

~~★~~  
(STAFF WORKING DRAFT)

(January 7, 1982)

97th CONGRESS  
1st Session

S. 1657

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

---

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

---

A B I L L

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

Be it enacted by the Senate and House of  
Representatives of the United States of America in  
Congress assembled,

TITLE I - POLICY

Findings

1           Sec. 101.    The Congress, recognizing the profound  
2 impact of science, engineering, and technology policy  
3 on the economic, social, political, and technological  
4 well-being, and the health and safety of the Nation as  
Enti 5 a whole, hereby finds and declares that:

6           (1) The United States has recently experienced  
7 a decline in the process of industrial innovation  
8 and productivity which is integrally related to,  
9 and adversely impacts upon, domestic productivity,  
: 10 the rate of economic growth, the level of  
11 employment, the balance of trade, and the  
Mr. 12 attainment of other national goals.

13           (2) The national support of scientific and  
14 technological research and development is  
15 indispensable to sustained growth and economic  
16 stability, and it is in the national interest to  
17 maximize the benefits to the general public from  
18 such investment.

19           (3) Scientific and technological developments  
20 and discoveries resulting from work performed with  
21 Government contracts constitute a valuable national  
22 resource which should be developed in a manner  
23 consistent with the public interest and the  
24 equities of the respective parties.

25           (4) Current Federal policy with respect to the  
26 allocation of rights to the results of federally

1 sponsored research and development deters  
2 contractor participation in Government contracts,  
3 delays technological process, and stifles the  
4 innovative process.

5 (5) There is a need for the establishment and  
6 implementation of a flexible Government-wide policy  
7 for the management and utilization of the results  
8 of federally funded research and development. This  
9 policy should promote the progress of science and  
10 the useful arts, encourage the efficient commercial  
11 utilization of technological developments and  
12 discoveries, guarantee the protection of the public  
13 interest, and recognize the equities of the  
14 contracting parties.

#### 15 PURPOSE

16 Sec. 102. It is the purpose of this Act to--

17 (1) establish and maintain a uniform Federal  
18 policy for the management and use of the results of  
19 federally sponsored science and technology research  
20 and development; and

21 (2) insure the effective uniform  
22 implementation of the provisions of this Act, and  
23 to monitor on a continuing basis the impact of  
24 Federal science and technology policies on  
25 innovation and technology development.

#### 26 DEFINITIONS

Sec. 103. As used in this Act, the term--

(1) "contract" means any contract, grant, or cooperative agreement, other than the Tennessee Valley Authority, entered into between any Federal agency and any person other than a small business firm or non-profit organization (as defined in section 201 of title 35, United States Code) where a purpose of the contract is the conduct of experimental, developmental, or research work. Such term includes any assignment, substitution of parties or subcontract of any type entered into or executed for the conduct of experimental, developmental, or research work in connection with the performance of that contract;

(2) "contractor" means any person or entity other than a Federal agency, non-profit organization, or small business firm or as defined in section 201 of title 35, United States Code, that is a party to the contract;

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

(4) "Federal agency" means an "executive agency" as defined by section 105 of title 5, United States Code, and the military departments as defined in section 102 of title 5, United States Code;

1 (5) "Government" means the Government of the  
2 United States of America;

3 (6) "subject invention" means any invention or  
4 discovery of a contractor conceived or first  
5 actually reduced to practice in the course of or  
6 under a contract, and includes any art, method,  
7 process, machine, manufacture, design, or  
8 composition of matter, or any new and useful  
9 improvement thereof, or any variety of plant, which  
10 is or may be patentable under the Patent Laws of  
11 the United States of America or any foreign  
12 country;

13 (7) "practical application" means to  
14 manufacture in the case of a composition or  
15 product, to practice in the case of a composition  
16 or product, to practice in the case of a process or  
17 method, or to operate in the case of a machine or  
18 system, and, in each case, under such conditions as  
19 to establish that the invention is being worked and  
20 that its benefits are, to the extent permitted by  
21 law or Government regulations, available to the  
22 public on reasonable terms (including reasonable  
23 licensing arrangements); and

24 (8) "Secretary" means the Secretary of  
25 Commerce.

26 TITLE II -- IMPLEMENTATION

1 RESPONSIBILITIES

2 Sec. 201. (a) The Director shall issue regulations  
3 applicable to Federal agencies which are necessary and  
4 desirable to achieve uniform and consistent  
5 implementation of title III of this Act. The Director  
6 shall issue standard contract provisions implementing  
7 the rights and terms and conditions specified in  
8 sections 301(c), 302(b) and 305(a) of this Act which  
9 shall be used by all Federal agencies and which shall  
10 be incorporated in appropriate agency and Government-  
11 wide regulations.

