the Office of Manage-*
23 *ment and Budget has determined that one or more Federal*
24 *agencies are utilizing the authority of section 202(a)(ii) in a*
25 *manner that is contrary to the policies and objectives of this*

1 chapter, he may promulgate regulations under section 206
2 which establish policies, procedures, and guidelines describ-
3 ing classes of situations in which agencies may not exercise
4 the authorities of that section.”;

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

7 “(1) A requirement that the contractor disclose
8 each subject invention to the contracting Federal
9 agency within a reasonable time after it becomes
10 known to contractor personnel responsible for the ad-
11 ministration of patent matters and that the Federal
12 Government may receive title to any subject invention
13 not disclosed to it within such time.

14 “(2) A requirement that the contractor make a
15 written election within 2 years after disclosure to the
16 Federal agency (or such additional time as may be ap-
17 proved by the Federal agency) whether the contractor
18 will retain title to a subject invention, except that (A)
19 in any case where publication, on sale, or public use
20 has initiated the one year statutory period in which
21 valid patent protection can still be obtained in the
22 United States, the period for election may be shortened
23 by the Federal agency to a date that is not more than
24 60 days prior to the end of the statutory period, and
25 (B) the Federal Government may receive title to any

1 *subject invention in which the contractor does not elect*
2 *to retain rights or fails to elect rights within such time.*

3 “(3) A requirement that a contractor electing
4 rights in a subject invention agrees to file a patent ap-
5 plication prior to any statutory bar date that may
6 occur under this title due to publication, on sale, or
7 public use, and shall thereafter file corresponding
8 patent applications in other countries in which it
9 wishes to retain title within reasonable times, and that
10 the Federal Government may receive title to any sub-
11 ject inventions in the United States or other countries
12 in which the contractor has not filed patent applica-
13 tions on the subject invention within such times.”;

14 (ii) by amending paragraph (4) of section
15 202(c) by inserting “(A)” after “(4)”, and by
16 adding at the end thereof the following new sub-
17 paragraph:

18 “(B) the right to require the contractor, inventor,
19 or assignee to license another person to practice a sub-
20 ject invention on reasonable terms if—

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

1 *tics and Space Administration and such subject*
2 *invention was made during research and develop-*
3 *ment activities directly funded under that project;*

4 *“(ii) a similar product or process is not com-*
5 *mercially available as a reasonable substitute for*
6 *the licensing; and*

7 *“(iii) such right is specified in the con-*
8 *tract.”;*

9 *(G) by striking out “may” in section*
10 *202(c)(5) and inserting in lieu thereof “as well as*
11 *any information on utilization or efforts at obtain-*
12 *ing utilization obtained as part of a proceeding*
13 *under section 203 of this chapter shall”;*

14 *(H) by amending paragraph (7) of section*
15 *202(c) to read as follows:*

16 *“(7) In the case of a nonprofit organization—*

17 *“(A) a requirement that the contractor share*
18 *royalties with the inventor, and*

19 *“(B) a requirement that the balance of any*
20 *royalties or income earned by the contractor with*
21 *respect to subject inventions, after payments of ex-*
22 *penditures (including payments to inventors) inciden-*
23 *tal to the administration of subject inventions, be*
24 *utilized for the support of scientific research or*
25 *education.”;*

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

3 “(9) The balance of any royalties or income
4 earned on subject inventions by the contractor operat-
5 ing a Government-owned, contractor-operated facility
6 up to a total equal to 5 percent of that facility’s annual
7 budget (if the invention was conceived or first actually
8 reduced to practice in the facility and if the contractor
9 elects to retain the funds) shall, after payment of
10 patenting costs, licensing costs, and other expenses
11 (including payments to inventors), be used by such
12 contractor for scientific research and development
13 consistent with the mission and objectives of such facil-
14 ity, including activities that increase the licensing po-
15 tential of other inventions of the facility, with any such
16 royalties or income in excess of 5 percent of the facili-
17 ty’s budget returned to the Treasury; and to the extent
18 practical the licensing of the inventions involved shall
19 be administered by contractor employees on location at
20 the facility.”

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

23 “(g)(1) A Federal agency may at any time waive all or
24 any part of the rights of the United States, under sections
25 202, 203, and 204 of this chapter, to any subject inventions

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

5 “(A) the funding agreement involves cosponsored,
6 cost shared, or joint venture research or development
7 and the contractor or other sponsor or joint venturer is
8 required to make or has made a substantial contribu-
9 tion of funds, facilities, personnel, data, or equipment,
10 to the work performed under the funding agreement, or

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

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

18 “(2) In making determinations under paragraph (1)(A)
19 of this subsection, the agency shall consider at least the fol-
20 lowing objectives:

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

24 “(B) Promoting the commercial utilization of in-
25 ventions made under Government funding agreements.

1 “(C) Encouraging participation by highly quali-
2 fied private persons in Government-sponsored research
3 and development programs.”

