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[TEXT OF COMMITTEE AMENDMENT TO H.R. 4564]

NOVEMBER 23, 1981

Strike out everything after the enacting clause and insert in lieu thereof the following:

- 1 That this Act may be cited as the 'Uniform Federal Research
- 2 and Development Utilization Act of 1981'.

TITLE I--POLICY

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

TITLE II--FUNCTIONS OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY AND THE FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

- Sec. 201. Federal Coordinating Council for Science, Engineering, and Technology.

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

- Sec. 301. Ownership and rights of the Government.
- Sec. 302. Rights of the contractor.
- Sec. 303. Waiver.
- Sec. 304. March-in-rights.
- Sec. 305. General provisions.
- Sec. 306. Judicial review.
- Sec. 307. Contractor's payments to the Government.
- Sec. 308. Background rights.

TITLE IV--DOMESTIC AND FOREIGN PROTECTION AND LICENSING OF FEDERALLY OWNED INVENTIONS

- Sec. 401. Authority of Federal agencies.
- Sec. 402. Authority of the Secretary of Commerce in cooperation with other Federal agencies.
- Sec. 403. Authority of the Administrator of General Services.
- Sec. 404. Grants of an exclusive or partially exclusive license.

TITLE V--MISCELLANEOUS

- Sec. 501. Definitions.
- Sec. 502. Relationship to other laws.
- Sec. 503. Identified Acts amended.
- Sec. 504. Effective date.

1 TITLE I--POLICY

2 FINDINGS

3 SEC. 101. The Congress, recognizing the profound impact
4 of science and technology on society and the interrelations
5 of scientific, technological, economic, social, political,
6 and institutional factors, hereby finds that--

7 (1) inventions in scientific and technological
8 fields resulting from work performed under Federal
9 research and development programs constitute a valuable
10 national resource;

11 (2) Federal policy on the allocations of rights to
12 inventions resulting from federally sponsored research
13 and development should stimulate inventors, meet the
14 needs of the Federal Government, and serve the public
15 interest; and

16 (3) the public interest would be better served if
17 greater efforts were made to promote the commercial use
18 of new technology resulting from federally sponsored
19 research and development, both in the United States and
20 foreign countries, as appropriate.

21 DECLARATION OF PURPOSE

22 SEC. 102. It is the purpose of this Act to--

23 (1) establish a uniform Federal system for the

1 management and use of the results of federally sponsored
2 scientific and technological research and development;

3 (2) provide for uniform implementation of the
4 provisions of this Act, and to make a continuing effort
5 to monitor such implementation;

6 (3) allocate rights to inventions by contractors
7 which result from federally sponsored research and
8 development so as to--

9 (A) encourage the participation of the most
10 qualified and competent contractors,

11 (B) foster competition,

12 (C) reduce the administrative burdens, both for
13 the Federal agencies and its contractors, and

14 (D) protect the public investment in research
15 and development by promoting the widespread
16 utilization of inventions;

17 (4) provide for a domestic and foreign protection
18 and licensing program to obtain commercial utilization
19 of federally owned inventions, with the objective of
20 strengthening the Nation's economy and expanding its
21 domestic and foreign markets; and

22 (5) amend or repeal other Acts and Executive orders
23 regarding the allocation of rights to inventions which
24 result from federally sponsored research and development
25 and the licensing of federally owned patents.

1 TITLE II--FUNCTIONS OF THE OFFICE OF SCIENCE AND TECHNOLOGY
2 POLICY AND THE FEDERAL COORDINATING COUNCIL FOR SCIENCE,
3 ENGINEERING, AND TECHNOLOGY
4 FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND
5 TECHNOLOGY

6 SEC. 201. (a) The Federal Coordinating Council for
7 Science, Engineering, and Technology (established by section
8 401 of the National Science and Technology Policy,
9 Organization, and Priorities Act of 1976 (42 U.S.C. 6651))
10 (hereinafter in this Act referred to as the "Council")
11 shall make recommendations to the Director of the Office of
12 Science and Technology Policy (hereinafter in this title
13 referred to as the "Director"), with regard to--

14 (1) uniform and effective planning and
15 administration of Federal programs pertaining to
16 inventions, patents, rights in technical data, and
17 matters connected therewith;

18 (2) uniform policies, regulations, guidelines, and
19 practices to carry out the provisions of this Act and
20 other Federal Government objectives in the field of
21 intellectual property; and

22 (3) uniformity and effectiveness of interpretation
23 and implementation by individual Federal agencies of the
24 provisions of this Act and other related Federal
25 Government policies, regulations, and practices.

