

MARK BOFF

II

Calendar No. 541

97TH CONGRESS  
2D SESSION

**S. 1657**

[Report No. 97-381]

Entitled the "Uniform Science and Technology Research and Development Utilization Act".

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23 (legislative day, SEPTEMBER 9), 1981

Mr. SCHMITT (for himself, Mr. CANNON, Mr. GORTON, Mrs. KASSEBAUM, Mr. LUGAR, and Mr. SYMMS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 5 (legislative day, APRIL 13), 1982

Reported by Mr. PACKWOOD, with an amendment

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

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**A BILL**

Entitled the "Uniform Science and Technology Research and Development Utilization Act".

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

1 second time it appears therein, and inserting in lieu thereof a  
2 period.

3 (12) Section 5(i) of the Tennessee Valley Authority Act  
4 of 1933 (16 U.S.C. 831d(i); 48 Stat. 61) is amended by strik-  
5 ing both proviso clauses at the end thereof.

6 (13) Section 5(d) of the Consumer Product Safety Act  
7 (15 U.S.C. 2054(d); 88 Stat. 1211) is repealed.

8 (14) Section 3 of the Act of April 5, 1944 (30 U.S.C.  
9 323; 58 Stat. 191), is repealed.

10 (15) Section 8001 of the Solid Waste Disposal Act (42  
11 U.S.C. 6981; 90 Stat. 2892) is repealed.

12 (16) Sections 200 through 209 and section 211 of title  
13 35, United States Code, are repealed.

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16 and (2); 94 Stat. 2313) is repealed.

17 **EFFECTIVE DATE**

18 **SEC. 402.** This Act shall take effect 6 months after the  
19 date of enactment of this Act.

20 **TITLE I—POLICY.**

21 **FINDINGS**

22 **SEC. 101.** *The Congress, recognizing the profound*  
23 *impact of science, engineering, and technology policy on the*  
24 *economic, social, political, and technological well-being, and*

1 *the health and safety, of the Nation as a whole, hereby finds*  
2 *and declares that—*

3           (1) *the United States has recently experienced a*  
4 *decline in the process of industrial innovation and pro-*  
5 *ductivity which adversely affects domestic productivity,*  
6 *the rate of economic growth, the level of employment,*  
7 *the balance of trade, and the attainment of other na-*  
8 *tional goals;*

9           (2) *the national support of scientific and techno-*  
10 *logical research and development is indispensable to*  
11 *sustained growth and economic stability, and it is in*  
12 *the national interest to maximize the benefits to the*  
13 *general public from such investment;*

14           (3) *scientific and technological developments and*  
15 *discoveries resulting from work performed with Gov-*  
16 *ernment contracts constitute a valuable national re-*  
17 *source which should be developed in a manner consist-*  
18 *ent with the public interest and the equities of the re-*  
19 *spective parties;*

20           (4) *current Federal policy with respect to the allo-*  
21 *cation of rights to the results of federally sponsored re-*  
22 *search and development delays technological progress,*  
23 *and inhibits commercial utilization of those results;*  
24 *and*



1       agency (other than the Tennessee Valley Authority)  
2       and any person other than a small business firm or  
3       nonprofit organization (as defined in section 201 of  
4       title 35, United States Code) where a purpose of the  
5       contract is the conduct of experimental, developmental,  
6       or research work; such term includes any assignment,  
7       substitution of parties or subcontract of any tier en-  
8       tered into or executed for the conduct of experimental,  
9       developmental, or research work in connection with the  
10      performance of that contract;

11           (2) "contractor" means any person or entity  
12      (other than a Federal agency, nonprofit organization,  
13      or small business firm, as defined in section 201 of  
14      title 35, United States Code) which is a party to the  
15      contract;

16           (3) "Director" means the Director of the Office of  
17      Management and Budget, or his designee;

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

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

24           (6) "invention" means any invention or discovery  
25      which is or may be patentable or otherwise protectable

1 under title 35, United States Code, or any novel vari-  
 2 ety of plant which is or may be protectable under the  
 3 Plant Variety Protection Act (7 U.S.C. 2321 et seq.);