4 “(D) Fostering competition and preventing the
5 creation or maintenance of situations inconsistent with
6 the antitrust laws.”;

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

9 “A determination pursuant to this section or section
10 202(b)(1) shall not be subject to the Contract Disputes Act
11 (41 U.S.C. 601 et seq.). An administrative appeals proce-
12 dure shall be established by regulations promulgated by the
13 Director of the Office of Management and Budget in accord-
14 ance with section 206. Any contractor, inventor, assignee, or
15 exclusive licensee adversely affected by a determination
16 under this section may, at any time within sixty days after
17 the determination is issued, file an appeal under the appeals
18 procedure established pursuant to the preceding sentence or
19 file a petition in the United States Claims Court, which
20 shall have jurisdiction to determine the matter *de novo* and to
21 affirm, reverse, or modify as appropriate, the determination
22 of the Federal agency. In cases described in paragraphs (a)
23 and (c), the agency’s determination shall be held in abeyance
24 pending the exhaustion of appeals under the preceding
25 sentence.”;

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

3 **“§ 212. Assignment of title or rights**

4 “Subject to regulations promulgated under section 206,
5 upon a determination that to do so is in the best interests of
6 the Government, an agency may assign title or other rights to
7 an invention to a person where such title or rights are held by
8 the Government under such terms and conditions as will en-
9 courage the domestic commercial use of such technology.

10 **“§ 213. Disposition of rights in educational awards**

11 “*No scholarship, fellowship, training grant, or other*
12 *funding agreement made by a Federal agency primarily to*
13 *an awardee for educational purposes will contain any provi-*
14 *sion giving the Federal agency any rights to inventions made*
15 *by the awardee.”;*

16 (M) by adding at the end of the table of sec-
17 tions for the chapter the following new items:

“212. Assignment of title or rights.

“213. Disposition of rights in educational awards.”; and

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

20 **“§ 206. Uniform clauses and regulations**

21 “*The Secretary of Commerce may initiate the regula-*
22 *tions and revisions thereto and standard funding agreement*
23 *provisions, required to implement sections 202 through 204,*
24 *to be promulgated by the Director of the Office of Manage-*

1 *ment and Budget after full consideration of agency and*
2 *public comment.”.*

3 (16) *Section 6(e) of the Stevenson-Wydler Tech-*
4 *nology Innovation Act of 1980 (15 U.S.C. 3705(e);*
5 *94 Stat. 2313) is repealed.*

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

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

12 (19) *Section 306(d) of the Surface Mining Con-*
13 *trol and Reclamation Act of 1977 (30 U.S.C.*
14 *1226(d)) is amended by striking out the first two*
15 *sentences.*

16 (20) *Section 21(d) of the Federal Fire Prevention*
17 *and Control Act of 1974 (15 U.S.C. 2218(d)) is*
18 *repealed.*

19 (21) *Section 6(b) of the Solar Photovoltaic*
20 *Energy Research, Development, and Demonstration*
21 *Act of 1978 (42 U.S.C. 5585(b)) is amended by in-*
22 *serting “as amended” after “this title”.*

23 (22) *Section 12 of the Critical Agricultural Mate-*
24 *rials Act (7 U.S.C. 178j) is repealed.*