1 For the purpose of assuring effective management of
2 Government-owned inventions, the Secretary of Commerce shall
3 chair a committee of the Council to formulate the
4 recommendations required by this subsection.

5 (b) Recommendations regarding matters set forth in
6 subsection (a) which are made by the Council and adopted by
7 the Director shall be transmitted to Federal agencies
8 through appropriate channels.

9 (c) In order to carry out the responsibilities set forth
10 in subsections (a) and (b), the Council is authorized to--

11 (1) acquire data and reports from Federal agencies
12 on the interpretation and implementation of this Act and
13 related policies, regulations, and practices;

14 (2) review on its own initiative, or upon request by
15 a Federal agency, Federal agency implementation of the
16 provisions of this Act;

17 (3) analyze, on a continuing basis, data acquired by
18 the Council;

19 (4) consider problems and developments in the fields
20 of inventions, patents, rights in technical data, and
21 matters connected therewith and the impact thereof on
22 Federal Government policy or uniform accommodation or
23 implementation by Federal agencies; and

24 (5) publish annually a report on Council efforts,
25 findings, and recommendations made under this section.

1 TITLE III--ALLOCATION OF PROPERTY RIGHTS IN INVENTIONS
 2 RESULTING FROM FEDERALLY SPONSORED RESEARCH AND DEVELOPMENT
 3 OWNERSHIP AND RIGHTS OF THE GOVERNMENT

4 SEC. 301. (a) Each Federal agency shall acquire on
 5 behalf of the Federal Government, at the time of entering
 6 into a contract, title to any invention made under the
 7 contract if the agency determines that--

8 (1) the services of the contractor are for the
 9 operation of Federal research and development centers,
 10 including Government-owned research or production
 11 facilities;

12 (2) the restriction or elimination of the right to
 13 retain title to any subject invention is necessary to
 14 protect the national security nature of such activities;

15 (3) because of exceptional circumstances,
 16 acquisition of title by the Government is necessary to
 17 assure the adequate protection of the public health,
 18 safety, or welfare, recombinant DNA research being
 19 considered an exceptional circumstance;

20 (4) the principal purpose of the contract is to
 21 develop or improve products, processes, or methods which
 22 will be required for compliance with Government
 23 regulations;

24 (5) the contract is not to be performed in the
 25 United States, its possessions, or Puerto Rico;

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1 (6) the contractor is a business entity that does
 2 not have a place of business located in the United
 3 States, except that this paragraph shall not require an
 4 agency to take an action in violation of existing
 5 treaties or laws of the United States; or

6 (7) the contractor is or is subject to the control
 7 of a foreign government, except that this paragraph
 8 shall not require an agency to take an action in
 9 violation of existing treaties or laws of the United
 10 States.

11 The Federal agency may subsequently waive all or any part of
 12 the rights of the Federal Government under this section to
 13 such invention in conformity with the provisions of section
 14 303.

15 (b) In other situations not covered by subsection (a)
 16 each Federal agency shall acquire on behalf of the Federal
 17 Government, at the time of contracting--

18 (1) an agreement that, if the contractor elects not
 19 to file a patent application on a subject invention in
 20 any country, title to such an invention shall be
 21 assigned to the Federal Government, subject to the
 22 rights retained by the contractor under section 302; and

23 (2) an agreement that, if the contractor elects to
 24 file a patent application in accordance with section
 25 302--

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1 (A) the Federal agency, under uniform
2 regulations promulgated under section 305, shall
3 have the right to require periodic written reports
4 at reasonable intervals and, when specifically
5 requested by such agency under such uniform
6 regulations, reports on the commercialization or
7 other form of utilization by the public that is
8 being made or is intended to be made of any subject
9 invention: Provided, That any such information shall
10 be treated by the Federal agency as commercial or
11 financial information obtained from a person and
12 privileged or confidential and not subject to
13 disclosure under the Freedom of Information Act (5
14 U.S.C. 552);

15 (B) the Government shall have a nonexclusive,
16 nontransferable, irrevocable, paid-up license to
17 practice or have practiced any subject invention
18 throughout the world by or on behalf of the Federal
19 Government, and may, if provided in such agreement,
20 have additional rights to sublicense any State or
21 domestic local government when it is determined to
22 be in the national interest to acquire such
23 additional rights.

