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DIRECTOR OF RESEARCH
MICHIGAN TECHNOLOGICAL
UNIVERSITY

[Staff working draft]

JANUARY 23, 1979

96TH CONGRESS
1ST SESSION

S.

To amend title 35 of the United States Code; to establish a uniform Federal patent procedure for small businesses and nonprofit organizations; to create a consistent policy and procedure concerning patentability of inventions made with Federal assistance; and for other related purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY , 1979

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

A BILL

To amend title 35 of the United States Code; to establish a uniform Federal patent procedure for small businesses and nonprofit organizations; to create a consistent policy and procedure concerning patentability of inventions made with Federal assistance; and for other related purposes.

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

1 23, 1971 (36 Fed. Reg. 16887), agency regulations, or other
2 applicable regulations or to otherwise limit the authority of
3 agencies to agree to allow such persons to retain ownership
4 of such inventions.

5 "SEC. 213. RELATIONSHIP TO ANTITRUST LAWS.—

6 Nothing in this chapter shall be deemed to convey to any
7 person immunity from civil or criminal liability, or to create
8 any defenses to actions, under any antitrust law."

9 SEC. 3. AMENDMENTS TO OTHER ACTS.—The follow-
10 ing Acts are amended as follows:

11 (a) Section 156 of the Atomic Energy Act of 1954 (42
12 U.S.C. 2186; 68 Stat. 947) is amended by deleting the words
13 "held by the Commission or".

14 (b) The National Aeronautics and Space Act of 1958 is
15 amended by repealing paragraph (g) of section 305 (42
16 U.S.C. 2457(g); 72 Stat. 436).

17 (c) The Federal Nonnuclear Energy Research and De-
18 velopment Act of 1974 is amended by repealing paragraphs
19 (g), (h), and (i) of section 9 (42 U.S.C. 5908 (g), (h), and (i);
20 88 Stat. 1889-1891).

21 SEC. 4. EFFECTIVE DATE.—This Act shall take effect
22 one hundred and eighty days after the date of its enactment,
23 except that the regulations referred to in section 2, or other
24 implementing regulations, may be issued prior to that time.

1 **SEC. 2. AMENDMENT OF TITLE 35, UNITED STATES**
 2 **CODE, PATENTS.**—Title 35 of the United States Code is
 3 amended by adding after chapter 17, a new chapter as
 4 follows:

5 **“CHAPTER 18.—PATENTABILITY OF INVENTIONS**
 6 **MADE WITH FEDERAL ASSISTANCE**

“Sec.

- “200. Policy and objective.
- “201. Definitions.
- “202. Disposition of rights.
- “203. March-in rights.
- “204. Return of Government investment.
- “205. Preference for United States industry.
- “206. Confidentially.
- “207. Uniform clauses.
- “208. Domestic and foreign protection of federally owned inventions.
- “209. Regulations governing Federal licensing.
- “210. Coordination of Federal licensing practices.
- “211. Restrictions on licensing of federally owned inventions.
- “212. Precedence of chapter.
- “213. Relationship to antitrust laws.

7 **“SEC. 200. POLICY AND OBJECTIVE.**—It is the policy
 8 and objective of the Congress to use the patent system to
 9 promote the utilization of inventions arising from federally
 10 supported research or development; to encourage maximum
 11 participation of small business firms in federally supported
 12 research and development efforts; to promote collaboration
 13 between commercial concepts and nonprofit organizations, in-
 14 cluding universities; to ensure that inventions made by non-
 15 profit organizations and small business firms are used in a
 16 manner to promote free competition and enterprise; to pro-
 17 mote the commercialization and public availability of inven-
 18 tions made in the United States by United States industry

1 “(16) section 303 of the Water Resources Re-
 2 search Act of 1964 (42 U.S.C. 1961c-3; 78 Stat.
 3 332);

4 “(17) section 5(d) of the Consumer Product Safety
 5 Act (15 U.S.C. 2054(d); 88 Stat. 1211);

6 “(18) section 3 of the Act of April 5, 1944 (30
 7 U.S.C. 323; 58 Stat. 191); and

8 “(19) section 8001 of the Solid Waste Disposal
 9 Act (42 U.S.C. 6981; 90 Stat. 2829).