1 *RELATIONSHIP TO ANTITRUST LAWS*

2 *SEC. 403. Nothing in this Act shall be deemed to*

3 *convey to any person immunity from civil or criminal liabil-*

4 *ity, or to create any defense to actions, under any antitrust*

5 *law.*

6 *EFFECTIVE DATE*

7 *SEC. 404. (a) This Act shall take effect six months after*

8 *the date of the enactment of this Act.*

9 *(b) After the effective date of this Act, each Federal*

10 *agency may allow a contractor or an inventor to retain title to*

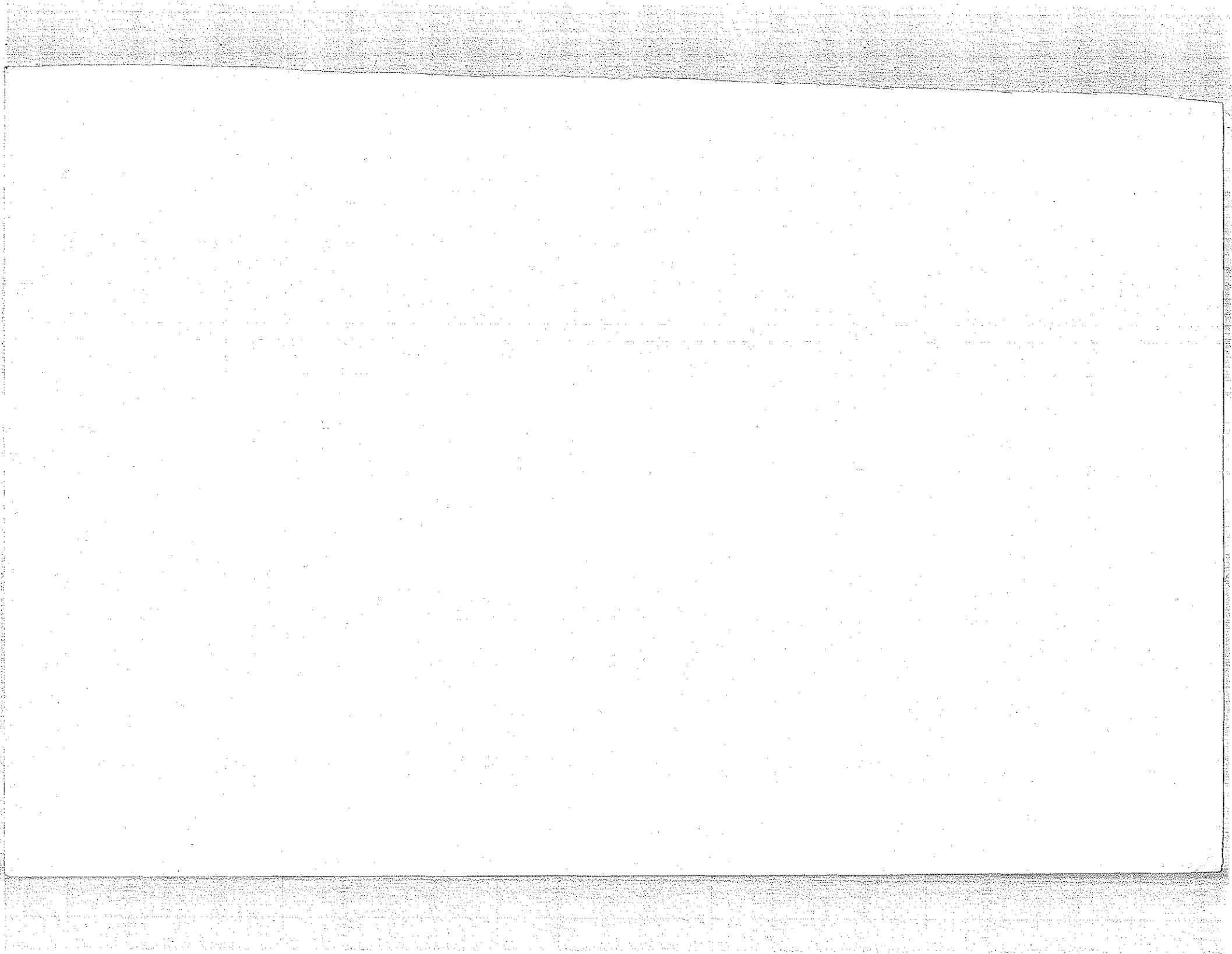
11 *any subject inventions made under contracts awarded prior*

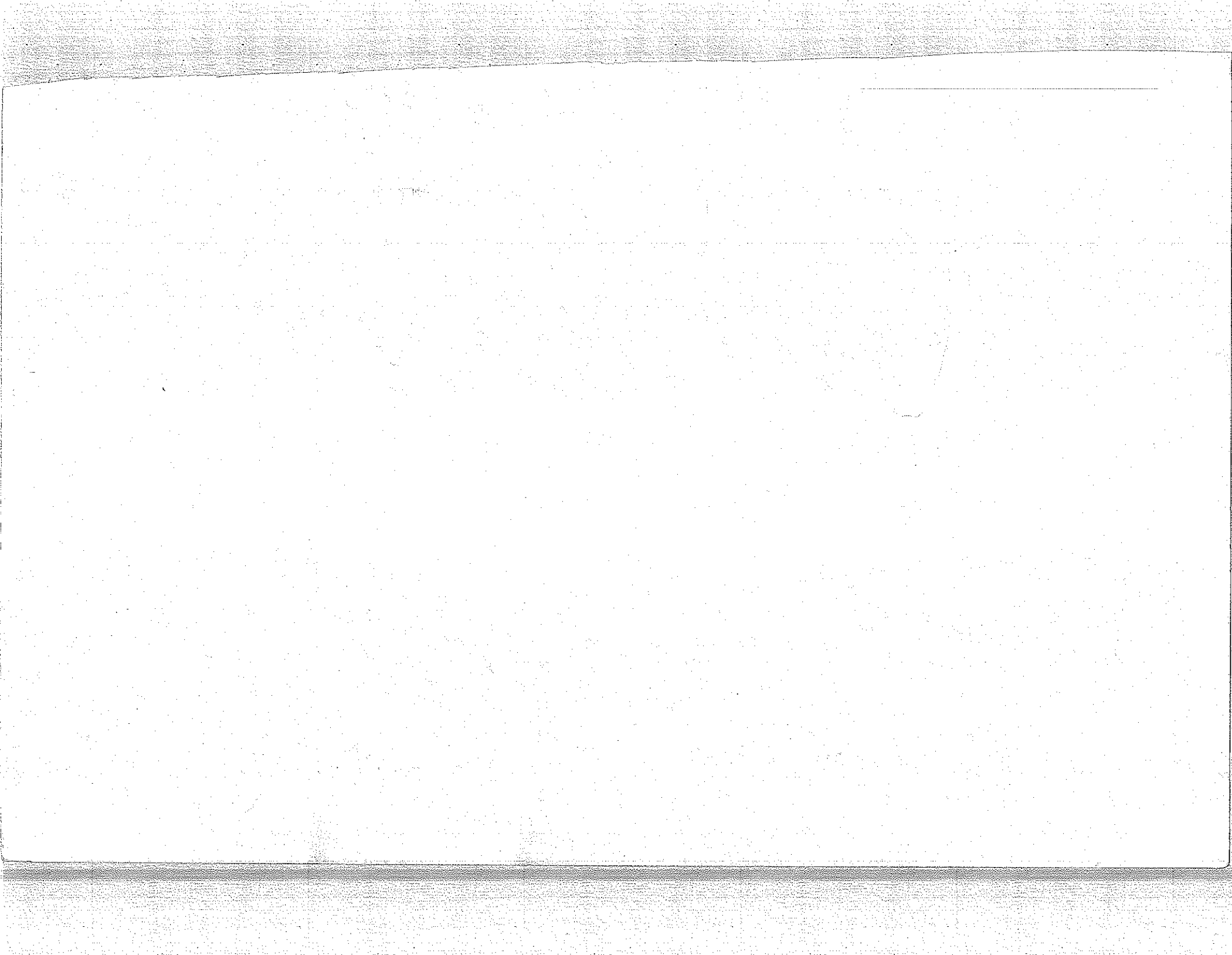
12 *to the effective date of this Act, subject to the same terms and*