24 RIGHTS OF THE CONTRACTOR

25 SEC. 302. (a) Whenever a contractor enters into a

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1 contract with a Federal agency other than in those
2 circumstances identified in section 301(a), the contractor
3 shall have the option of retaining title to any invention
4 made under the contract. Such rights shall be subject to
5 the limitations set forth in section 304 and the provisions
6 of sections 301(b)(2) and 305. Such option shall be
7 exercised by notifying the Government at the time of
8 disclosure of the invention or within such time thereafter
9 as may be provided in the contract. The Government shall
10 obtain title to any invention for which this option is not
11 exercised.

12 (b) When the Government obtains title to an invention
13 under section 301 or 302(a), the contractor shall retain a
14 nonexclusive, royalty-free license which shall be revocable
15 only to the extent necessary for the Government to grant an
16 exclusive license. The contractor's license to practice the
17 invention, or to have it practiced on the contractor's
18 behalf, shall include the right to grant sublicenses of the
19 same scope to subsidiaries and affiliates within the
20 corporate structure of the contractor's organization, and to
21 existing licensees to whom the contractor is legally
22 obligated to sublicense or assure freedom from infringement
23 liability.

24 (c) If a contractor does not exercise its option to
25 retain title, the Federal agency may consider and, after

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1 consultation with the contractor, grant requests for
2 retention of rights by the inventor, subject to the
3 provisions of this Act.

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4 (d) In any case when a Federal employee is a coinventor
5 of any invention made under a contract with a nonprofit
6 organization or a small business firm, the Federal agency
7 employing such coinventor is authorized to transfer or
8 assign whatever rights it may acquire in the subject
9 invention from its employee to the contractor.

10 WAIVER

11 SEC. 303. A Federal agency may at any time waive all or
12 any part of the rights of the United States under section
13 301(a) to any invention or class of inventions made or which
14 may be made by any person or class of persons under the
15 contract of the agency if the agency determines that the
16 condition justifying acquisition of title by the Government
17 under section 301 no longer exists or the interests of the
18 United States and the general public will be best served
19 thereby. The agency shall maintain a record, which shall be
20 made public and periodically updated, of determinations made
21 under this section. In making such determinations, the
22 agency shall consider the following objectives:

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23 (1) encouraging the wide availability to the public
24 of the benefits of the experimental, developmental, or
25 research programs in the shortest practicable time;

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

3 (3) encouraging participation by private persons in
4 the Government-sponsored experimental, developmental, or
5 research programs; and

6 (4) fostering competition and preventing the
7 creation or maintenance of situations inconsistent with
8 the antitrust laws.

9 MARCH-IN-RIGHTS

10 SEC. 304. (a) Where a contractor or inventor has
11 elected to retain title to an invention under section 302 or
12 303, the Federal agency shall have the right, pursuant to
13 regulations and subject to the provisions of subsection (b),
14 to grant, or require the contractor to grant, a
15 nonexclusive, partially exclusive, or exclusive license to a
16 responsible applicant or applicants, upon terms reasonable
17 under the circumstances, if the agency determines such
18 action is necessary--

19 (1) because the contractor has not taken, or is not
20 expected to take within a reasonable time, effective
21 steps to achieve practical application of the subject
22 invention;

23 (2) to alleviate serious health, safety, or welfare
24 needs which are not reasonably satisfied by the
25 contractor or its licensees or otherwise required for

1 the protection of national security;

2 (3) to meet requirements for public use specified by
3 Federal regulation which are not reasonably satisfied by
4 the contractor or its licensees; or

5 (4) because the actions of the contractor beyond the
6 exercise of the exclusive rights in the invention have
7 created or maintained a situation inconsistent with the
8 antitrust laws.