10 The Act creating this chapter shall be construed to take pre-
 11 edence over any future Act unless that Act specifically cites
 12 this Act and provides that it shall take precedence over this
 13 Act.

14 “(b) Nothing in this chapter is intended to alter the
 15 effect of the laws cited in paragraph (a) of this section or any
 16 other laws with respect to the disposition of rights in inven-
 17 tions made in the performance of funding agreements with
 18 persons other than nonprofit organizations of small business
 19 firms.

20 “(c) Nothing in this chapter is intended to limit the au-
 21 thority of agencies to agree to the distribution of rights in
 22 inventions made in the performance of work under funding
 23 agreements with persons other than nonprofit organizations
 24 or small business firms in accordance with the Statement of
 25 Government Patent Policy issued by the President on August

1 "(5) section 12 of the National Science Founda-
 2 tion Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);
 3 "(6) section 152 of the Atomic Energy Act of
 4 1954 (42 U.S.C. 2182; 68 Stat. 943);
 5 "(7) section 305 of the National Aeronautics and
 6 Space Act of 1958 (42 U.S.C. 2457);
 7 "(8) section 6 of the Coal Research Development
 8 Act of 1960 (30 U.S.C. 666; 74 Stat. 337);
 9 "(9) section 4 of the Helium Act Amendments of
 10 1960 (50 U.S.C. 167b; 74 Stat. 920);
 11 "(10) section 32 of the Arms Control and Disar-
 12 mament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);
 13 "(11) subsection (e) of section 302 of the
 14 Appalachian Regional Development Act of 1965 (40
 15 U.S.C. App. 302(e); 79 Stat. 5);
 16 "(12) subsection (a)(2) of section 216 of title 38,
 17 United States Code;
 18 "(13) section 9 of the Federal Nonnuclear Energy
 19 Research and Development Act of 1974 (42 U.S.C.
 20 5901; 88 Stat. 1878);
 21 "(14) section 3 of the Act of June 22, 1976 (42
 22 U.S.C. 1959d, note; 90 Stat. 694);
 23 "(15) subsection (d) of section 6 of the Saline
 24 Water Conversion Act of 1971 (42 U.S.C. 1959(d); 85
 25 Stat. 161);

1 and labor; to ensure that the Government obtains sufficient
 2 rights in federally supported inventions to meet the needs of
 3 the Government and protect the public against nonuse or un-
 4 reasonable use of inventions; and to minimize the costs of
 5 administering policies in this area.
 6 "SEC. 201. DEFINITIONS.—As used in this chapter—
 7 "(a) The term 'Federal agency' means any execu-
 8 tive agency as defined in section 105 of title 5, United
 9 States Code, and the military departments as defined
 10 by section 102 of title 5, United States Code.
 11 "(b) The term 'funding agreement' means any
 12 contract, grant, or cooperative agreement entered into
 13 between any Federal agency and any person for the
 14 performance of experimental, developmental, or re-
 15 search work funded in whole or in part by the Federal
 16 Government. Such term includes any assignment, sub-
 17 stitution of parties, or subcontract of any type entered
 18 into for the performance of experimental, developmen-
 19 tal, or research work under a funding agreement as
 20 herein defined.
 21 "(c) The term 'contractor' means any person that
 22 is a party to funding agreement.
 23 "(d) The term 'invention' means any invention or
 24 discovery which is or may be patentable or otherwise
 25 protectable under this title.

1 (e) The term 'subject invention' means any in-
 2 vention of the contractor conceived or first actually re-
 3 duced to practice in the performance of work under a
 4 funding agreement.

5 (f) The term 'practical application' means to
 6 manufacture in the case of a composition or product, to
 7 practice in the case of a process or method, or to oper-
 8 ate in the case of a machine or system; and, in each
 9 case, under such conditions as to establish that the in-
 10 vention is being utilized and that its benefits are to the
 11 extent permitted by law or Government regulations
 12 available to the public on reasonable terms.

