

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5023

Offered by _____

[July 17, 1984]

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

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

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1 Findings

2 Sec. 101. The Congress, recognizing the profound impact
3 of science and technology, finds and declares that--

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

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

14 (3) inventions resulting from Government-sponsored
15 research and development constitute a valuable national
16 resource which should be developed in a manner
17 consistent with the public interest and the equities of
18 the respective parties; and

19 (4) there is a need for the establishment and
20 implementation of a flexible Government-wide policy to
21 increase the utilization of the results of
22 Government-sponsored research and development, and this
23 policy should promote the progress of science and the
24 useful arts, encourage the efficient commercial
25 utilization of technological developments and

1 discoveries, guarantee the protection of the public
2 interest in the United States and foreign countries, and
3 recognize the equities of the contracting parties.

4 TITLE II--IMPLEMENTATION

5 Functions of the Federal Coordinating Council on Science,
6 Engineering, and Technology

7 Sec. 201. (a)(1) The Federal Coordinating Council for
8 Science, Engineering, and Technology (established by section
9 401 of the National Science and Technology Policy,
10 Organization, and Priorities Act of 1976 (42 U.S.C. 6651)
11 and reestablished by Executive Order 12039) (hereinafter in
12 this section referred to as the "Council") shall make
13 recommendations to the Director of the Office of Science and
14 Technology Policy (or his designee) and to the Secretary
15 with regard to uniform policies, guidelines, and practices
16 to carry out the provisions of this Act.

17 (2) For the purpose of assuring effective management of
18 Government-owned or funded inventions, the Secretary of
19 Commerce shall chair a committee of the Council to formulate
20 the recommendations required by this subsection. Such
21 committee shall also include but not be limited to
22 representatives of each Federal agency with a major research
23 and development program. When adopted by the Director any
24 such recommendations shall be transmitted to Federal
25 agencies through appropriate channels, including those

1 provided in section 202(6).

2 (c) In order to carry out the responsibilities set forth
3 in subsection (a), the Council may--

4 (1) acquire data and reports from Federal agencies
5 on the interpretation and implementation of this Act and
6 related policies, regulations, and practices;

7 (2) review Federal agency implementation of the
8 provisions of this Act;

9 (3) analyze, on a continuing basis, data acquired by
10 the Council;

11 (4) consider problems and developments in the fields
12 of inventions, patents, and matters connected therewith
13 and the impact thereof on Government policy or uniform
14 accommodation or implementation by Federal agencies; and

15 (5) publish annually a report on Council efforts,
16 findings, and recommendations made under this section,
17 which report shall include--

18 (A) relevant statistical data regarding the
19 disposition of subject invention disclosures
20 resulting from Government-sponsored research and
21 development, including those inventions disclosed by
22 small businesses and nonprofit organizations;

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

25 (C) an analysis of Federal policies related to

1 this Act.

2 Functions of the Secretary of Commerce

3 Sec. 202. For the purpose of assuring the effective
4 management of Government-owned inventions, the Secretary
5 may--

6 (1) assist Federal agency efforts to promote the
7 licensing and utilization of Government-owned
8 inventions;

9 (2) assist Federal agencies in seeking and
10 maintaining protection on inventions in foreign
11 countries, including the payment of fees and costs
12 connected therewith;

13 (3) consult with and advise Federal agencies as to
14 areas of science and technology research and development
15 with potential for commercial utilization;

16 (4) publish notification of all Government-owned
17 inventions that are available for licensing or
18 assignment;

19 (5) evaluate inventions referred to him by Federal
20 agencies, and patent applications filed thereon, in
21 order to identify those inventions with the greatest
22 commercial potential and to insure promotion and
23 utilization by the public of inventions so identified;
24 and

25 (6) initiate regulations and revisions thereof which

1 shall be promulgated by the Director of the Office of
2 Management and Budget after full consideration of agency
3 and public comments.