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

13 (8) "Secretary" means the Secretary of Com-  
 14 merce; and

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

## 22 TITLE II—IMPLEMENTATION

### 23 RESPONSIBILITIES

24 SEC. 201. (a) The Director shall issue such policies,  
 25 procedures, and guidelines applicable to Federal agencies as

1 *are necessary and desirable to achieve uniform and consistent*  
2 *implementation of the provisions of title III of this Act.*

3 (b) *For the purpose of obtaining consistent application*  
4 *of the policies of this Act, the Secretary is authorized and*  
5 *directed to—*

6 (1) *consult with and advise Federal agencies con-*  
7 *cerning the effective implementation and operation of*  
8 *the policies, purposes, and objectives of this Act;*

9 (2) *accumulate, analyze, and disseminate data ob-*  
10 *tained from Federal agencies; and*

11 (3) *perform such other duties as may be pre-*  
12 *scribed by the President or by statute.*

13 (c) *For the purpose of assuring the effective manage-*  
14 *ment of Government-owned inventions, the Secretary is au-*  
15 *thorized to—*

16 (1) *assist Federal agency efforts to promote the li-*  
17 *censing and utilization of Government-owned inven-*  
18 *tions;*

19 (2) *assist Federal agencies in seeking protection*  
20 *and maintaining inventions in foreign countries, in-*  
21 *cluding the payment of fees and costs connected there-*  
22 *with; and*

23 (3) *consult with and advise Federal agencies as to*  
24 *areas of science and technology research and develop-*  
25 *ment with potential for commercial utilization.*

1 (d) Within 1 year after the date of enactment of this Act  
2 and annually thereafter, the Secretary shall submit to Con-  
3 gress a report of activities pursuant to this Act. Such report  
4 shall include—

5 (1) relevant statistical data regarding the disposi-  
6 tion of subject invention; <sup>disclosures resulting from fed-</sup>  
7 erally funded research and development, including  
8 those inventions disclosed by small businesses and non-  
9 profit organizations;

10 (2) any legislative or administrative recommenda-  
11 tions to better achieve the policy and purposes of this  
12 Act; and

13 (3) an analysis of impact of Federal policies on  
14 the purposes of this Act.

15 (e) The authorities conferred upon the Secretary by sub-  
16 sections (b) through (d) of this section shall expire 7 years  
17 following the effective date of this Act, unless renewed by  
18 action of Congress.

19 TITLE III—ALLOCATIONS OF RIGHTS—

20 GOVERNMENT CONTRACTORS

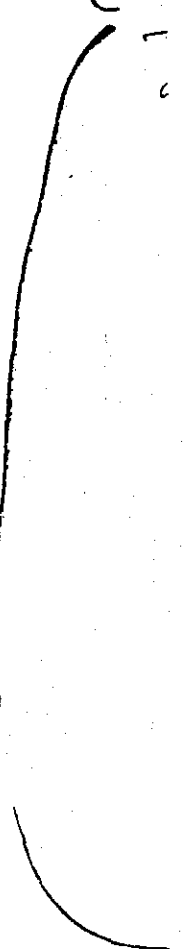
21 RIGHTS OF THE GOVERNMENT

*Unless such action would be inconsistent*

22 SEC. 301. (a) Each Federal agency may acquire on  
23 behalf of the United States, at the time of entering into a  
24 contract, title to or rights to license any subject invention, or

*inf obligation of the U S under international  
agreement,*

*7/1/68  
S. 1657*



*11*



*to be developed under the contract, discouraged, restricted, or otherwise controlled;*  
27

1 may limit the rights of a contractor under section 302(b) of  
2 this title, if—

3 (1) it is determined by a Government authority  
4 which is authorized by statute or Executive order to  
5 conduct foreign intelligence or counterintelligence activ-  
6 ities that such action is necessary to protect the secu-  
7 rity of such activities;

8 (2) the agency determines, on a case-by-case  
9 basis, that there are exceptional circumstances requir-  
10 ing such action to better promote the policy and objec-  
11 tives of section 101(5) of this Act;

12 (3) the contractor is not located in the United  
13 States or does not have a place of business located in  
14 the United States, or is a foreign government; or

15 (4) the contract is entered into under a program  
16 that implements a formal international agreement or  
17 arrangement of cooperation in science and technology,  
18 and rights in the Government greater than a nonexclu-  
19 sive license are necessary for the agency to fulfill its  
20 obligations under the international agreement or ar-  
21 rangement.