13 *conditions as those which would apply under this Act had the*

14 *contract been entered into after the effective date of this Act.*







98TH CONGRESS
1ST SESSION

S. 2171

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18 (legislative day, NOVEMBER 14), 1983

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

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Uniform Patent Proce-
4 dures Act of 1983".

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

1 (b) Part II of title 35, United States Code, is amended
 2 by inserting chapter 18, as redesignated herein, after chapter
 3 17 of such title.

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

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

10 **“CHAPTER 19—PATENT RIGHTS IN INVENTIONS**
 11 **MADE WITH FEDERAL ASSISTANCE BY OTHER**
 12 **THAN SMALL BUSINESS FIRMS OR NONPROFIT**
 13 **ORGANIZATIONS**

“Sec.

“212. Policy and objectives.

“213. Definitions.

“214. Responsibilities.

“215. Disposition of rights.

“216. March-in rights.

“217. Background rights.

14 **“§ 212. Policy and objectives**

15 “In addition to the policy and objectives set forth in
 16 section 200 of this title, it is the further policy and objective
 17 of the Congress to ensure that all inventions made with Fed-
 18 eral support are used in a manner to promote free competi-
 19 tion and enterprise.

20 **“§ 213. Definitions**

21 “As used in this chapter, the term—

1 "“(1) ‘Administrator’ means the Administrator of
 2 the Office of Federal Procurement Policy or his or her
 3 designee;

4 "“(2) ‘contract’ means any contract, grant, or co-
 5 operative agreement entered into between any Federal
 6 agency (other than the Tennessee Valley Authority)
 7 and any person other than a small business firm or
 8 nonprofit organization (as defined in section 201 of this
 9 title) where a purpose of the contract is the conduct of
 10 experimental, developmental, or research work; such
 11 term includes any assignment, substitution of parties or
 12 subcontract of any tier entered into or executed for the
 13 conduct of experimental, developmental, or research
 14 work in connection with the performance of that con-
 15 tract;

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

20 "“(4) ‘Federal agency’ means an executive agency
 21 (as defined in section 105 of title 5, United States
 22 Code), and the military departments (as defined in sec-
 23 tion 102 of title 5, United States Code);

24 "“(5) ‘Government’ means the Government of the
 25 United States of America;

1 “(6) ‘invention’ means any invention or discovery
2 which is or may be patentable or otherwise protectable
3 under this title, or any novel variety of plant which is
4 or may be protectable under the Plant Variety Protec-
5 tion Act (7 U.S.C. 2321 et seq.);

6 “(7) ‘practical application’ means to manufacture
7 (in the case of a composition or product), to practice (in
8 the case of a processor method), or to operate (in the
9 case of a machine or system), in each case, under such
10 conditions as to establish that the invention is being
11 utilized and that its benefits are, to the extent permit-
12 ted by law or Government regulations, available to the
13 public on reasonable terms or through reasonable li-
14 censing arrangements;

15 “(8) ‘Secretary’ means the Secretary of Com-
16 merce or his or her designee; and

17 “(9) ‘subject invention’ means any invention of a
18 contractor conceived or first actually reduced to prac-
19 tice in the performance of work under a contract: *Pro-*
20 *vided*, That, in the case of a variety of plant, the date
21 of determination (as defined in section 41(d) of the
22 Plant Variety Protection Act (7 U.S.C. 2401(d)) must
23 also occur during the period of contract performance.

1 **“§ 214. Responsibilities**

2 “(a) The Secretary is authorized to issue regulations
3 which may be made applicable to all Federal agencies imple-
4 menting the provisions of this chapter, and the Secretary
5 shall proscribe standard patent rights provisions for use under
6 this chapter. The regulations and the standard patent rights
7 provisions shall be subject to public comment before their is-
8 suance.

9 “(b) In order to obtain consistent practices under this
10 chapter and chapter 18 of this title, the Secretary is author-
11 ized and directed (i) to consult with and advise Federal agen-
12 cies concerning the effective and consistent implementation of
13 these chapters, and (ii) to obtain from the agencies informa-
14 tion and data relating to agency practices under these
15 chapters.