4 TITLE III--ALLOCATION OF RIGHTS

5 Rights of the Government and the Contractor

6 Sec. 301. (a) Subject to subsection (c) and to section
7 303, each contractor may elect to retain title, either
8 worldwide or in such countries as it may choose, to any
9 subject invention. Where not in violation of existing
10 treaties or laws of the United States, a Federal agency may,
11 at the time of contracting, limit or eliminate this right,
12 place additional restrictions or conditions in the contract
13 that go beyond those set forth in subsection (c), expand the
14 rights of the Government to license or sublicense, or alter
15 or eliminate the contractor's right under subsection (c)(7),
16 if--

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

22 (2) the contractor is not located in the United
23 States or does not have a place of business located in
24 the United States, is a foreign government, or is
25 subject to the control of a foreign government;

1 (3) the contract is related to or associated with an
2 international treaty, agreement, memorandum of
3 understanding, or other arrangement with a foreign
4 government including (but not limited to) agreements of
5 cooperation in science and technology and military
6 agreements related to weapons development or production,
7 and it is determined by the agency that rights in the
8 Government in any subject inventions beyond the license
9 right provided in subsection (c)(3) are necessary for
10 the agency to fulfill its obligations under the
11 international treaty, agreement, or arrangement; or

12 (4) the agency determines, on a case by case basis,
13 that there are exceptional circumstances requiring such
14 action.

15 (b) Each determination made by a Federal agency under
16 subsection (a) shall be in writing and copies of those made
17 under subsection (a)(4) shall be filed with the Federal
18 Coordinating Council for Science, Engineering, and
19 Technology. In the case of a determination under subsection
20 (a)(4), the statement shall include an analysis supporting
21 the determination and justifying the limitations and
22 conditions being imposed. If the contractor believes that a
23 determination is contrary to the terms, policy, or
24 objectives of this Act, or constitutes an abuse of
25 discretion by the agency, the determination shall be subject

1 to section 303(b). Whenever the Director of the Office of
2 Management and Budget has determined that one or more
3 Federal agencies are utilizing the authority of subsection
4 (a)(4) in a manner that is contrary to the terms, policy, or
5 objectives of this Act, he may promulgate regulations under
6 section 202(6) which establish policies, procedures, and
7 guidelines describing classes of situations in which
8 agencies may or may not utilize the provisions of subsection
9 (a)(4).

10 (c) In accordance with regulations which shall be
11 promulgated under section 202(6), each contract under which
12 the contractor may elect to retain title to a subject
13 invention shall include a patent rights clause containing
14 such provisions as may be necessary and appropriate to
15 effectuate the following rights and requirements:

16 (1) The contractor shall disclose each subject
17 invention to the contracting Federal agency within a
18 reasonable time after it is made and the Government may
19 receive title to any subject invention not disclosed
20 within such reasonable time.

21 (2) Unless the Government has acquired the right to
22 title in accordance with subsection (a)--

23 (A) the contractor shall make a written election
24 to retain title to the subject invention within a
25 reasonable time after disclosure under paragraph

1 (1);
2 (B) the Federal agency may consider and, with
3 the consent of the contractor, grant requests for
4 retention of rights by the inventor in any country
5 in which the contractor has not elected title on
6 such terms and conditions as may be deemed
7 appropriate by the agency and subject to section
8 303;

9 (C) a contractor electing to retain title in any
10 country to a subject invention shall file a patent
11 application in the elected country within a
12 reasonable time; and

13 (D) the Government may receive title to any
14 subject invention in any countries in which the
15 contractor or inventor fails to elect or has elected
16 not to retain title or has failed to file a patent
17 application in accordance with this paragraph.

18 (3) With respect to any subject invention to which a
19 contractor elects to retain title, the Government shall
20 have (in addition to any rights that have been taken
21 under subsection (a))--

22 (A) a nonexclusive, nontransferable,
23 irrevocable, paid-up license to practice or have
24 practiced the subject invention throughout the world
25 by or on behalf of the Government;

1 (B) if provided in the contract, such additional
2 rights to sublicense any foreign government or
3 international organization pursuant to any existing
4 or future treaty or agreement; and

5 (C) the right to require the contractor,
6 inventor, or assignee to license another person to
7 practice a subject invention on reasonable terms
8 if--

9 (i) such licensing is necessary to permit
10 lawful commercial manufacture, use, or sale by a
11 third party of a specified end item of a major,
12 multiyear research and development project and
13 such subject invention was made during research
14 and development activities directly related to
15 that project;

16 (ii) a similar product or process is not
17 commercially available as a reasonable
18 substitute for the licensing; and

19 (iii) such right is specified in the
20 contract.