22 (b)(1) The rights of the Government under subsection  
23 (a) of this section shall not be exercised by the Federal  
24 agency unless it first determines that at least one of the con-  
25 ditions identified in paragraphs (1) through (4) of subsection

*unless prior action under the contract is necessary to protect the security of such activities; the U.S. - under the Agreement on Atomic Energy*

*inserted*

*return*

*[1c] provide violation of int'l agreement*

1 (a) of this section exist. Except in the case of paragraph (1)  
 2 of such subsection, the agency shall [within 30 days] after the  
 3 award of the applicable contract, file with the Secretary a  
 4 statement stating such determination. In the case of a deter-  
 5 mination under subsection (a) <sup>(3)</sup>(2) or <sup>(4)</sup>(4) of this section, the  
 6 statement shall include an analysis supporting the determi-  
 7 nation and justifying the limitations and conditions being  
 8 imposed. If the Secretary believes that any individual deter-  
 9 mination or pattern of determinations is contrary to the  
 10 terms, policy, or objectives of this Act, the Secretary shall so  
 11 advise the head of the agency concerned and the Director and  
 12 recommend corrective actions.

13 (2) Whenever the Director has determined that one or  
 14 more Federal agencies are utilizing the authority of subsec-  
 15 tion (a) <sup>(3)</sup>(2) or <sup>(4)</sup>(4) of this section is in a manner that is  
 16 contrary to the terms, policy, or objectives of this Act, the  
 17 Director is authorized to issue policies, procedures, and  
 18 guidelines describing classes of situations in which agencies  
 19 may not utilize the provisions of subsection (a) <sup>(3)</sup>(2) or <sup>(4)</sup>(4) of  
 20 this section.

21 (c) Each contract entered into by a Federal agency shall  
 22 include appropriate provisions—

23 (1) to require written reports on the commercial  
 24 use or other forms of utilization or efforts toward ob-  
 25 taining commercial utilization made by the contractor

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1 or its licensees or assignees with respect to any subject  
 2 invention to which the contractor elects title, pursuant  
 3 to section 302 of this title: Provided, That any such  
 4 report, as well as any information on utilization or ef-  
 5 forts toward obtaining utilization obtained as part of a

(3) <sup>Insert</sup> if the head of the Federal agency or a <sup>policy-level</sup> policy-level  
 designee determines that it would be in the national interest,  
 to give the Federal agency the rights (A) to require the  
 contractor to license any state or domestic local government  
 or, pursuant to any existing or future treaty or agreement,  
 any foreign government to practice any subject invention to which  
 the contractor elects title and (B) to sublicense such entities  
 if the contractor refuses to license them.

15 use, and sell any subject invention throughout the  
 16 world by or on behalf of the United States. <sup>Insert</sup>

17 **RIGHTS OF THE CONTRACTOR**

18 **SEC. 302.** (a) Whenever a contractor enters into a con-  
 19 tract, unless limited in those circumstances identified in sec-  
 20 tion 301(a) of this title, the contractor shall have the option of  
 21 retaining title to any subject invention. Such title shall be  
 22 subject <sup>only</sup> to the limitations set forth in sections 301, 304,  
 23 and 305 of this title, <sup>and such title shall not be subject to any</sup>  
 24 other limitations or conditions.]

1 (b) When the Government obtains title to a subject in-  
2 vention under section 301 of this title, the contractor shall  
3 retain a nonexclusive, royalty-free, paid-up, worldwide li-  
4 cense, including the right to sublicense <sup>domestic</sup> affiliates, subsidiar-  
5 ies, and existing licensees to whom the contractor is legally  
6 obligated to sublicense, which shall be revocable only to the  
7 extent necessary for the Government to grant an exclusive  
8 license.