13 (g) The term 'made' when used in relation to
 14 any invention means the conception or first actual re-
 15 duction to practice of such invention.

16 (h) The term 'small business firm' means a small
 17 business concern as defined at section 2 of Public Law
 18 85-536 (15 U.S.C. 632) and implementing regulations
 19 of the Administrator of the Small Business
 20 Administration.

21 (i) The term 'nonprofit organization' means uni-
 22 versities and other institutions of higher education or
 23 an organization of the type described in section
 24 501(c)(3) of the Internal Revenue Code of 1954 (26
 25 U.S.C. 501(c)) and exempt from taxation under section

1 breach of an agreement obtained pursuant to paragraph
 2 (b) of this section; and

3 (4) the right of the Federal agency to terminate
 4 the license in whole or in part if the agency determines
 5 that such action is necessary to meet requirements for
 6 public use specified by Federal regulations issued after
 7 the date of the license and such requirements are not
 8 reasonably satisfied by the licensee.

9 SEC. 212. PRECEDENCE OF ACT.—(a) This chapter
 10 shall take precedence over any other Act which would re-
 11 quire a disposition of rights in subject inventions of small
 12 business firms or nonprofit organizations contractors in a
 13 manner that is inconsistent with this chapter, including but
 14 not necessarily limited to the following:

15 (1) section 10(a) of the Act of June 29, 1935, as
 16 added by title 1 of the Act of August 14, 1946 (7
 17 U.S.C. 427i(a); 60 Stat. 1085);

18 (2) section 205(a) of the Act of August 14, 1946
 19 (7 U.S.C. 1624(a); 60 Stat. 1090);

20 (3) section 501(c) of the Federal Coal Mine
 21 Health and Safety Act of 1969 (30 U.S.C. 951(c); 83
 22 Stat. 742);

23 (4) section 106(c) of the National Traffic and
 24 Motor Vehicle Safety Act of 1966 (15 U.S.C. 1935(c);
 25 80 Stat. 721);

1 "(e) The Federal agency shall maintain a record of de-
2 terminations to grant exclusive or partially exclusive licenses.

3 "(f) Any grant of a license shall contain such terms and
4 conditions as the Federal agency determines appropriate for
5 the protection of the interests of the Federal Government and
6 the public, including provisions for the following:

7 "(1) periodic reporting on the utilization or efforts
8 at obtaining utilization that are being made by the li-
9 censee with particular reference to the plan submitted:

10 *Provided*, That any such information may be treated
11 by the Federal agency as commercial and financial in-
12 formation obtained from a person and privileged and
13 confidential and not subject to disclosure under the
14 Freedom of Information Act;

15 "(2) the right of the Federal agency to terminate
16 such license in whole or in part if it determines that
17 the licensee is not executing the plan submitted with
18 its request for a license and the licensee cannot other-
19 wise demonstrate to the satisfaction of the Federal
20 Agency that it has taken or can be expected to take
21 within a reasonable time, effective steps to achieve
22 practical application of the invention;

23 "(3) the right of the Federal agency to terminate
24 such license in whole or in part if the licensee is in

1 501(a) of the Internal Revenue Code (26 U.S.C.
2 501(a)).

3 "SEC. 202. DISPOSITION OF RIGHTS.—(a) Each non-
4 profit organization or small business firm may, within a rea-
5 sonable time after disclosure as required by paragraph (c)(1)
6 of this section elect to retain title to any subject invention:
7 *Provided, however*, That a funding agreement may provide
8 otherwise (i) when the subject invention is made under a con-
9 tract for the operation of a Government-owned research or
10 production facility, or (ii) in exceptional circumstances when
11 it is determined by the agency that restriction or elimination
12 of the right to retain title to any subject invention will better
13 promote the policy and objectives of this chapter. The rights
14 of the nonprofit organization or small business firm shall be
15 subject to the provisions of paragraph (c) of this section and
16 the other provisions of this chapter.