21 (4) The Federal agency shall require, in accordance
22 with regulations which shall be promulgated under
23 section 202(6), at least one written report during the
24 first 3 years following receipt of title by a contractor
25 or inventor and may require other written reports on the

1 efforts to obtain commercial utilization made by the
2 contractor, inventor, licensee, or assignee with respect
3 to any subject invention to which the contractor elects
4 title pursuant to this section, except that any such
5 report, as well as any information on utilization or
6 efforts toward obtaining utilization obtained as part of
7 a proceeding under section 373, shall be treated by the
8 agency as a trade secret or as commercial or financial
9 information obtained from a person and privileged or
10 confidential and not subject to disclosure under section
11 552 of title 5, United States Code.

12 (5) The contractor or inventor, in the event a
13 United States patent application is filed by it or on
14 its behalf or by any assignee, shall include within the
15 specification of such application and any patent issuing
16 thereon a statement specifying that the invention was
17 made with Government support and that the Government has
18 certain rights in the invention.

19 (6) The balance of any royalties or income earned on
20 subject inventions by the contractor operating a
21 Government-owned, contractor-operated facility up to a
22 total equal to 5 percent of that facility's annual
23 budget (if the invention was made in the facility)
24 shall, after payment of patenting costs, licensing
25 costs, and other expenses (including payments to

1 inventors), be used by such contractor for scientific
2 research and development consistent with the mission and
3 objectives of such facility with priority given to
4 activities that increase the licensing potential of
5 other inventions of the facility, with any such
6 royalties or income in excess of 5 percent of the
7 facility's budget returned to the Treasury; and to the
8 extent practical the licensing of the inventions
9 involved shall be administered by contractor employees
10 on location at the facility.

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

24 (8) A transfer by the contractor of rights in any
25 subject invention shall be subject to the rights of the

1 Government provided by this section and sections 302,
2 303, and 304.

3 (9) The clause may impose any other administrative
4 requirements which may be necessary to effectuate rights
5 of the Government and the contractor as specified in
6 this Act, to the extent not inconsistent with this Act.

7 Waiver

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

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

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

1 (d) The Federal agency shall maintain a record, which
2 shall be made public and periodically updated, of
3 determinations 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 public
7 of the benefits of Government-sponsored research and
8 development in the shortest practicable time.

9 (B) Promoting the commercial utilization of
10 inventions 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
15 creation 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 section 301(a)(2), the contractor shall
19 be permitted to take title subject to this section and
20 sections 301(c), 303, and 304 of this Act.

21 March-In Rights and Notification of Availability for

22 Licensing

23 Sec. 303. (a) Where a contractor or inventor has elected
24 to retain title to a subject invention under section 301 or
25 302, the Federal agency shall have the right, in accordance

1 with regulations which shall be promulgated under section
2 202(6), and subject to the provisions of subsection (b), to
3 require the contractor or his assignee or the inventor or
4 his assignee to grant a nonexclusive, partially exclusive,
5 or exclusive license to a responsible applicant or
6 applicants, upon terms reasonable under the circumstances,
7 if the head of the agency (or his designee) determines that
8 such action is necessary--

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

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

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

19 (b)(1) A determination made pursuant to this section or
20 section 301(b)(1) shall not be subject to the Contract
21 Disputes Act (41 U.S.C. 601 et seq.).

22 (2) An administrative appeals procedure shall be
23 established by regulations promulgated under section 202(6).

24 (3) Any contractor, inventor, assignee, or exclusive
25 licensee adversely affected by a determination under this

1 section may, at any time within sixty days after the
2 determination is issued--

3 (A) file an appeal under the appeals procedure
4 established 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
8 appropriate, the determination of the Federal agency.

9 (4) In cases described in paragraphs (1) and (3) of
10 subsection (a), the agency's determination shall be held in
11 abeyance pending the exhaustion of any appeal described in
12 paragraph (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(5).