9 WAIVER

10 SEC. 303. (a) A Federal agency may at any time waive  
11 all or any part of the rights of the United States under sec-  
12 tion 301 or 304 of this title to any subject invention or class  
13 of subject inventions made or which may be made under a  
14 contract or class or contracts if the agency determines that—

15 (1) the interests of the United States and the gen-  
16 eral public will be best served thereby; or

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

22 (b) The agency shall maintain a record, which shall be  
23 made public and periodically updated, of determinations  
24 made under this section.



1 head of the agency or his designee determines that such  
2 action is necessary—

3 (1) because the contractor, assignee, or licensee  
4 has not taken, or is not expected to take within a rea-  
5 sonable time, effective steps to achieve practical appli-  
6 cation of the invention;

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

10 (3) to meet requirements for public use specified  
11 by Federal regulation which are not reasonably satis-  
12 fied by the contractor, his assignees or licensees.

13 (b) A determination made pursuant to this section shall  
14 not be considered a contract dispute and shall not be subject  
15 to the Contract Disputes Act (41 U.S.C. 601 et seq.). Any  
16 contractor adversely affected by a determination under this  
17 section may, at any time within 60 days after the determina-  
18 tion is issued, file a petition in the United States Court of  
19 Claims, which shall have jurisdiction to determine the matter  
20 de novo and to affirm, reverse, or modify as appropriate, the  
21 determination of the Federal agency.

22 GENERAL PROVISIONS

23 SEC. 305. Each contract entered into by a Federal  
24 agency shall employ a patent right clause containing appro-  
25 priate provisions to provide—

and that the Fed. Gov. may receive title to  
any subject invention <sup>is made</sup> ~~is made~~ <sup>33</sup> ~~is made~~ <sup>is made</sup>

1 (1) that the contractor disclose each subject inven-  
2 tion to the Federal agency within a reasonable time  
3 after it <sup>is made</sup> becomes known to contractor personnel respon-  
4 sible for the administration of invention and patent  
5 matters, and that the Federal Government may receive  
6 title to any subject invention not disclosed to it within  
7 such time; and

8 (2) unless the Government acquires title to the  
9 subject invention under section 301(a) of this title,

10 that—

11 (A) the contractor make a written election to <sup>a reasonable time</sup>  
12 the Federal agency within [2 years] after disclosure  
13 under paragraph (1) of this subsection, or such ad-  
14 ditional time as may be approved by the Federal  
15 agency whether the contractor will retain title to a  
16 subject invention pursuant to the provisions of  
17 section 302 of this title: Provided, That, in any  
18 case where publication, on sale, or public use has  
19 initiated the 1-year statutory period wherein valid  
20 patent protection can still be obtained within the  
21 United States, the period for election of title may  
22 be shortened by the Federal agency to a date that  
23 is no more than 60 days prior to the end of the  
24 statutory period;

(3) When a patent issues on an invention under a contract the notification of the patent's issuance that appears in the Official Gazette of the U.S.P.-XII- should contain a statement specifying that this invention was made with Government support in the manner.

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(B) a contractor which elects rights in a subject invention agrees to file [a] patent applications [prior to any statutory bar date that may occur under title 35, United States Code, due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title] within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times; and

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

BACKGROUND RIGHTS

SEC. 306. Nothing contained in this Act shall be construed to deprive the owner of any background patent or of such rights as the owner may have under such patent.



1 TITLE IV—MISCELLANEOUS

2 REPEAL OF EXISTING STATUTORY RESEARCH AND  
3 DEVELOPMENT AUTHORIZATIONS

4 SEC. 401. The following Acts are hereby amended as  
5 follows:

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

9 (2) Section 501(c) of the Federal Coal Mine Health and  
10 Safety Act of 1969 (30 U.S.C. 951(c)) is amended by strik-  
11 ing the last sentence thereof.

12 (3) Section 106(c) of the National Traffic and Motor  
13 Vehicle Safety Act of 1966 (15 U.S.C. 1395(c)) is repealed.

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

16 (5)(A) Section 152 of the Atomic Energy Act of 1954  
17 (42 U.S.C. 2182) is repealed: Provided, however, That such  
18 section shall continue to be effective with respect to any appli-  
19 cation for a patent in which the statement under oath referred  
20 to in such section has been filed or requested to be filed by the  
21 Commissioner of Patents and Trademarks prior to the effec-  
22 tive date of this Act.