17 "(b)(1) Any determination under (ii) of paragraph (a) of
18 this section shall be in writing and accompanied by a written
19 statement of facts justifying the determination. A copy of
20 each such determination and justification shall be sent to the
21 Comptroller General of the United States within thirty days
22 after the award of the applicable funding agreement. In the
23 case of determinations applicable to funding agreements with
24 small business firms copies shall also be sent to the Chief
25 Counsel for Advocacy of the Small Business Administration.

1 “(2) If the Comptroller General believes that any pat-
 2 tern of determinations by a Federal agency is contrary to the
 3 policy and objectives of this chapter or that an agency’s poli-
 4 cies or practices are otherwise not in conformance with this
 5 chapter, the Comptroller General shall so advise the head of
 6 the agency. The head of the agency shall advise the Comp-
 7 troller General in writing within one hundred twenty days of
 8 what action, if any, the agency has taken or plans to take
 9 with respect to the matters raised by the Comptroller
 10 General.

11 “(3) At least once each year, the Comptroller General
 12 shall transmit a report to the Committees on Judiciary of the
 13 Senate and House of Representatives on the manner in
 14 which this chapter is being implemented by the agencies and
 15 on such other aspects of Government patent policies and
 16 practices with respect to federally funded inventions as the
 17 Comptroller General believes appropriate.

18 “(c) Each funding agreement with a small business firm
 19 or nonprofit organization shall contain appropriate provisions
 20 to effectuate the following:

21 “(1) A requirement that the contractor disclose
 22 each subject invention to the Federal agency within a
 23 reasonable time after it is made and that the Federal
 24 Government, upon request, may receive title to any
 25 subject invention not reported to it within such time.

1 substantially to lessen competition or result in undue concen-
 2 tration in any section of the country in any line of commerce
 3 to which the technology to be licensed relates, or to create or
 4 maintain other situations inconsistent with the antitrust
 5 laws.

6 “(3) First preference in the exclusive or partially exclu-
 7 sive licensing of federally owned inventions shall go to small
 8 business firms submitting plans that are determined by the
 9 agency to be within the capabilities of the firms and as likely,
 10 if executed, to bring the invention to practical application as
 11 any plans submitted by applicants that are not small business
 12 firms.

13 “(d) After consideration of whether the interests of the
 14 Federal Government or United States industry in foreign
 15 commerce will be enhanced, any Federal agency may grant
 16 exclusive or partially exclusive licenses in any invention cov-
 17 ered by a foreign patent application or patent, after public
 18 notice and opportunity for filing written objections, except
 19 that a Federal agency shall not grant such exclusive or par-
 20 tially exclusive license if it determines that the grant of such
 21 license will tend substantially to lessen competition or result
 22 in undue concentration in any section of the country in any
 23 line of commerce to which the technology to be licensed re-
 24 lates, or to create or maintain other situations inconsistent
 25 with the antitrust laws.

erally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that—

“(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant’s intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention’s utilization by the public;

“(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

“(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention’s utilization by the public; and

“(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention’s utilization by the public.

“(2) A Federal agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend

“(2) A requirement that the contractor make an election to retain title to any subject invention within a reasonable time after disclosure and that the Federal Government, upon request, may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such time.

“(3) A requirement that a contractor electing rights file patent applications within reasonable times and that the Federal Government, upon request, 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.

“(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or one behalf of the United States any subject invention throughout the world, and may, if provided in the funding agreement, have additional rights to sublicense any foreign government pursuant to any existing or future treaty or agreement.

“(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or

1 his licensees or assignees. *Provided*, That any such in-
 2 formation may be treated by the Federal agency as
 3 commercial and financial information obtained from a
 4 person and privileged and confidential and not subject
 5 to disclosure under the Freedom of Information Act.