16 (2) If the head of an agency (or his designee)
17 determines, on the basis of information contained in the
18 report required to be filed with the agency by a contractor
19 or inventor under section 301(c)(4), that such contractor or
20 inventor has failed to meet the minimum standards prescribed
21 pursuant to paragraph (1), such agency head (or designee)
22 shall refer interested parties to the patent holder of such
23 invention through the licensing program of such agency or
24 the National Technology Information Service.

25 Background Rights

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

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

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

1 practical application of the subject invention or work
2 object. Any such determination shall be on the record after
3 an opportunity for an agency hearing in which the contractor
4 has the right to participate and the contractor shall be
5 given prompt notification of the determination by certified
6 or registered mail.

7 TITLE IV--MISCELLANEOUS

8 Definitions

9 Sec. 401. As used in this Act (other than in section
10 402)--

11 (1) the term "person" means any person as defined
12 in section 1 of title 1, United States Code;

13 (2) the term "Government" means the Government of
14 the United States of America;

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

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

24 (5) the term "nonprofit organization" means a
25 university or other institution of higher education or

1 an organization of the type described in section
2 501(c)(3) of the Internal Revenue Code of 1954 and
3 exempt from taxation under section 501(a) of such Code,
4 or any nonprofit, scientific, or educational
5 organization qualified under a State nonprofit
6 organization statute;

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

21 (7) the term "contractor" means any person or
22 entity (other than a Federal agency, nonprofit
23 organization, or small business firm) which is a party
24 to a contract;

25 (8) the term "Secretary" means the Secretary of

1 Commerce;

2 (9) the term "director" means the Director of the
3 Office of Science and Technology Policy, or his
4 designee;

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

11 (11) the term "subject invention" means any
12 invention of a contractor conceived or first actually
13 reduced to practice in the performance of work under a
14 contract, except that in the case of a sexually
15 propagated variety of plant the date of determination
16 (as defined in section 41(d) of the Plant Variety
17 Protection Act (7 U.S.C. 2401(a))) must also occur
18 during the period of contract performance;

19 (12) the term "practical application" with respect
20 to any invention means the manufacture (in the case of a
21 composition or product), practice (in the case of a
22 process or method), or operation (in the case of a
23 machine or system) of such invention under such
24 conditions as to establish that the invention is being
25 utilized and that its benefits are, to the extent

1 permitted by law or Government regulations, available to
2 the public on reasonable terms or through reasonable
3 licensing arrangements;

4 (13) the term "antitrust law" means the laws
5 included within the definition of the term "antitrust
6 laws" in section 1 of the Clayton Act (15 U.S.C. 12),
7 as amended;

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

15 (15) the term "United States" includes the
16 territories, possessions, and the District of Columbia;

17 (16) the term "inventor" with regard to a subject
18 invention means a person who is listed as an inventor on
19 the patent for said invention issued by the United
20 States Patent and Trademark Office; and

21 (17) the term "Government-owned, contractor-
22 operated facility" includes all federally funded
23 research and development centers.

24 Amendments To Other Acts

25 Sec. 402. The following Acts are hereby amended as

1 follows:

2 (1) Section 205(a) of the Act of August 14, 1946
3 (7 U.S.C. 1624(a); 60 Stat. 1090) is amended by striking
4 out the last sentence.

5 (2) Section 501(c) of the Federal Coal Mine Health
6 and Safety Act of 1969 (30 U.S.C. 951(c); 83 Stat. 742)
7 is amended by striking out the last sentence.

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

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

14 (5) Section 152 of the Atomic Energy Act of 1954 (42
15 U.S.C. 2182; 68 Stat. 943) is repealed; except that such
16 section shall continue to be effective with respect to
17 (A) any application for a patent in which the statement
18 under oath referred to in such section has been filed or
19 requested to be filed by the Commissioner of Patents and
20 Trademarks prior to the effective date of this Act, and
21 (B) any right retained by the Government under sections
22 301(a)(4) and (5) of this Act.

23 (6) The National Aeronautics and Space Act of 1958
24 (42 U.S.C. 2451 et seq.; 72 Stat. 426) is amended--
25 (A) by striking out section 305 (42 U.S.C.