23 (B) The item relating to section 152 in the table of con-  
24 tents of the Atomic Energy Act of 1954 is amended to read  
25 as follows:

"Sec. 152. Repealed."

1       (6) *The National Aeronautics and Space Act of 1958*  
 2 *(42 U.S.C. 2451 et seq.) is amended by—*

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

11           (B) *repealing section 306 thereof (42 U.S.C.*  
 12 *2458);*

13           (C) *adding at the end of section 203 thereof (42*  
 14 *U.S.C. 2473) the following new subsection:*

15           “(d) *For the purpose of chapter 17 of title 35, United*  
 16 *States Code, the Administration shall be considered a defense*  
 17 *agency of the United States.”;*

18           *and*

19           (D) *striking “(including patents and rights there-*  
 20 *under)” in section 203(c)(3) thereof (42 U.S.C.*  
 21 *2473(c)(3)).*

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

1 (8) Section 4 of the Helium Act Amendments of 1960 DOI  
 2 (50 U.S.C. 167b) is amended by striking all after "utiliza-  
 3 tion" and inserting in lieu thereof a period.

4 (9) Section 32 of the Arms Control and Disarmament DoD  
 5 Act (22 U.S.C. 2572) is repealed.

6 (10) Subsection (e) of section 302 of the Appalachian AEC  
 7 Regional Development Act of 1965 (40 U.S.C. App. 302(e))  
 8 is repealed.

9 (11) Subsections (a) through (k), (m), and (n) of section DOE  
 10 9 of the Federal Nonnuclear Energy Research and Develop-  
 11 ment Act of 1974 (42 U.S.C. 5908) are repealed.

12 (12) Section 5(d) of the Consumer Product Safety Act CPSC  
 13 (15 U.S.C. 2054(d)) is repealed.

14 (13) Section 3 of the Act of April 5, 1944 (30 U.S.C. ?  
 15 323), is repealed.

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

18 (15) Chapter 38 of title 35, United States Code, is USDA  
 19 amended—

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

24 (B) by adding ": Provided, That, in the case of a  
 25 variety of plant, the date of determination (as defined

When it is determined that commercialization of the technology to be developed under the funding agreement should be <sup>38</sup>deserving, restricted or otherwise controlled, (ii)

1 in section 41(d) of the Plant Variety Protection Act (7  
2 U.S.C. 2401(d)) must also occur during the period of  
3 contract performance" immediately after "agreement"  
4 in section 201(e);

5 (C) in section 202(a), (i) by amending clause (i)  
6 to read as follows: "(i) when the contractor is not locat-  
7 ed in the United States or does not have a place of  
8 business located in the United States," and (ii) by  
9 striking "or (iii)" and inserting in lieu thereof the fol-  
10 lowing: ", (iii) when the funding agreement is entered  
11 into under a program that implements a formal inter-  
12 national agreement or arrangement of cooperation in  
13 science and technology, and rights in the Government  
14 greater than a nonexclusive license are necessary for  
15 the agency to fulfill its obligations under the interna-  
16 tional agreement or arrangement; or (iv)";

17 (D) by amending section 202(b) to read as fol-  
18 lows:

19 "(b)(1) The rights of the Government under paragraph  
20 (a) of this section shall not be exercised by a Federal agency  
21 unless it first determines that at least one of the conditions  
22 identified in subparagraphs (i) through (iv) of paragraph (a)  
23 exists. Except in the case of paragraph (a)(iv), the agency  
24 shall file with the Secretary of Commerce, within 30 days  
25 after the award of the applicable funding agreement, a state-

1 ment stating such determination. In the case of a determina-  
 2 tion under paragraphs (a) (ii) or (iii),<sup>(ii)</sup> the statement shall  
 3 include an analysis justifying the determination. If the Sec-  
 4 retary of Commerce believes that any individual determina-  
 5 tion or pattern of determinations is contrary to the policies  
 6 and objectives of this chapter or otherwise not in conformance  
 7 with this chapter, the Secretary shall so advise the head of  
 8 the agency concerned and the Administrator of the Office of  
 9 Federal Procurement Policy, and recommend corrective ac-  
 10 tions.