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9 (b) The determinations required under subsection (a)
10 shall be made upon the basis of such information as may be
11 presented by the contractor, an interested party, or any
12 Federal agency. Such determination shall be made after
13 public notice and opportunity for hearing if such a hearing
14 is requested by any interested person justifying such a
15 hearing.

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16 GENERAL PROVISIONS

17 SEC. 305. (a) The allocation of property rights in
18 subject inventions shall be determined by uniform
19 regulations, issued by the Administrator of General
20 Services, the Administrator of the National Aeronautics and
21 Space Administration, and the Secretary of Defense,
22 employing a single patent rights clause in all instances
23 except as may be provided in such regulations. Such a patent
24 rights clause shall include the provisions required by
25 sections 301, 302, and 304, and each contract entered into

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1 by the Federal agency shall include provisions to--

2 (1) require disclosure within a reasonable time by
3 the contractor of each subject invention which is or may
4 be patentable under the laws of the United States;

5 (2) require an election, at the time of disclosure
6 or within a reasonable time thereafter, whether the
7 contractor intends to file a patent application on the
8 subject invention in the United States or other
9 countries;

10 (3) require, where the contractor elects to retain
11 title--

12 (A) the filing of a patent application within a
13 reasonable time; and

14 (B) the filing of a declaration of the
15 contractor's intent to commercialize or otherwise
16 achieve the utilization of the invention by the
17 public;

18 (4) require an obligation on the part of the
19 contractor, in the event a United States patent
20 application is filed by or on its behalf or by any
21 assignee of the contractor, to include within the
22 specification of such application, and any patent
23 issuing thereon, a statement specifying that the
24 invention was made with Government support and that the
25 Government has certain rights in the invention;

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1 (5) permit deviation to the minimum rights acquired
 2 under sections 301(b)(2) and 304(a) on a class basis
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4 (A) contracts involving cosponsored, cost
 5 sharing, or joint venture research when the
 6 contractor is required to make a substantial
 7 contribution of funds, facilities, or equipment to
 8 the work performed under the contract; and

9 (B) special contracting situations such as
 10 Federal price or purchase supports and Federal loan
 11 or loan guarantees; and

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12 (6) require that a transfer by the contractor of the
 13 rights in any subject invention will be subject to the
 14 rights of the Federal Government provided for in section
 15 301, 303, 304, and 307.

16 No deviation under this subsection shall waive, in whole or
 17 in part, the minimum rights to be secured for the Federal
 18 Government set forth in section 304(a)(4). The Federal
 19 Government shall withhold publication by the Federal
 20 Government or release to the public by the Federal
 21 Government of information disclosing any invention subject
 22 to the uniform regulations issued under this subsection for
 23 a reasonable time in order for a United States or foreign
 24 patent application to be filed.

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25 (b) When it is determined that the right to require

1 licensing or the right of the Federal agency to license
 2 should be exercised pursuant to section 304(a), the Federal
 3 agency may specify terms and conditions, including royalties
 4 to be charged, if any, and the duration and field of use of
 5 the license, if appropriate consistent with the provisions
 6 of title IV of this Act. Agency determinations as to the
 7 rights to inventions under this title shall be made in an
 8 expeditious manner without unnecessary delay.

9 (c) Regulations issued under subsection (a) may contain
 10 provisions applicable only to (1) contractors which are
 11 nonprofit organizations, (2) contractors which are small
 12 business firms, or (3) other contractors.

13 (d) The provisions of this Act shall not apply to the
 14 Tennessee Valley Authority or to any of its patents, patent
 15 licenses or sublicenses, or contracts.

16 JUDICIAL REVIEW

17 SEC. 306. Any person adversely affected by a Federal
 18 agency determination made under this Act may, at any time
 19 within sixty days after the determination is issued, file a
 20 petition to the United States Court of Customs and Patent
 21 Appeals which shall have jurisdiction to determine the
 22 matter de novo and to affirm, reverse, or modify as
 23 appropriate, the determination of the Federal agency.