16 **“§ 215. Disposition of rights**

17 “(a) Subject to subsection (c) of this section and to sec-
18 tion 216 of this title, each contractor may elect to retain title,
19 either worldwide or in such countries as it may choose, to
20 any subject invention: *Provided, however,* That a Federal
21 agency may, at the time of contracting, limit or eliminate this
22 right, place additional restrictions or conditions on the con-
23 tract that go beyond those set forth in subsection (c) of this
24 section, expand the rights of the Government to license or
25 sublicense, and alter or eliminate the contractor’s right under
26 paragraph (6) of subsection (c) of this section if—

1 “(1) it is determined by a Government authority
2 which is authorized by statute or Executive order to
3 conduct foreign intelligence or counterintelligence ac-
4 tivities that this is necessary to protect the security of
5 such activities;

6 “(2) it is determined that the contractor is not lo-
7 cated in the United States or does not have a place of
8 business located in the United States, or is a foreign
9 government; or

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

14 “(b)(1) Each determination required by subsection (a) of
15 this section shall be in writing and, except in the case of
16 paragraph (1) of subsection (a) of this section, the agency
17 shall, within thirty days after the award of the applicable
18 contract, file with the Secretary a copy of each such determi-
19 nation. In the case of a determination under subsection (a)(3)
20 of this section, the statement shall include an analysis sup-
21 porting the determination and justifying the limitations and
22 conditions being imposed. If the Secretary believes that any
23 individual determination or pattern of determinations is con-
24 trary to the terms, policy, or objectives of this Act, the Sec-

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

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

11 “(c) In accordance with the regulations to be issued by
12 the Secretary, after public comment, each contract that the
13 Government or any Federal agency acting on behalf of the
14 Government may enter into shall employ a patent rights
15 clause containing appropriate provisions to effectuate the fol-
16 lowing:

17 “(1) that the contractor disclose each subject in-
18 vention within a reasonable time after it is made and
19 that, upon request, the contractor will assign the Gov-
20 ernment title to any subject invention not disclosed
21 within such time;

22 “(2) that, unless the Government has acquired the
23 right to title under subsection (a) of this section—

24 “(A) the contractor make a written election,
25 as to the retention of title to the subject invention

1 within a reasonable time after disclosure under
2 paragraph (1) of this subsection;

3 "(B) the Government may, upon request, re-
4 ceive title to any subject invention in any coun-
5 tries in which the contractor has not elected to
6 retain title within such time;

7 "(C) a contractor electing to retain title to a
8 subject invention will file patent applications
9 within reasonable times; and

10 "(D) the Government may, upon request, re-
11 ceive title to any subject invention in any coun-
12 tries in which the contractor has failed to file
13 patent applications within the reasonable times
14 specified pursuant to subparagraph (C) of this sub-
15 section;

16 "(3) that with respect to any subject invention to
17 which a contractor elects to retain title, the United
18 States shall have (unless additional rights have been
19 taken under subsection (a) of this section) a nonexclu-
20 sive, nontransferrable, irrevocable, paid-up license to
21 make, use and sell the subject invention throughout the
22 world by or on behalf of the United States: *Provided*,
23 That the contract may provide for such additional
24 rights, including the right to assign or have assigned
25 foreign patent rights in the invention, as determined by

1 the agency as necessary for meeting the obligations of
2 the United States under any treaty or other interna-
3 tional agreement, arrangement of cooperation, memo-
4 randum of understanding, or similar international ar-
5 rangement, including military agreements relating to
6 weapons development and production;

7 "(4) that the agency may require written reports
8 on the commercial use or other forms of utilization or
9 efforts toward obtaining commercial utilization made by
10 the contractor or its licensees or assignees with respect
11 to any subject invention to which the contractor elects
12 title, pursuant to this section: *Provided*, That any such
13 report, as well as any information on utilization of ef-
14 forts toward obtaining utilization obtained as part of a
15 proceeding under section 216 of this title, shall be
16 treated by the Federal agency as commercial or finan-
17 cial information obtained from a person and privileged
18 or confidential and not subject to disclosure under the
19 Freedom of Information Act (5 U.S.C. 552);

20 "(5) that the contractor, in the event a United
21 States patent application is filed by or on its behalf or
22 by any assignee of the contractor, will include within
23 the specification of such application and any patent is-
24 suing thereon, a statement specifying that the inven-

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

3 "(6) that the contractor, in cases when it does not
4 elect to retain title to a subject invention, shall retain a
5 nonexclusive, royalty free, paid-up, worldwide license,
6 including the right to sublicense affiliates, subsidiaries,
7 and existing licensees to whom the contractor is legally
8 obligated to sublicense in any subject invention to
9 which the Government obtains title, which license shall
10 be revocable only to the extent necessary for the Gov-
11 ernment to grant an exclusive license: *Provided, how-*
12 *ever,* That the contractor shall not be entitled to such a
13 license if the contractor has fraudulently failed to dis-
14 close the subject invention; and

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

19 "(d) Agencies are authorized to include awards to inven-
20 tors to stimulate reporting of subject inventions as an allow-
21 able element of cost if such reporting results in the agency
22 initiating a statutory invention disclosure, the filing of a
23 patent application, or issuance of a patent.