11 “(2) Whenever the Administrator of the Office of Feder-  
 12 al Procurement Policy has determined that one or more Fed-  
 13 eral agencies are utilizing the authority of subparagraphs (i)  
 14 through (v) of paragraph (a) of this section in a manner that  
 15 is contrary to the policies and objectives of this chapter, the  
 16 Administrator is authorized to issue regulations describing  
 17 classes of situations in which agencies may not exercise the  
 18 authorities of those subparagraphs.”;

19 ~~(E) by amending subparagraphs (1), (2), and (3)~~  
 20 ~~of section 202(c) to read as follows:~~

21 “(1) That the contractor disclose each subject invention  
 22 to the Federal agency within a reasonable time after it be-  
 23 comes known to contractor personnel responsible for the ad-  
 24 ministration of patent matters, and that the Federal Govern-

1 ment may receive title to any subject invention not disclosed  
2 to it within such time.

3       “(2) That the contractor make a written election within  
4 2 years after disclosure to the Federal agency (or such addi-  
5 tional time as may be approved by the Federal agency)  
6 whether the contractor will retain title to a subject invention:  
7 Provided, That, in any case where publication, on sale, or  
8 public use, has initiated the 1 year statutory period in which  
9 valid patent protection can still be obtained in the United  
10 States, the period for election may be shortened by the Feder-  
11 al agency to a date that is not more than sixty days prior to  
12 the end of the statutory period: And provided further, That  
13 the Federal Government may receive title to any subject in-  
14 vention in which the contractor does not elect to retain rights  
15 or fails to elect rights within such times.

16       “(3) That a contractor electing rights in a subject inven-  
17 tion agrees to file a patent application prior to any statutory  
18 bar date that may occur under this title due to publication, on  
19 sale, or public use, and shall thereafter file corresponding  
20 patent applications in other countries in which it wishes to  
21 retain title within reasonable times, and that the Federal  
22 Government may receive title to any subject inventions in the  
23 United States or other countries in which the contractor has  
24 not filed patent applications on the subject invention within  
25 such times.”;

*E*  
*(R)* by adding the following new paragraph at the  
end of section 202:

*(g)* A Federal agency may at any time waive all or  
any part of the rights of the United States under paragraphs  
(c) (4) through (8) of this section, section 203, and section  
204 of this chapter, to any subject invention or class of sub-  
ject inventions made or which may be made under a funding  
agreement or class of funding agreements if the agency deter-  
mines (A) that the interests of the United States and the  
general public will be best served thereby; or (B) the funding  
agreement involves cosponsored, cost sharing or joint venture  
research or development when the contractor or other sponsor  
or joint venturer is required to make or has made a substan-  
tial contribution of funds, facilities, or equipment to the work  
performed under the funding agreement. The agency shall  
maintain a record, which shall be made public and periodi-  
cally updated, of determinaitons made under this paragraph.  
In making such determinations under clause (A) of this  
paragraph, the agency shall consider at least the following  
objectives:

(1) encouraging the wide availability to the  
public of the benefits of the experimental, developmen-  
tal, or research programs in the shortest practicable  
time;

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

3           “(3) encouraging participation by private persons,  
4 including the most highly qualified persons, in Gov-  
5 ernment-sponsored experimental, developmental, or re-  
6 search programs; and

7           “(4) fostering competition preventing the creation  
8 or maintenance of other situations inconsistent with the  
9 antitrust laws.”;

10           ~~(G)~~ <sup>F</sup> by striking “may” in section 202(c)(5) and  
11 inserting in lieu thereof “as well as any information  
12 on utilization or efforts at obtaining utilization ob-  
13 tained as part of a proceeding under section 203 of this  
14 chapter ~~shall~~ <sup>may</sup>”;

15           ~~C~~ <sup>H</sup> by striking clause (B) in section 202(c)(7)  
16 and redesignating clauses (C) and (D) of such section  
17 as clauses (B) and (C), respectively;