6 "(6) An obligation on the part of the contractor,
 7 in the event a United States patent application is filed
 8 by or on its behalf or by any assignee of the contrac-
 9 tor, to include within the specification of such applica-
 10 tion and any patent issuing thereon, a statement speci-
 11 fying that the invention was made with Government
 12 support and that the Government has certain rights in
 13 the invention.

14 "(7) In the case of a nonprofit organization, (a) a
 15 prohibition upon the assignment of rights to a subject
 16 invention in the United States without the approval of
 17 the Federal agency, except where such assignment is
 18 made to an organization which has as one of its pri-
 19 mary functions the management of inventions and
 20 which is not, itself, engaged in or does not have a sub-
 21 stantial proprietary interest in the manufacture or sale
 22 of products or the use of processes that might utilize
 23 the invention or be in competition with embodiments of
 24 the invention (provided that such assignee shall be sub-
 25 ject to the same provisions as the contractor) (b) a pro-

1 tion for the purposes set forth in paragraphs (1)
 2 through (4) of section 208, with the approval of the
 3 Federal agency concerned and without regard to the
 4 provisions of the Federal Property and Administrative
 5 Service Act of 1949 (40 U.S.C. 471);

6 "(6) receive funds from fees, royalties, or other
 7 management of federally owned inventions authorized
 8 under this chapter, but such fund shall be used only for
 9 the purposes of this chapter; and

10 "(7) undertake such other functions directly or
 11 through such contracts as are necessary and appropri-
 12 ate to accomplish the purposes of this title.

13 "SEC. 211. RESTRICTIONS ON LICENSING OF FEDER-
 14 ALLY OWNED INVENTIONS.—(a) No Federal agency shall
 15 grant any license under a patent or patent application on a
 16 federally owned invention unless the person requesting the
 17 license has supplied the agency with a plan for development
 18 and/or marketing of the invention.

19 "(b) A Federal agency shall normally grant the right to
 20 use or sell any federally owned invention in the United States
 21 only to a licensee that agrees that any products embodying
 22 the invention or produced through the use of the invention
 23 will be manufactured substantially in the United States.

24 "(c)(1) Each Federal agency may grant exclusive or
 25 partially exclusive licenses in any invention covered by a fed-

1 "SEC. 209. REGULATIONS GOVERNING FEDERAL LI-
 2 CENSING.—The Administrator of General Services is author-
 3 ized to promulgate regulations specifying the terms and con-
 4 ditions upon which any federally owned invention may be
 5 licensed on a nonexclusive, partially exclusive, or exclusive
 6 basis.

7 "SEC. 210. COORDINATION OF FEDERAL LICENSING
 8 PRACTICES.—The Secretary of Commerce is authorized in
 9 cooperation with other Federal agencies to—

10 "(1) coordinate a program for assisting all Federal
 11 agencies in carrying out the authority set forth in sec-
 12 tion 208;

13 "(2) publish notification of all federally owned in-
 14 ventions that are available for licensing;

15 "(3) evaluate inventions referred by Federal agen-
 16 cies, and patent applications filed thereon, in order to
 17 identify those inventions with the greatest commercial
 18 potential and to insure promotion and utilization by the
 19 public of inventions so identified;

20 "(4) assist the Federal agencies in seeking and
 21 maintaining protection on inventions in the United
 22 States and in foreign countries, including the payment
 23 of fees and costs connected therewith;

24 "(5) accept custody and administration, in whole
 25 or in part, of the right, title, and interest in any inven-

1 prohibition against the granting of exclusive licenses under
 2 United States Patents or Patent Applications in a sub-
 3 ject invention by the contractor for a period in excess
 4 of the earlier of five years from first commercial sale or
 5 use of the invention or eight years from the date of the
 6 exclusive license excepting that time before regulatory
 7 agencies necessary to obtain premarket clearance
 8 unless, on a case-by-case basis, the Federal agency ap-
 9 proves a longer exclusive license. If exclusive field of
 10 use licenses are granted, commercial sale or use in one
 11 field of use shall not be deemed commercial sale or use
 12 as to other fields of use; (c) a requirement that the con-
 13 tractor share royalties with the inventor; and (d) a re-
 14 quirement that the balance of any royalties or income
 15 earned by the contractor with respect to subject inven-
 16 tions, after payment of expenses (including payments to
 17 inventors) incidental to the administration of subject in-
 18 ventions, be utilized for the support of scientific re-
 19 search or education.