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

1 or section 216 of this title to any subject invention or class of
 2 subject inventions made or which may be made under a con-
 3 tract or class of contracts if the agency determines that—

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

6 “(B) the contract involves cosponsored, cost-shar-
 7 ing or joint venture research or development and the
 8 contractor or other sponsor or joint venturer is required
 9 to make a substantial contribution of funds, facilities,
 10 or equipment to the work performed under the con-
 11 tract.

12 “(2) The agency shall maintain a record, which shall be
 13 available to the public and periodically updated, of determina-
 14 tions made under paragraph (1) of this subsection.

15 “(3) In making determinations under paragraph (1) of
 16 this subsection, the agency shall consider at least the follow-
 17 ing objectives:

18 “(A) encouraging wide availability to the public of
 19 the benefits of the experimental, developmental, or re-
 20 search programs in the shortest practicable time;

21 “(B) promoting the commercial utilization of such
 22 inventions;

23 “(C) encouraging participation by private persons
 24 (including the most highly qualified persons) in the

1 Government-sponsored experimental, developmental, or
2 research programs; and
3 “(D) fostering competition and preventing the cre-
4 ation or maintenance of situations inconsistent with the
5 antitrust laws of the United States.

6 “(4) With respect to contracts in which an agency in-
7 vokes paragraphs (1) through (3) of subsection (a) of section
8 215, a Federal agency may, after a subject invention has
9 been identified, waive any limits or additional restrictions or
10 conditions placed on a contractor beyond those set forth in
11 sections 215 and 216 and may allow the contractor to retain
12 the license rights set forth in subsection (c)(6) of this section
13 if such license rights were otherwise limited in the contract.

14 “(f) If a contractor does not elect to retain worldwide
15 title to a subject invention, the Federal agency may consider
16 and, after consultation with the contractor, grant requests for
17 retention of rights by the inventor on such terms and condi-
18 tions as the agency deems appropriate, subject to section 216
19 of this Act.

20 “(g) In any case when a Federal employee is a coinven-
21 tor of any subject invention, the Federal agency employing
22 such coinventor is authorized to transfer or assign whatever
23 rights it may acquire in the subject invention from its employ-
24 ee to the contractor subject to the same conditions set forth

1 in this title as are applicable to the rights the contractor de-
 2 rived through its own contract.

3 **“§ 216. March-in rights**

4 **“(a)** Where a contractor has elected to retain title to a
 5 subject invention under section 215 of this title, the Federal
 6 agency shall have the right (unless waived under subsection
 7 (d) of section 215 of this title), pursuant to policies, proce-
 8 dures, and guidelines of the Secretary and subject to the pro-
 9 visions of subsection (b) of this section, to grant or require the
 10 contractor or his assignee to grant a nonexclusive, partially
 11 exclusive, or exclusive license to a responsible applicant or
 12 applicants, upon terms reasonable under the circumstances, if
 13 the head of the agency or his designee determines that such
 14 action is necessary—

15 **“(1)** because the contractor, assignee, or licensee
 16 has not taken, or is not expected to take within a rea-
 17 sonable time, effective steps to achieve practical appli-
 18 cation of the invention;

19 **“(2)** to alleviate serious health or safety needs
 20 which are not reasonably satisfied by the contractor,
 21 his assignees or licensees; or

22 **“(3)** to meet requirements for public use specified
 23 by Federal regulation which are not reasonably satis-
 24 fied by the contractors, his assignees or licensees.

1 “(b) A determination made pursuant to this section shall
2 not be considered a contract dispute and shall not be subject
3 to the Contract Disputes Act (41 U.S.C 601 et seq.). Any
4 contractor adversely affected by a determination under this
5 section may, at any time within sixty days after the date the
6 determination is issued, file a petition in the United States
7 Claims Court, which shall have jurisdiction to determine the
8 matter de novo and to affirm, reverse, or modify as appropri-
9 ate, the determination of the Federal agency.

10 “§ 217. Background rights

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

14 “(b) No contract shall contain a provision allowing a
15 Federal agency to require the licensing to third parties of
16 inventions owned by the contractor that are not subject in-
17 ventions unless such provision has been approved by the
18 agency head and a written justification has been signed by
19 such agency head. Any such provision will clearly state
20 whether the licensing may be required in connection with the
21 practice of a subject invention, a specifically identified work
22 object, or both. The agency head may not delegate the au-
23 thority to approve such provisions or to sign the justification
24 required for such provisions.

1 “(c) A Federal agency will not require the licensing of
 2 third parties under any such provision unless the agency head
 3 determines that the use of the invention by others is neces-
 4 sary for the practice of a subject invention or for the use of a
 5 work object of the contract and that such action is necessary
 6 to achieve practical application of the subject invention or
 7 work object. Any such determination will be made on the
 8 record after an opportunity for an agency hearing, and the
 9 contractor shall be given prompt notification of the determi-
 10 nation by certified or registered mail.”