24 CONTRACTOR'S PAYMENTS TO THE GOVERNMENT

25 SEC. 307. (a)(1) The Administrator of General Services,

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1 the Administrator of the National Aeronautics and Space
2 Administration, and the Secretary of Defense shall issue
3 regulations which will provide for payment to the Government
4 by the contractor of an equitable share of royalties or
5 other revenues received from a patent on a subject invention
6 if--

7 (A) the contract under which the contractor receives
8 title to the patent is intended to produce technology
9 for commercial use or produces technology readily
10 adaptable to commercial use, and such commercial use is
11 expected to occur within 8.5 years; and

12 (B) the contribution by the Government to the
13 technology has provided or will provide the contractor
14 with a substantial near-term commercial advantage.

15 (2) Such payment shall not exceed the amount of
16 Government funds expended under such contract in making the
17 subject invention except that such payment may, under
18 extraordinary circumstances, exceed the amount of Government
19 funds expended under such contract when the agency and the
20 contractor have agreed to a negotiated amount which is or
21 may be in excess of the amount expended by the Government
22 under the contract.

23 (3) Such regulations shall provide, to the extent
24 appropriate, a standard contractual clause to be included in
25 all Federal research and development contracts, but

1 contractors which are small business firms or nonprofit
2 organizations shall not be required to make any such payment
3 to the Government.

4 (b) Such regulations may allow the agency to waive all
5 or part of the payment set forth in subsection (a) at the
6 time of contracting or at the request of the contractor
7 where the agency determines that--

8 (1) the probable administrative costs are likely to
9 be greater than the expected amount of payment;

10 (2) the Federal Government's contribution to the
11 technology as licensed or utilized is insubstantial
12 compared with private investment made or to be made in
13 the technology;

14 (3) the total Government funding of the technology
15 with the contractor is less than \$500,000;

16 (4) the payment would place the contractor at a
17 competitive disadvantage or would stifle commercial
18 utilization of the technology; or

19 (5) it is otherwise in the best interests of the
20 Government and the general public.

21 (c) Such regulations shall be promulgated within twelve
22 months of enactment of this section, but shall not take
23 effect for a period of sixty days after the date of their
24 promulgation, and shall not take effect if either House of
25 Congress adopts a resolution during such sixty-day period

1 stating in substance that it disapproves of such
2 regulations.

3 (d) Until such regulations become effective, each agency
4 shall obtain payment on behalf of the Federal Government for
5 its research and development activities on a
6 contract-by-contract basis in a manner consistent with the
7 provisions of subsection (b).

8 BACKGROUND RIGHTS

9 SEC. 308. Nothing contained in this Act shall be
10 construed to deprive the owner of any background patent or
11 of such rights as the owner may have thereunder.

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12 TITLE IV--DOMESTIC AND FOREIGN PROTECTION AND LICENSING OF
13 FEDERALLY OWNED INVENTIONS

14 AUTHORITY OF FEDERAL AGENCIES

15 SEC. 401. Each Federal agency is authorized to--

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16 (1) apply for, obtain, and maintain patents or other
17 forms of protection in the United States and in foreign
18 countries on inventions in which the Federal Government
19 owns a right, title, or interest;

20 (2) promote the licensing of inventions covered by
21 federally owned patent applications, patents, or other
22 forms of protection obtained with the objective of
23 maximizing utilization by the public of the inventions
24 covered thereby;

25 (3) make market surveys and other investigations for

1 determining the potential of inventions for domestic and
2 foreign licensing and other forms of utilization, and
3 acquire technical information and engage in negotiations
4 and other activities for promoting the licensing and for
5 the purpose of enhancing their marketability and public
6 utilization;

7 (4) undertake the actions described in paragraphs
8 (1), (2), and (3), and all other suitable and necessary
9 steps to protect and administer rights to inventions on
10 behalf of the Federal Government either directly or
11 through contract;

12 (5) withhold publication by the Federal Government
13 or release to the public by the Federal Government of
14 information disclosing any invention in which the
15 Federal Government owns or may own a right, title, or
16 interest for a reasonable time in order for a patent
17 application to be filed;