20 "(8) The requirements of sections 203, 204, and
 21 205 of this chapter.

22 "(e) If a contractor does not elect to retain title to a
 23 subject invention in cases subject to this section, the Federal
 24 agency may consider and after consultation with the contrac-
 25 tor grant requests for retention of rights by the inventor sub-

1 subject to the provisions of this Act and regulations promulgated
2 hereunder.

3 "(f) In any case when a Federal employee is a coinven-
4 tor of any invention made under a funding agreement with a
5 nonprofit organization or small business firm, the Federal
6 agency employing such coinventor is authorized to transfer or
7 assign whatever rights it may acquire in the subject invention
8 from its employee to the contractor subject to the conditions
9 set forth in this chapter.

10 "SEC. 203. MARCH-IN RIGHTS.—With respect to any
11 subject invention in which a small business firm or nonprofit
12 organization has acquired title under this chapter, the
13 Federal agency under whose funding agreement the subject
14 invention was made shall have the right, in accordance with
15 such procedures as are provided in regulations promulgated
16 hereunder to require the subject inventor, an assignee or ex-
17 clusive licensee of a subject invention to grant a nonexclu-
18 sive, partially exclusive, or exclusive license in any field of
19 use to a responsible applicant or applicants, upon terms that
20 are reasonable under the circumstances, and if the contractor,
21 assignee, or exclusive licensee refuses such request, to grant
22 such a license itself, if the Federal agency determines
23 either—

24 "(a) that such action is necessary because the
25 contractor or assignee has not taken, or is not ex-

1 provisions of chapter 28 of this title as determined ap-
2 propriate in the public interest;

3 "(4) make market surveys and other investiga-
4 tions for determining the potential of federally owned
5 inventions for domestic and foreign licensing and other
6 forms of utilization, acquire technical information, and
7 engage in negotiations and other activities for promot-
8 ing the licensing and for the purpose of enhancing their
9 marketability and public utilization;

10 "(5) undertake all other suitable and necessary
11 steps to protect and administer rights to federally
12 owned inventions on behalf of the Federal Government
13 either directly or through contract;

14 "(6) transfer custody and administration, in whole
15 or in part, to the Department of Commerce or to an-
16 other Federal agency, of the right, title, or interest in
17 any federally owned invention for the purpose of carry-
18 ing out the provisions of paragraphs (1) through (4),
19 without regard to the provisions of the Federal Pro-
20 perty and Administrative Services Act of 1949 (40
21 U.S.C. 471); and

22 "(7) designate the Department of Commerce as
23 recipient of any or all funds received from fees, royal-
24 ties, or other management of federally owned inven-
25 tions authorized under this chapter.

1 "SEC. 207. UNIFORM CLAUSES.—The Office of Feder-
 2 al Procurement Policy, after receiving recommendations of
 3 the Office of Science and Technology Policy, may issue regu-
 4 lations which may be made applicable to Federal agencies
 5 establishing standard funding, agreement provisions required
 6 under this chapter.

7 "SEC. 208. DOMESTIC AND FOREIGN PROTECTION OF
 8 FEDERALLY OWNED INVENTIONS.—Each Federal agency is

9 authorized to—
 10 (1) apply for, obtain, and maintain patents or
 11 other forms of protection in the United States and in
 12 foreign countries on inventions in which the Federal
 13 Government owns a right, title, or interest;

14 (2) promote the licensing of inventions covered
 15 by federally owned patent applications, patents, or
 16 other forms of protection obtained with the objective of
 17 maximizing utilization by the public of the inventions
 18 covered thereby;