1 2457); except that subsections (c), (d), and (e) of
2 such section shall continue to be effective with
3 respect to any application for patents in which the
4 written statement referred to in subsection (c) of
5 such section has been filed or requested to be filed
6 by the Commissioner of Patents and Trademarks prior
7 to the effective date of this Act;

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

16 (C) by adding at the end of section 203(c) (42
17 U.S.C. 2473(c)) the following new paragraph:
18 "(14) to provide effective contractual provisions
19 for the prompt and effective reporting of the results of
20 the activities of the Administration, including full and
21 complete technical reporting of any invention,
22 discovery, improvement, or innovation which may be made
23 in the performance of any work under any contract of the
24 Administration, whether or not patentable under title
25 35, United States Code.";

1 (D) by adding at the end of section 203 (42

2 U.S.C. 2473) the following new subsection:

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

6 (E) by adding at the end of title III the
7 following new section:

8 "Use of Patented Inventions

9 "Sec. 311. (a) Any object intended for launch,
10 launched, or assembled in outer space shall be considered a
11 vehicle for purpose of section 272 of title 35, United
12 States Code (35 U.S.C. 272).

13 "(b) The use or manufacture of any patented invention
14 incorporated in a space vehicle launched by the United
15 States Government for a person other than the United States
16 shall not be considered to be a use or manufacture by or for
17 the United States within the meaning of section 1498(a) of
18 title 28, United States Code (28 U.S.C. 1498(a)), unless the
19 Administration gives an express authorization or consent for
20 such use or manufacture."

21 (7) Section 6 of the Act of July 7, 1960 (30 U.S.C.
22 656; 74 Stat. 337) is amended by striking out the first
23 sentence.

24 (8) Section 4 of the Helium Act Amendments of 1960
25 (50 U.S.C. 167b; 74 Stat. 920) is amended by striking

1 out all after "utilization" and inserting in lieu
2 thereof a period.

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

5 (10) Section 302(e) of the Appalachian Regional
6 Development Act of 1965 (48 U.S.C. App. 302(e); 79 Stat.
7 5) is repealed.

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

11 "Sec. 9. The Administration shall be considered a
12 defense agency of the United States for purposes of chapter
13 17 of title 35, United States Code."

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

16 "Administration Treated as Defense Agency for Purposes of
17 Secrecy of Inventions".

18 (12) Section 5(d) of the Consumer Product Safety Act
19 (15 U.S.C. 2054(d); 88 Stat. 1211) is repealed.

20 (13) Section 3 of the Act of April 5, 1944 (38
21 U.S.C. 323; 58 Stat. 191) is repealed.

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

25 (B) Section 8004(c)(2) of such Act is amended by

1 striking out "notwithstanding section 6981(c)(3) of
2 this title".

3 (15) Chapter 18 of title 35, United States Code, is
4 amended--

5 (A) by inserting "", but does not mean any
6 agreement or arrangement entered into between a
7 private entity person and the operator of a
8 Government-owned, contractor-operated facility"
9 immediately before the period at the end of section
10 201(b);

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

15 (C) by inserting "", except that in the case of
16 a sexually propagated variety of plant, the date of
17 determination (as defined in section 41(d) of the
18 Plant Variety Protection Act (7 U.S.C. 2401(d)))
19 must also occur during the period of contract
20 performance" immediately after "agreement" in
21 section 201(e);

22 (D) in section 202(a)--

23 (i) by amending clause (i) to read as

24 follows: "(1) when the contractor is not

25 located in the United States or does not have a

1 place of business located in the United States
2 or is subject to the control of a foreign
3 government''; and

4 (ii) by striking ''or (iii)'' and inserting
5 in lieu thereof the following: '', (iii) when
6 the funding agreement is related to or
7 associated with an international treaty,
8 agreement, memorandum of understanding, or other
9 arrangement with a foreign government including
10 (but not limited to) agreements of cooperation
11 in science and technology or military agreements
12 relating to weapons development or production,
13 and it is determined by the agency that rights
14 in the Government greater than a nonexclusive
15 license are necessary for the agency to fulfill
16 its obligations under the international treaty,
17 agreement, memorandum of understanding, or other
18 arrangement, or (iv)'';

19 (E) by adding at the end of section 202(b) the
20 following new paragraphs:

21 ''(4) If the contractor (other than a grantee or a party
22 to a cooperative agreement) believes that a determination is
23 contrary to the policies and objectives of this chapter or
24 constitutes an abuse of discretion by the agency, the
25 determination shall be subject to section 203(d).