11 (b) The table of chapters for title 35, United States
 12 Code, is amended by adding immediately after the item relat-
 13 ing 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.”

14 (c) Chapter 18 of title 35, United States Code, as red-
 15 igned herein, is amended—

16 (1) by adding “or any novel variety of plant which
 17 is or may be protectable under the Plant Variety Pro-
 18 tection Act (7 U.S.C. 2321 et seq.)” immediately after
 19 “title” in section 201(d);

20 (2) by adding “: *Provided*, That in the case of a
 21 variety of plant, the date of determination (as defined
 22 in section 41(d) of the Plant Variety Protection Act (7
 23 U.S.C. 2401(d))) must also occur during the period of

1 "contract performance" immediately after "agreement"
2 in section 201(e);
3 (3) in section 202(a), by amending clause (i) to
4 read as follows: "(i) when the contractor is not located
5 in the United States or does not have a place of busi-
6 ness located in the United States; and
7 (4) by amending section 202(b) to read as follows:
8 "(b)(1) The rights of the Government under paragraph
9 (a) of this section shall not be exercised by a Federal agency
10 unless it first determines that at least one of the conditions
11 identified in subparagraphs (i) through (iii) of paragraph (a)
12 exists. Except in the case of paragraph (a)(iii), the agency
13 shall file with the Secretary of Commerce, within thirty days
14 after the award of the applicable funding agreement, a copy
15 of such determination. In the case of a determination under
16 paragraph (a)(ii), the statement shall include an analysis justi-
17 fying the determination. If the Secretary of Commerce be-
18 lieves that any individual determination or pattern of deter-
19 minations is contrary to the policies and objectives of this
20 chapter or otherwise not in conformance with this chapter,
21 the Secretary shall so advise the head of the agency con-
22 cerned and the Administrator of the Office of Federal Pro-
23 curement Policy, and recommend corrective actions.
24 "(2) Whenever the Administrator of the Office of Feder-
25 al Procurement Policy has determined that one or more Fed-

1 eral agencies are utilizing the authority of subparagraph (i) or
2 (ii) of paragraph (a) of this section in a manner that is con-
3 trary to the policies and objectives of this chapter, the Ad-
4 ministrator is authorized to issue regulations describing
5 classes of situations in which agencies may not exercise the
6 authorities of those subparagraphs.”

7 (5) by amending subparagraphs (1), (2), (3), and
8 (4) of section 202(c) to read as follows:

9 “(1) That the contractor disclose each subject in-
10 vention to the Federal agency within a reasonable time
11 after it becomes known to contractor personnel respon-
12 sible for the administration of patent matters, and that
13 the Federal Government may receive title to any sub-
14 ject invention not disclosed to it within such time.

15 “(2) That the contractor make a written election
16 within two years after disclosure to the Federal agency
17 (or such additional time as may be approved by the
18 Federal agency) whether the contractor will retain title
19 to a subject invention: *Provided*, That in any case
20 where publication, on sale, or public use, has initiated
21 the one year statutory period in which valid patent
22 protection can still be obtained in the United States,
23 the period for election may be shortened by the Feder-
24 al agency to a date that is not more than sixty days
25 prior to the end of the statutory period: *And provided*

1 further, That the Federal Government may receive
2 title to any subject invention in which the contractor
3 does not elect to retain rights or fails to elect rights
4 within such times.

5 “(3) That a contractor electing rights in a subject
6 invention agrees to file a patent application prior to
7 any statutory bar date that may occur under this title
8 due to publication, on sale, or public use, and shall
9 thereafter file corresponding patent applications in
10 other countries in which it wishes to retain title within
11 reasonable times, and that the Federal Government
12 may receive title to any subject inventions in the
13 United States or other countries in which the contrac-
14 tor has not filed patent applications on the subject in-
15 vention within such times.

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

1 States under any treaty, international agreement, ar-
2 rangement of cooperation, memorandum of understand-
3 ing, or similar arrangement, including military agree-
4 ments relating to weapons development and produc-
5 tion.”

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

8 “(g) A Federal agency may at any time waive all or any
9 part of the rights of the United States under paragraphs
10 (c) (4) through (8) of this section, section 203, and section 204
11 of this chapter, to any subject inventions made under a fund-
12 ing agreement or class of funding agreements if the agency
13 determines (1) that the interests of the United States and the
14 general public will be best served thereby; or (2) the funding
15 agreement involves cosponsored, cost sharing or joint venture
16 research or venturer is required to make or has made a sub-
17 stantial contribution of funds, facilities, or equipment to the
18 work performed under the funding agreement. The agency
19 shall maintain a record, which shall be available to the public
20 and periodically updated, of determinations made under this
21 paragraph. In making such determinations under clause (A)
22 of this paragraph, the agency shall consider at least the fol-
23 lowing objectives:

24 “(1) encouraging the wide availability to the
25 public of the benefits of the experimental, developmen-

1 tal, or research program in the shortest practicable
2 time; and

3 “(2) promoting the commercial utilization of such
4 inventions;