12 (b) With a view to obtaining consistent application  
13 of the policies of this Act, the Secretary is  
14 authorized and directed--

15 (1) to consult with and advise Federal  
16 agencies concerning the effective implementation  
17 and operation of the policies, purposes, and  
18 objectives of this Act;

19 (2) to accumulate, analyze, and disseminate  
20 data obtained from Federal agencies; and

21 (3) to perform such other duties as may be  
22 prescribed by the President or by statute.

23 (c) For the purpose of assuring the effective  
24 management of Government-owned inventions, the  
25 Secretary is authorized to--

1  
2 (1) assist Federal agency efforts to promote  
3 the licensing and utilization of Government-owned  
4 inventions;

5 (2) assist Federal agencies in seeking  
6 protection and maintaining inventions in foreign  
7 countries, including the payment of fees and costs  
8 connected therewith; and

9 (3) consult with and advise Federal agencies  
10 as to areas of science and technology research and  
11 development with potential for commercial  
12 utilization.

13 (d) The Secretary shall submit to Congress an  
14 annual report of activities pursuant to this Act. Such  
15 report shall include (1) relevant statistical data  
16 regarding the disposition of invention disclosure  
17 resulting from federally funded research and  
18 development, including those inventions disclosed by  
19 small businesses and nonprofit organizations; (2) any  
20 legislative or administrative recommendations to better  
21 achieve the policy and purposes of this Act; and (3) an  
22 analysis of the impact of Federal policies on the  
23 purposes of this Act.

24 Sec. 202. The authorities conferred upon the  
25 Secretary by subsections (b) through (d) of section 201  
of this title shall expire seven years following the

1 effective date of this Act, unless renewed by action of  
2 Congress.

3 TITLE III - ALLOCATIONS OF RIGHTS -

4 GOVERNMENT CONTRACTORS

5 RIGHTS OF THE GOVERNMENT

6 Sec. 301. (a) Each Federal agency may acquire on  
7 behalf of the United States, at the time of entering  
8 into a contract, title to any invention made under the  
9 contract of a Federal agency or may limit the rights of  
10 a contractor under section 302(b) of this title if--

11 (1) it is determined by a Government authority  
12 which is authorized by statute or Executive order  
13 to conduct foreign intelligence or  
14 counterintelligence activities, that this is  
15 necessary to protect the security of such  
16 activities;

17 (2) the agency determines, on a case-by-case  
18 basis, that there are exceptional circumstances  
19 such that this determination will better promote  
20 the policy and objectives section 101(5) of this  
21 Act; or

22 (3) the contractor is not located in the  
23 United States and does not have a place of business  
24 located in the United States or is a foreign  
25 government or subject to the control of any foreign  
26 government.



1 (b)(1) The rights of the Government under  
2 subsection (a) of this section shall not be exercised  
3 by the Federal agency unless it first determines that  
4 at least one of the conditions identified in  
5 paragraphs (1) through (3) of subsection (a) exist and  
6 in the case of paragraphs (2) or (3), it has filed  
7 with the Secretary within 30 days after the award of  
8 the applicable contract a statement stating such  
9 determination. In the case of a determination under  
10 subsection (a)(2) of this section, the statement shall  
11 include an analysis justifying the determination and  
12 limitations or conditions being imposed. If the  
13 Secretary believes that any individual determination or  
14 pattern of determinations is contrary to the terms,  
15 policy, or objectives of this Act, the Secretary shall  
16 so advise the head of the Agency concerned and the  
17 Director and recommend corrective actions.

18 (2) Whenever the Director has determined that one  
19 or more Federal agencies are utilizing the authority of  
20 subsection (a)(2) of this section in a manner that is  
21 contrary to the terms, policy or objectives of this  
22 Act, the Director is authorized to issue regulations  
23 describing classes of situations in which agencies may  
24 not utilize the provisions of subsection (a)(2) of this  
25 section.