19 (3) grant nonexclusive, exclusive, or partially ex-
 20 clusive licenses under federally owned patent applica-
 21 tions, patents, or other forms of protection obtained,
 22 royalty-free or for royalties or other consideration; and
 23 on such terms and conditions, including the grant to
 24 the licensee of the right of enforcement pursuant to the

1 pected to take within a reasonable time, effective steps
 2 to achieve practical application of the subject invention
 3 in such field of use; or

4 (b) that such action is necessary to alleviate
 5 health or safety needs which are not reasonably satis-
 6 fied by the contractor, assignee, or their licensees; or

7 (c) that such action is necessary to meet require-
 8 ments for public use specified by Federal regulations
 9 and such requirements are not reasonably satisfied by
 10 the contractor, assignee, or licensees; or

11 (d) that such action is necessary because the
 12 agreement required by section 205 has not been ob-
 13 tained or waived or because a licensee of the exclusive
 14 right to use or sell any subject invention in the United
 15 States is in breach of its agreement obtained pursuant
 16 to section 205.

17 "SEC. 204. RETURN OF GOVERNMENT INVEST-

18 MENT.—(a) If a nonprofit organization or small business firm
 19 receives \$250,000 in after tax profits from the licensing of
 20 any subject invention within a period of ten years following
 21 disclosure of the invention, the United States shall be entitled
 22 to a share, to be negotiated, of up to 50 per centum of all net
 23 income during said period from licensing received by the con-
 24 tractor above \$250,000: *Provided, however,* That in no event
 25 shall the United States be entitled to an amount greater than

1 that portion of the Federal funding under the funding agree-
 2 ment under which the subject invention was made which was
 3 expended on activities related to the making of the invention.

4 "(b) In addition, if a nonprofit organization or small
 5 business firm receives after tax profits in excess of
 6 \$2,000,000 on sales of products embodying or manufactured
 7 by a process employing a subject invention, during a period
 8 of ten years commencing with commercial exploitation of the
 9 subject invention, the Government shall be entitled to a
 10 share, to be negotiated, of all additional income accruing
 11 from such sales up to the amount of the portion of the Gov-
 12 ernment funding under the funding agreement under which
 13 the invention was made which was expended on activities
 14 related to the making of the invention less any amounts re-
 15 ceived by the Government in accordance with paragraph (a)
 16 of this section 204.

17 "(c) The Director of the Office of Federal Procurement
 18 Policy is authorized and directed to revise the figures of
 19 \$250,000 and \$2,000,000 in paragraphs (a) and (b) of this
 20 section at least every three years in light of changes to the
 21 Consumer Price Index or other indices which he considers
 22 reasonable to use.

23 "SEC. 205. PREFERENCE FOR UNITED STATES INDUS-
 24 TRY.—Notwithstanding any other provision of this chapter,
 25 no small business firm or nonprofit organization which re-

1 ceives title to any subject invention and no assignee of any
 2 such nonprofit organization shall grant to any person the ex-
 3 clusive right to use or sell any subject invention in the United
 4 States unless such person agrees that any products embody-
 5 ing the subject invention or produced through the use of the
 6 subject invention will be manufactured substantially in the
 7 United States. However, in individual cases, the requirement
 8 for such an agreement may be waived by the Federal agency
 9 under whose funding agreement the invention was made
 10 upon a showing by the small business firm, nonprofit organi-
 11 zation, or assignee that reasonable but unsuccessful efforts
 12 have been made to grant licenses on similar terms to poten-
 13 tial licensees that would be likely to manufacture substan-
 14 tially in the United States.

15 "SEC. 206. CONFIDENTIALITY.—Federal agencies are
 16 authorized to withhold from disclosure to the public informa-
 17 tion disclosing any invention in which the Federal Govern-
 18 ment owns or may own a right, title, or interest (including a
 19 nonexclusive license) for a reasonable time in order for a
 20 patent application to be filed. Furthermore, Federal agencies
 21 shall not be required to release copies of any document which
 22 is part of an application for patent filed with the United
 23 States Patent and Trademark Office or with any foreign
 24 patent office.