18 (6) grant nonexclusive, exclusive, or partially
19 exclusive licenses under federally owned patent
20 applications, patents, or other forms of protection
21 obtained, royalty free or for royalties or other
22 consideration, and on such terms and conditions,
23 including the grant to the licensee of the right of
24 enforcement pursuant to the provisions of chapter 28 of
25 title 35, United States Code, as deemed appropriate in

1 the public interest;

2 (7) transfer custody and administration, in whole or
3 in part, to the Department of Commerce or to other
4 Federal agencies, of the right, title, or interest in
5 any invention for the purpose of administering the
6 authorities set forth in paragraphs (1), (2), (3), (4),
7 and (6) without regard to the provisions of the Federal
8 Property and Administrative Services Act of 1949 (40
9 U.S.C. 471); and

10 (8) designate the Department of Commerce as
11 recipient of any or all funds received from fees,
12 royalties, or other management of federally owned
13 inventions authorized under this Act.

14 AUTHORITY OF THE SECRETARY OF COMMERCE IN COOPERATION WITH
15 OTHER FEDERAL AGENCIES

16 SEC. 402. The Secretary of Commerce is authorized in
17 cooperation with other Federal agencies to--

18 (1) coordinate a program for assisting all Federal
19 agencies in carrying out the authority set forth in
20 section 401;

21 (2) publish notification of all federally owned
22 inventions that are available for licensing;

23 (3) evaluate inventions referred by Federal
24 agencies, and patent applications filed thereon, in
25 order to identify those inventions with the greatest

1 commercial potential and to insure promotion and
2 utilization by the public of inventions so identified;

3 (4) assist the Federal agencies in seeking and
4 maintaining protection on inventions in the United
5 States and in foreign countries, including the payment
6 of fees and costs connected therewith;

7 (5) accept custody and administration, in whole or
8 in part, of the right, title, and interest in any
9 invention for the purpose of taking any action set forth
10 in paragraphs (1), (2), (3), (4), and (6) of section
11 401, with the approval of the Federal agency concerned
12 without regard to the provisions of the Federal Property
13 and Administrative Service Act of 1949 (40 U.S.C. 471);

14 (6) receive funds from fees, royalties, or other
15 management of federally owned inventions authorized
16 under this Act, but such funds shall be used only for
17 the purpose of this Act; and

18 (7) undertake these and such other functions either
19 directly or through such contracts as are necessary and
20 appropriate to accomplish the purposes of this title.

21 AUTHORITY OF THE ADMINISTRATOR OF GENERAL SERVICES

22 SEC. 403. The Administrator of General Services is
23 authorized to promulgate regulations specifying the terms
24 and conditions upon which any federally owned invention may
25 be licensed on a nonexclusive, partially exclusive, or

1 exclusive basis.

2 GRANTS OF AN EXCLUSIVE OR PARTIALLY EXCLUSIVE LICENSE
3 SEC. 404. (a) Each Federal agency may grant exclusive or
4 partially exclusive licenses in any invention covered by a
5 federally owned domestic patent or patent application only
6 if, after public notice and opportunity for filing written
7 objections, such agency determines that--

8 (1) the interests of the Federal Government and the
9 public will best be served by the proposed license, in
10 view of the applicant's intentions, plans, and ability
11 to bring the invention to practical application or
12 otherwise promote the invention's utilization by the
13 public;

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

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

23 (4) the proposed terms and scope of exclusivity are
24 not greater than reasonably necessary to provide the
25 incentive for bringing the invention to practical

1 application or otherwise promote the invention's
2 utilization by the public;
3 except that a Federal agency shall not grant such exclusive
4 or partially exclusive license if it determines that the
5 grant of such license would, apart from the exercise of the
6 exclusive rights in the invention, create or maintain a
7 situation inconsistent with the antitrust laws.

8 (b) After consideration of whether the interests of the
9 Federal Government or United States industry in foreign
10 commerce will be enhanced, Federal agencies may grant
11 exclusive or partially exclusive licenses in any invention
12 covered by a foreign patent application or patent after
13 public notice and opportunity for filing written objections,
14 except that a Federal agency shall not grant such exclusive
15 or partially exclusive license if it determines that the
16 grant of such license would, apart from the exercise of the
17 exclusive rights in the invention, create or maintain a
18 situation inconsistent with the antitrust laws.