1 (c) Each contract entered into by a Federal agency  
2 shall include appropriate provisions to--

3 (1) require periodic written reports at  
4 reasonable intervals on the commercial use or other  
5 forms of utilization or efforts at obtaining  
6 commercial utilization made by the contractor or  
7 its licensees or assignees with respect to any  
8 subject invention to which the contractor elects  
9 title: Provided, That any such report, as well as  
10 any information on utilization or efforts at  
11 obtaining utilization obtained as part of a  
12 proceeding under section 304 of this, shall be  
13 treated by the Federal agency as commercial or  
14 financial information obtained from a person and  
15 privileged or confidential and not subject to  
16 disclosure under the Freedom of Information Act (5  
17 U.S.C. 552): and

18 (2) reserve to the United States at least an  
19 irrevocable, nonexclusive, nontransferable, paid-up  
20 license to make, use, and sell any subject  
21 invention throughout the world by or on behalf of  
22 the United States.

#### 23 RIGHTS OF THE CONTRACTOR

24 Sec. 302. (a) Whenever a contractor enters into a  
25 contract, unless limited in those circumstances  
26 identified in section 301(a) of this title, the

1 contractor shall have the option of retaining title to  
2 any subject invention. Such rights shall be subject to  
3 the limitations set forth in sections 301(c), 304 and  
4 305 of this title.

5 (b) When the Government obtains title to subject  
6 invention under section 301 of this title, the  
7 contractor shall retain a nonexclusive, royal-free,  
8 paid-up, worldwide license, including the right to  
9 sublicense affiliates and subsidiaries, which shall be  
10 revocable only to the extent necessary for the  
11 Government to grant an exclusive license.

12 WAIVER

13 Sec. 303. A Federal agency may at any time waive  
14 all or any part of the rights of the United States  
15 under section 301 or 304 of this title to any subject  
16 invention or class of subject inventions made or which  
17 may be made under the contract or class of contracts if  
18 (1) the agency determines that the interests of the  
19 United States and the general public will be best  
20 served thereby, or (2) the contract involves  
21 cosponsored, cost sharing or joint venture research or  
22 development when the contractor or other sponsor or  
23 joint venturer is required to make a substantial  
24 contribution of funds, facilities, or equipment to the  
25 work performed under the contract. The agency shall  
26 maintain a record, which shall be made public and

1 periodically updated, of determinations made under this  
2 section. In making determinations under paragraph (1)  
3 of this section the agency shall consider at least the  
4 following objectives:

5 (A) encouraging wide availability to the  
6 public of the benefits of the experimental,  
7 developmental, or research programs in the shortest  
8 practicable time;

9 (B) promoting the commercial utilization of  
10 such inventions;

11 (C) encouraging participation by private  
12 persons including the most highly qualified  
13 persons, in the Government-sponsored experimental,  
14 developmental, or research programs; and

15 (D) fostering competition and preventing undue  
16 market concentration or the creation or maintenance  
17 of other situations inconsistent with the antitrust  
18 laws of the United States.

19 MARCH-IN-RIGHTS

20 Sec. 304. (a) Where a contractor has elected to  
21 retain title to a subject invention under section 302  
22 of this title, the Federal agency shall have the right  
23 (unless waived under section 303 of this title),  
24 pursuant to regulations of the Director and subject to  
25 the provisions of subsection (b) of this section, to  
26 grant or require the patent-owner contractor to grant a

1 nonexclusive, partially exclusive, or exclusive license  
2 to a responsible applicant or applicants, upon terms  
3 reasonable under the circumstances, if the head of the  
4 agency determines such action is necessary--

5 (1) because the contractor has not taken, or  
6 is not expected to take within a reasonable time,  
7 effective steps to achieve practical application of  
8 the invention;

9 (2) to alleviate serious health or safety  
10 needs which are not reasonably satisfied by the  
11 contractor; or

12 (3) to meet requirements for public use  
13 specified by Federal regulation which are not  
14 reasonably satisfied by the contractor.

15 (b) A determination pursuant to this section shall  
16 not be considered a contract dispute and shall not be  
17 subject to the Contract Disputes Act (P.L. 95-563).  
18 Any contractor adversely affected by a determination  
19 under this section may, at any time within sixty days  
20 after the determination is issued, file a petition to  
21 the United States Court of Claims, which shall have  
22 jurisdiction to determine the matter de novo and to  
23 affirm, ... reverse, or modify as appropriate, ... the  
24 determination of the Federal agency.