5 “(3) encouraging participation by private persons,
6 including the most highly qualified persons, in Govern-
7 ment-sponsored experimental, developmental, or re-
8 search programs.”; and

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

14 (8) by striking out “and which is not, itself, en-
15 gaged in or does not hold a substantial interest in other
16 organizations engaged in the manufacture or sales of
17 products or the use of processes that might utilize the
18 invention or be in competition with embodiments of the
19 invention” in clause (A) of section 202(c)(7) and by
20 striking out clause (B) of section 202(c)(7) and redes-
21 ignating clauses (C) and (D) of such section as clauses
22 “(B)” and “(C)”, respectively;

23 (9) by adding at the end of section 203 the
24 following:

1 "A determination pursuant to this section shall not be
 2 considered a contract dispute and shall not be subject to the
 3 Contract Disputes Act (41 U.S.C. 601 et seq.). Any contrac-
 4 tor, assignee, or exclusive licensee adversely affected by a
 5 determination under this section may, at any time within
 6 sixty days after the determination is issued, file a petition in
 7 the United States Claims Court, which shall have jurisdiction
 8 to determine the manner de novo and to affirm, reverse, or
 9 modify as appropriate, the determination of the Federal
 10 agency.";

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

12 **"§ 206. Uniform clauses and regulations**

13 "The Secretary of Commerce may issue regulations
 14 which may be made applicable to Federal agencies imple-
 15 menting the provisions of sections 202 through 204 of this
 16 chapter and shall establish standard funding agreement provi-
 17 sions required under this chapter. The regulations and the
 18 standard funding agreement shall be subject to public com-
 19 ment before their issuance.";

20 (11) by amending section 207 by adding the fol-
 21 lowing new paragraph at the end thereof:

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

1 “(A) assist Federal agency efforts to promote the
2 licensing and utilization of Government-owned inven-
3 tions;

4 “(B) assist Federal agencies in seeking protection
5 and maintaining inventions in foreign countries, includ-
6 ing the payment of fees and costs connected therewith;
7 and

8 “(C) consult with and advise Federal agencies as
9 to areas of science and technology research and devel-
10 opment with potential for commercial utilization.”;

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

14 (13) by amending section 209—

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

16 (B) by redesignating subsection (c)(3) as sub-
17 section (c)(2); and

18 (C) by striking out all in paragraph (d) after
19 “objections” and inserting in lieu thereof a period;

20 and

21 (14) by adding “of the United States” in section
22 211 after “law”

23 SEC. 3. (a) Section 205(a) of the Act of August 14,
24 1946 (7 U.S.C. 1624(a)), is amended by striking out the last
25 sentence thereof.

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

4 (c) Section 106(c) of the National Traffic and Motor Ve-
 5 hicle Safety Act of 1966 (15 U.S.C. 1395(c)) is repealed.

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

8 (e)(1) Section 152 of the Atomic Energy Act of 1954
 9 (42 U.S.C. 2182) is repealed: *Provided, however,* That such
 10 section shall continue to be effective with respect to any ap-
 11 plication for a patent in which the statement under oath re-
 12 ferred to in such section has been filed or requested to be
 13 filed by the Commissioner of Patents and Trademarks prior
 14 to the effective date of this Act.

15 (2) The item relating to section 152 in the table of con-
 16 tents of the Atomic Energy Act of 1954 is amended to read
 17 as follows:

18 "Sec. 152. Repealed"

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

21 (1) repealing subsections (a)–(h) and (j) of section
 22 305 thereof (42 U.S.C. 2457): *Provided, however,* That
 23 subsections (c), (d), and (e) of such section shall contin-
 24 ue to be effective with respect to any application for
 25 patents in which the written statement referred to in
 subsection (c) of such section has been filed or request-

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

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

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

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

15 (h) Section 4 of the Helium Act Amendments of 1960
16 (50 U.S.C. 167b) is amended by striking out all after "utili-
17 zation" and inserting in lieu thereof a period.

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

20 (j) Subsection (e) of section 302 of the Appalachian Re-
21 gional Development Act of 1965 (40 U.S.C. App. 302(e)) is
22 repealed.

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

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

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

5 (n) Section 8001(c)(3) of the Solid Waste Disposal Act
6 (42 U.S.C. 6981(c)(3)) is repealed.

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

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

11 (q) Section 427(b) of the Federal Mine Safety and
12 Health Act of 1977 (30 U.S.C. 937(b)) is amended by strik-
13 ing the last sentence thereof.

14 (r) Section 306(d) of the Surface Mining Control and
15 Reclamation Act of 1977 (30 U.S.C. 1226(d)) is amended by
16 striking the first two sentences thereof.

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

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

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

1 (v) Section 408 of the Water Research and Develop-
2 ment Act of 1978 (42 U.S.C. 7879) is repealed.

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

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

“Sec. 173. Repealed.”

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

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

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

22 SEC. 6. Within twenty-four months after the date of en-
23 actment of this Act and every two years thereafter, the Sec-
24 retary of Commerce shall submit to Congress a report of the
25 implementation of chapters 18 and 19 of title 35, United

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



outstanding in the amount of \$100.00.

The balance of the account is \$100.00.

Respectfully,
O