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

22 (d) Any grant of an exclusive or partially exclusive
23 license shall contain such terms and conditions as the
24 Federal agency may determine to be appropriate for the
25 protection of the interests of the Federal Government and

1 the public, including provisions for the following:

2 (1) periodic written reports at reasonable intervals
3 including, when specifically requested by the Federal
4 agency, the extent of the commercial or other use by the
5 public that is being made or is intended to be made of
6 the invention;

7 (2) a nonexclusive, nontransferable, irrevocable,
8 paid-up license to practice or have practiced for the
9 Federal Government the licensed invention throughout the
10 world by or on behalf of the Federal Government
11 (including any Federal agency), and the additional right
12 to sublicense any State or domestic local government or
13 to sublicense any foreign government pursuant to foreign
14 policy considerations, or any existing or future treaty
15 or agreement, if the Federal agency determines it would
16 be in the national interest to retain such additional
17 rights;

18 (3) the right of the Federal agency to terminate
19 such exclusive or partially exclusive license in whole
20 or in part unless the licensee demonstrates to the
21 satisfaction of the Federal agency that the licensee has
22 taken effective steps, or within a reasonable time is
23 expected to take such steps, to accomplish substantial
24 commercial or other use of the invention by the public;
25 and

1 (4) the right of the Federal agency, commencing
2 three years after the grant of a license, to require the
3 licensee to grant a nonexclusive or partially exclusive
4 license to a responsible applicant or applicants, upon
5 terms reasonable under the circumstances, and in
6 appropriate circumstances to terminate the license in
7 whole or in part, after public notice and opportunity
8 for a hearing, upon a petition by an interested person
9 justifying such hearing, if the Federal agency
10 determines, upon review of such material as it deems
11 relevant, and after the licensee, or other interested
12 person, has had the opportunity to provide such relevant
13 and material information as the Federal agency may
14 require, that such license has, apart from the exercise
15 of the exclusive rights in the invention, created or
16 maintained a situation inconsistent with the antitrust
17 laws.

18 TITLE V--MISCELLANEOUS

19 DEFINITIONS

20 SEC. 501. As used in this Act--

21 (1) The term "'Federal agency'" means an "'executive
22 agency'" as defined by section 105 of title 5, United
23 States Code, and the military departments defined by
24 section 102 of title 5, United States Code.

25 (2) The term "'contract'" means any contract, grant,

1 or cooperative agreement entered into between any
2 Federal agency and any person for the performance of
3 experimental, developmental, or research work funded by
4 the Federal Government. Such term includes any
5 assignment, substitution of parties, or subcontract of
6 any type entered into for the performance of
7 experimental, developmental, or research work under a
8 contract.

9 (3) The term "contractor" means any person, other
10 than a Federal agency, that is a party to the contract.

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

18 (5) The term "subject invention" means any
19 invention or discovery of the contractor conceived or
20 first actually reduced to practice in the course of or
21 under a contract.

22 (6) The term "practical application" means to
23 manufacture (in the case of a composition or product),
24 to practice (in the case of a process), or to operate
25 (in the case of a machine or system), and, in each case,

1 under such conditions as to establish that the invention
2 is being worked and that its benefits are available to
3 the public either on reasonable terms or through
4 reasonable licensing arrangements.

5 (7) The term "person" means any person as defined
6 in section 1 of title 1, United States Code, or other
7 entity.

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

11 (9) The term "antitrust law" means the laws
12 included within the definition of the term "antitrust
13 laws" in section 1 of the Clayton Act (15 U.S.C. 12),
14 as amended.

15 (10) The term "small business firm" means a small
16 business concern as defined in section 2 of the Small
17 Business Act (15 U.S.C. 632) and implementing
18 regulations of the Administrator of the Small Business
19 Administration.

20 (11) The term "nonprofit organization" means
21 universities and other institutions of higher education
22 or an organization of the type described in section
23 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.
24 501(c)(3)) and exempt from taxation under section 501(a)
25 of the Internal Revenue Code of 1954 (26 U.S.C. 501(a)),

1 or any nonprofit scientific or educational organization
2 qualified under a State nonprofit organization
3 statute.''