25

GENERAL PROVISIONS

1       Sec. 305. (a) Each contract entered into by a  
2 Federal agency shall employ a patent right clause  
3 containing appropriate provisions to effectuate the  
4 following--

5           (1) that the contractor disclose each subject  
6 invention to the Federal agency within a reasonable  
7 time after the subject invention becomes known to  
8 employees of the contractor who are responsible for  
9 the administration of invention and patent matters,  
10 and that the Federal Government may receive title  
11 to any subject invention not disclosed to it within  
12 such time;

13           (2) that the contractor make a written  
14 election within a reasonable time after disclosure  
15 as to whether the contractor will retain title to a  
16 subject invention, and that the Federal Government  
17 may receive title to any subject invention in which  
18 the contractor does not elect to retain rights or  
19 fails to elect rights within such time;

20           (3) that a contractor electing rights in a  
21 subject invention agrees to file a patent  
22 application thereon, and shall thereafter, within a  
23 reasonable time, file corresponding patent  
24 applications in other countries in which it wishes  
25 to retain title; and that the Federal government  
26 may receive title to any subject inventions in the

1 United States or other countries in which the  
2 contractor has not filed patent applications on the  
3 subject invention within such time; and

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

#### 12 BACKGROUND RIGHTS

13 Sec. 306. Nothing contained in this Act shall be  
14 construed to deprive the owner of any background patent  
15 or to such rights as the owner may have thereunder.

#### 16 TITLE IV - MISCELLANEOUS

##### 17 REPEAL OF EXISTING STATUTORY RESEARCH

##### 18 AND DEVELOPMENT AUTHORIZATIONS

19 Sec. 401.

##### 20 RELATIONSHIP TO ANTITRUST LAWS

21 Sec. 402. (a) In an action brought by the United  
22 States alleging a violation of section 7 of the Clayton  
23 Act (15 U.S.C. 81), the following shall be deemed an  
24 acquisition of assets by one person from another  
25 person:

1 (1) the retention of title to a subject  
2 invention by a contractor or inventor under section  
3 302 of this Act; and

4 (2) the grant of an exclusive or partially  
5 exclusive license under sections 207 through 209 of  
6 title 35, United States Code.

7 (b) Nothing in this Act shall be deemed to convey  
8 to any person immunity from civil or criminal  
9 liability, or to create any defenses to actions, under  
10 any antitrust law of the United States.

11                       
                     EFFECTIVE DATE

12 Sec. 403. This Act shall take effect six months  
13 after the date of enactment of this Act.

14 Sec. 404. After the effective date of this Act,  
15 each Federal agency is authorized, notwithstanding any  
16 other law governing the disposition of rights in  
17 subject inventions, to allow a contractor or an  
18 inventor to retain title to subject inventions made  
19 under contracts awarded prior to the effective date of  
20 this Act, subject to the same terms and conditions as  
21 would apply under this Act and the Director's  
22 implementing regulations had the contract been entered  
23 into after the effective date of this Act.



★

TITLE IV—MISCELLANEOUS

REPEAL OF EXISTING STATUTORY RESEARCH AND  
DEVELOPMENT AUTHORIZATIONS

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

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

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

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

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

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

that this section shall continue to be effective with respect to any application for patent in which the statement under oath referred to in such section has been filed or requested to be filed by the Commissioner of Patents and Trademarks prior to the effective date of this Act;

19 (6) The National Aeronautics and Space Act of 1958  
20 (42 U.S.C. 2451 et seq.; 72 Stat. 426) is amended—

21 (A) by repealing section 305 thereof (42 U.S.C.  
22 2457): *Provided, however,* That subsections (c), (d), and  
23 (e) of such section shall continue to be effective with  
24 respect to any application for patents in which the  
25 written statement referred to in subsection (c) of such

18

1 section has been filed or requested to be filed by the  
2 Commissioner of Patents and Trademarks prior to the  
3 effective date of this Act;

4 ~~(B) by inserting the following new section 305:—~~

5 ~~“INVENTIONS AND CONTRIBUTIONS BOARD~~

6 ~~“Sec. 305. Each proposal for any waiver of patent~~  
7 ~~rights held by the Administrator shall be referred to an In-~~  
8 ~~ventions and Contributions Board which shall be established~~  
9 ~~by the Administrator within the Administration. Such Board~~  
10 ~~shall accord to each interested party an opportunity for a~~  
11 ~~hearing, and shall transmit to the Administrator its findings~~  
12 ~~of fact with respect to such proposal and its recommendations~~  
13 ~~for action to be taken with respect thereto.”;—~~

14 <sup>B</sup>  
15 (C) by repealing section 306 thereof (42 U.S.C.  
16 2458);

17 (D) by inserting at the end of section 203(c)  
18 thereof (42 U.S.C. 2473(c)) the following new para-