1 “(5) Whenever the Director of the Office of Management
2 and Budget has determined that one or more Federal agencies
3 are utilizing the authority of section 202(a)(ii) in a
4 manner that is contrary to the policies and objectives of
5 this chapter, he may promulgate regulations under section
6 206 which establish policies, procedures, and guidelines
7 describing classes of situations in which agencies may not
8 exercise the authorities of that section.”;

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

11 “(1) A requirement that the contractor disclose
12 each subject invention to the contracting Federal agency
13 within a reasonable time after it becomes known to
14 contractor personnel responsible for the administration
15 of patent matters and that the Federal Government may
16 receive title to any subject invention not disclosed to
17 it within such time.

18 “(2) A requirement that the contractor make a
19 written election within 2 years after disclosure to the
20 Federal agency (or such additional time as may be
21 approved by the Federal agency) whether the contractor
22 will retain title to a subject invention, except that
23 (A) in any case where publication, on sale, or public
24 use has initiated the one year statutory period in which
25 valid patent protection can still be obtained in the

1 United States, the period for election may be shortened
2 by the Federal agency to a date that is not more than 60
3 days prior to the end of the statutory period, and (B)
4 the Federal Government may receive title to any subject
5 invention in which the contractor does not elect to
6 retain rights or fails to elect rights within such time.

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

18 (ii) by amending paragraph (4) of section 202(c)
19 by inserting "(A)" after "(4)", and by adding at
20 the end thereof the following new subparagraph:

21 "(B) the right to require the contractor, inventor,
22 or assignee to license another person to practice a
23 subject invention on reasonable terms if--

24 "(i) such licensing is necessary to permit
25 lawful commercial manufacture, use or sale by a

1 third party of a specified end item of a major,
2 multiyear research and development project and such
3 subject invention was made during research and
4 development activities directly funded under that
5 project;

6 "(ii) a similar product or process is not
7 commercially available as a reasonable substitute
8 for the licensing; and

9 "(iii) such right is specified in the
10 contract.";

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

16 (H) by amending paragraph (7) of section 202(c)
17 to read as follows:

18 "(7) In the case of a nonprofit organization--

19 "(A) a requirement that the contractor share
20 royalties with the inventor, and

21 "(B) a requirement that the balance of any
22 royalties or income earned by the contractor with
23 respect to subject inventions, after payments of
24 expenses (including payments to inventors)

25 incidental to the administration of subject

1 inventions, be utilized for the support of
2 scientific research or education.'';

3 (I) by adding the following new subsection at
4 the end of section 202:

5 '(g)(1) A Federal agency may at any time waive all or
6 any part of the rights of the United States, under sections
7 202, 203, and 204 of this chapter, to any subject inventions
8 made under a funding agreement or class of funding
9 agreements if the agency determines that the interests of
10 the United States and the general public will be best served
11 thereby including, but not limited to, instances where--

12 '(A) the funding agreement involves cosponsored,
13 cost shared, or joint venture research or development
14 and the contractor or other sponsor or joint venturer is
15 required to make or has made a substantial contribution
16 of funds, facilities, personnel, data, or equipment to
17 the work performed under the funding agreement, or

18 '(B) the conditions justifying acquisition of title
19 by the Government under section 202(a) no longer exist
20 or do not apply in the case of the subject invention.

21 The agency shall maintain a record, which shall be made
22 public and periodically updated, of determinations made
23 under this paragraph.

24 '(2) In making determinations under paragraph (1)(A) of
25 this subsection, the agency shall consider at least the

1 following objectives:

2 “(A) Encouraging the wide availability to the
3 public of the benefits of Government-sponsored research
4 and development in the shortest practicable time.