4 RELATIONSHIP TO OTHER LAWS

5 SEC. 502. Nothing in this Act shall be deemed to convey
6 to any individual, corporation, or other business
7 organization immunity from civil or criminal liability, or
8 to create defenses to actions, under any antitrust law.

9 IDENTIFIED ACTS AMENDED

10 SEC. 503. The following Acts are hereby amended as
11 follows:

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

15 (2) Section 501(c) of the Federal Mine Safety and
16 Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742) is
17 amended by striking out the last sentence thereof.

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

21 (4) Section 12 of the National Science Foundation
22 Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360) is
23 repealed.

24 (5) Section 152 of the Atomic Energy Act of 1954 (42
25 U.S.C. 2182; 68 Stat. 943) is repealed.

1 (6) The National Aeronautics and Space Act of 1958
2 (72 Stat. 426) is amended--

3 (A) by striking out section 305 thereof (42
4 U.S.C. 2457), except that subsections (c), (d), and
5 (e) of such section shall continue to apply to any
6 application for patents in which the written
7 statement referred to in subsection (c) of such
8 section has been filed or requested to be filed by
9 the Commissioner of Patents and Trademarks prior to
10 the effective date of this Act;

11 (B) by striking out, in section 306(a) thereof
12 (42 U.S.C. 2458(a)), "(as defined by section
13 305)", and by striking out "the Inventions and
14 Contributions Board, established under section 305
15 of this Act" and inserting in lieu thereof "an
16 Inventions and Contributions Board which shall be
17 established by the Administrator within the
18 Administration";

19 (C) by striking out the period at the end of
20 paragraph (13) of section 203(c) thereof (42 U.S.C.
21 2473(c)) and inserting in lieu thereof a semicolon
22 and by inserting after such paragraph the following:
23 "(14) to provide effective contractual provisions
24 for the reporting of the results of the activities of
25 the Administration, including full and complete

1 technical reporting of any innovation made in the course
2 of or under any contract of the Administration.'';

3 (D) by adding at the end of such section 203 the
4 following new subsection:

5 '(d) For purposes of chapter 17 of title 35 of the
6 United States Code, the Administration shall be considered a
7 defense agency of the United States.''; and

8 (E) by striking out '(including patents and
9 rights thereunder)' in subsection (a)(3) of such
10 section 203.

11 (7) Section 6 of the Act of July 7, 1960, entitled
12 'An Act to encourage and stimulate the production and
13 conservation of coal in the United States through
14 research and development by authorizing the Secretary of
15 the Interior to contract for coal research, and for
16 other purposes' (30 U.S.C. 666; 74 Stat. 337), is
17 repealed.

18 (8) Section 4 of the Helium Act (50 U.S.C. 167b; 74
19 Stat. 920) is amended by striking out both provisos at
20 the end thereof.

21 (9) Section 32 of the Arms Control and Disarmament
22 Act (22 U.S.C. 2572; 75 Stat. 634) is repealed.

23 (10) Subsection (e) of the section 302 of the
24 Appalachian Regional Development Act of 1965 (40 U.S.C.
25 App. 302(e); 79 Stat. 5) is repealed.

1 (11) Except for paragraph (1), section 9 of the
2 Federal Nonnuclear Energy Research and Development Act
3 of 1974 (42 U.S.C. 5908; 88 Stat. 1887) is repealed.

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

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

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

10 (15)(A) Chapter 38 of title 35, United States Code,
11 is repealed. Regulations issued under such chapter 38
12 shall continue in force until regulations implementing
13 this Act have taken effect.

14 (B) The table of chapters of part IV of title 35,
15 United States Code, is amended by striking out the item
16 pertaining to chapter 38.

17 (16) Section 6(e) (1) and (2) of the
18 Stevenson-Wydler Technology Innovation Act of 1980 (15
19 U.S.C. 3705(e) (1) and (2); 94 Stat. 2313) is repealed..

20 EFFECTIVE DATE

21 SEC. 504. This Act shall take effect on the first day of
22 the seventh month beginning after the date of enactment of
23 this Act, except that regulations implementing this Act may
24 be issued prior to such day.