18           ~~(L)~~ <sup>H</sup> by adding at the end of section 203 the follow-  
19 ing:

20           “A determination pursuant to this section shall not be  
21 considered a contract dispute and shall not be subject to the  
22 Contract Disputes Act (41 U.S.C. 601 et seq.). Any contrac-  
23 tor, assignee, or exclusive licensee adversely affected by a  
24 determination under this section may, at any time within 60  
25 days after the determination is issued, file a petition in the



1 *United States Court of Claims, which shall have jurisdiction*  
 2 *to determine the matter de novo and to affirm, reverse, or*  
 3 *modify as appropriate, the determination of the Federal*  
 4 *agency.”; and*

5 ~~(S)~~ *by amending section 209 by striking subsec-*  
 6 *tion (c)(2); by redesignating subsection (c)(3) as sub-*  
 7 *section (c)(2); and by striking all in paragraph (d)*  
 8 *after “objections” and inserting in lieu thereof a*  
 9 *period.*

10 *(16) Section 6(e) of the Stevenson-Wydler Technology* *LSF*  
 11 *Innovation Act of 1980 (15 U.S.C. 3705(e)) is repealed.* *DOE*

12 *(17) Section 10(a) of the Act of June 29, 1935 (7*  
 13 *U.S.C. 427i(a)) is amended by striking the last sentence*  
 14 *thereof.*

15 *(18) Section 427(b) of the Federal Mine Safety and* *DC*  
 16 *Health Act of 1977 (30 U.S.C. 937(b)) is amended by strik-*  
 17 *ing the last sentence thereof.*

18 *(19) Section 306(d) of the Surface Mining Control and* *DO*  
 19 *Reclamation Act of 1977 (30 U.S.C. 1226(d)) is amended*  
 20 *by striking the first two sentences thereof.*

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

23 *(21) Section 6(b) of the Solar Photovoltaic Energy Re-* *DOF*  
 24 *search, Development, and Demonstration Act of 1978 (42*

1 U.S.C. 5585(b)) is amended by striking "7, 8, and 9" and  
 2 inserting in lieu thereof "7 and 8".

7  
 ← 3 (22) Section 12 of the Native Latex Commercialization  
 4 and Economic Development Act of 1978 (7 U.S.C. 178j) is  
 5 repealed.

EPA 6 (23) Section 408 of the Water Research and Develop-  
 7 ment Act of 1978 (42 U.S.C. 7879) is repealed.

DCE 8 (24) (A) Section 173 of the United States Synthetic  
 9 Fuels Corporation Act of 1980 (42 U.S.C. 8773) is re-  
 10 pealed.

DOE 11 (B) The item relating to section 173 in the table of con-  
 12 tents of the Energy Security Act (42 U.S.C. 8701 et seq.) is  
 13 amended to read as follows:

"Sec. 173. Repealed."

14 RELATIONSHIP TO ANTITRUST LAWS

15 ~~Insert~~ SEC. 402. Nothing in this Act shall be deemed to  
 16 convey to any person immunity from civil or criminal liabili-  
 17 ty, or to create any defenses to actions, under any antitrust  
 18 law of the United States.

19 EFFECTIVE DATE

20 SEC. 403. (a) This Act shall take effect 6 months after  
 21 the date of enactment of this Act.

22 (b) After the effective date of this Act, each Federal  
 23 agency is authorized, notwithstanding any other law govern-  
 24 ing the disposition of rights in subject inventions, to allow a  
 25 contractor or an inventor to retain title to subject inventions

(a) In an action brought by the United States alleging a violation of section 7 of the Clayton Act (15 U.S.C. 81) the following shall be deemed an acquisition of assets by one person from another person:

(i) the retention of title to a subject invention by a contractor or inventor under section 301 or 302 of this Act; and

(ii) the grant of an exclusive or partially exclusive license under sections 401-403 of this Act.

1 *made under contracts awarded prior to the effective date of*  
2 *this Act, subject to the same terms and conditions as would*  
3 *apply under this Act and the Director's implementing poli-*  
4 *cies, procedures, and guidelines had the contract been entered*  
5 *into after the effective date of this Act.*