5 “(B) Promoting the commercial utilization of
6 inventions made under Government funding agreements.

7 “(C) Encouraging participation by highly qualified
8 private persons in Government-sponsored research and
9 development programs.

10 “(D) Fostering competition and preventing the
11 creation or maintenance of situations inconsistent with
12 the antitrust laws.”;

13 (J) by adding at the end of section 203 the
14 following new sentences:

15 “A determination pursuant to this section or section
16 202(b)(1) shall not be subject to the Contract Disputes Act
17 (41 U.S.C. 601 et seq.). An administrative appeals procedure
18 shall be established by regulations promulgated by the
19 Office of Federal Procurement Policy in accordance with
20 section 206. Any contractor, inventor, assignee, or
21 exclusive licensee adversely affected by a determination
22 under this section may, at any time within sixty days after
23 the determination is issued, file an appeal under the
24 appeals procedure established pursuant to the preceding
25 sentence or file a petition in the United States Claims

1 Court, which shall have jurisdiction to determine the matter
 2 de novo and to affirm, reverse, or modify as appropriate,
 3 the determination of the Federal agency. In cases described
 4 in paragraphs (a) and (c), the agency's determination shall
 5 be held in abeyance pending the exhaustion of appeals under
 6 the preceding sentence.";

7 (K) by adding at the end of the chapter the
 8 following new sections:

9 "§212. Assignment of title or rights

10 "Upon a determination that to do so is in the best
 11 interests of the Government, an agency may assign title or
 12 other rights to an invention to a person where such title or
 13 rights are held by the Government under such terms and
 14 conditions as will encourage the domestic commercial use of
 15 such technology.

16 "§213. Disposition of rights in educational awards

17 "No scholarship, fellowship, training grant, or other
 18 funding agreement made by a Federal agency primarily to an
 19 awardee for educational purposes will contain any provision
 20 giving the Federal agency any rights to inventions made by
 21 the awardee.";

22 (L) by adding at the end of the table of

23 sections for the chapter the following new items:

"212. Assignment of title or rights.

"213. Disposition of rights in educational awards."; and

1 (M) by amending section 206 to read as follows:

2 ``§206. Uniform clauses and regulations

3 ``The Secretary of Commerce may initiate the regulations

4 and revisions thereto and standard funding agreement

5 provisions, required to implement sections 202 through 204,

6 to be promulgated by the Director of the Office of

7 Management and Budget after full consideration of agency and

8 public comment.''.

9 (16) Section 6(e) of the Stevenson-Wydler Technology

10 Innovation Act of 1980 (15 U.S.C. 3705(e); 94 Stat.

11 2313) is repealed.

12 (17) Section 10(a) of the Act of June 29, 1935

13 (7 U.S.C. 4271(a)) is amended by striking out the last

14 sentence.

15 (18) Section 427(b) of the Federal Mine Safety and

16 Health Act of 1977 (30 U.S.C. 937(b)) is amended by

17 striking out the last sentence.

18 (19) Section 306(d) of the Surface Mining Control

19 and Reclamation Act of 1977 (30 U.S.C. 1226(d)) is

20 amended by striking out the first two sentences.

21 (20) Section 21(d) of the Federal Fire Prevention

22 and Control Act of 1974 (15 U.S.C. 2218(d)) is repealed.

23 (21) Section 6(b) of the Solar Photovoltaic Energy

24 Research, Development, and Demonstration Act of 1978 (42

25 U.S.C. 5585(b)) is amended by inserting ``as amended''

1 after ``this title``.

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

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

7 Relationship to Antitrust Laws

8 Sec. 403. Nothing in this Act shall be deemed to convey
9 to any person immunity from civil or criminal liability, or
10 to create any defense to actions, under any antitrust law.

11 Effective Date

12 Sec. 404. (a) This Act shall take effect six months
13 after the date of the enactment of this Act.

14 (b) After the effective date of this Act, each Federal
15 agency may allow a contractor or an inventor to retain title
16 to any subject inventions made under contracts awarded prior
17 to the effective date of this Act, subject to the same terms
18 and conditions as those which would apply under this Act had
19 the contract been entered into after the effective date of
20 this Act.