19           ~~“(14) to provide effective contractual provisions~~  
20           ~~for reporting of the results of the activities of the Ad-~~  
21           ~~ministration, including full and complete technical re-~~  
22           ~~porting of any innovation made in the course of or~~  
23           ~~under any contract of the Administration.”;~~

24           <sup>C</sup>  
          ~~(V)~~ by inserting at the end of section 203 thereof  
25           (42 U.S.C. 2478) the following new subsection:

19

1           “(d) For the purpose of chapter 17 of title 35 of the  
2           United States Code, the Administration shall be considered a  
3           defense agency of the United States.”; and

4           <sup>D</sup>  
          ~~(F)~~ by striking out the following in section  
5           203(c)(3) thereof (42 U.S.C. 2473(c)(3)) “(including  
6           patents and rights thereunder).”.

7           (7) Section 6 of the Act of July 7, 1960 (30 U.S.C. 666;  
8           74 Stat. 337), is repealed.

9           (8) Section 4 of the Helium Act Amendments of 1960  
10          (50 U.S.C. 167b; 74 Stat. 920) is amended by striking out  
11          both proviso clauses at the end thereof.

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

14          (10) Subsection (c) of section 302 of the Appalachian  
15          Regional Development Act of 1965 (40 U.S.C. App. 302(c);  
16          79 Stat. 5) is repealed.

17          <sup>Subsections (a)-(k), (m) and (n) of</sup>  
          (11) <sup>AS</sup>Section 9 of the Federal Nonnuclear Energy Re-  
18          search and Development Act of 1974 (42 U.S.C. 5908; 88

19 Stat. 1887) <sup>are repealed.</sup> ~~is amended by striking all after "hours" the~~  
20 ~~second time it appears therein, and inserting in lieu thereof a~~  
21 ~~period.~~

22 ~~(12) Section 5(i) of the Tennessee Valley Authority Act~~  
23 ~~of 1933 (16 U.S.C. 831d(i); 48 Stat. 61) is amended by stri-~~  
24 ~~ng both proviso clauses at the end thereof.~~

20

1 <sup>2</sup> ~~(13)~~ Section 5(d) of the Consumer Product Safety Act  
2 (15 U.S.C. 2054(d); 88 Stat. 1211) is repealed.

3 <sup>3</sup> ~~(14)~~ Section 3 of the Act of April 5, 1944 (30 U.S.C.  
4 323; 58 Stat. 191), is repealed.

5 <sup>4</sup> ~~(15)~~ Section 8001<sup>(d)(3)</sup> of the Solid Waste Disposal Act (42  
6 U.S.C. 6981; 90 Stat. 2892) is repealed.

7 <sup>5</sup> ~~(16)~~ Sections 200, ~~through 209~~ <sup>208</sup> and section 211 of title  
8 ~~35, United States Code, are repealed.~~

9 <sup>6</sup> ~~(17)~~ Section 6e ~~(1) and (2)~~ of the Stevenson-Wydler  
10 Technology Innovation Act of 1980 (15 U.S.C. 3705(e) ~~(1)~~  
11 ~~and (2)~~; 94 Stat. 2313) is repealed.

Insert  
Bayh-Doles  
Amendments  
here

(17) Section 10(a) of the Act of June 29, 1935, as added by title I of the Act of Aug. 14, 1946 (7 U.S.C. §427i(a); 60 Stat. 1085) is amended by striking out the last sentence thereof;

(18) Section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. §937(b); 86 Stat. 155) is amended by striking out the last sentence thereof;

(19) Section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. §1226(d); 91 Stat. 455) is amended by striking out the first two sentences thereof;

(20) Section 21(d) of the Federal Fire Prevention and Control Act of 1977 (15 U.S.C. §2218(d); 91 Stat. 1548) is repealed;

(21) Section 6(<sup>b</sup>~~a~~) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. §5585(b); 92 Stat. 2516) is amended by striking out the comma after "5906" and substituting the word "and" therefore and by deleting ",and 5908";

(22) Section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. §178(j); 92 Stat. 2533) is repealed;

(23) Section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. §7879; 92 Stat. 1360) is repealed; and

(24) Section 173 of Public Law 96-294 (42 U.S.C. §8773; 94 Stat. 675) is repealed.

Revision to sec. 401(16), S. 1657

(16) Chapter 38 of Title 35, United States Code, is amended--

(A) by adding "or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (Public Law 91-577, 7 U.S.C. §§2321-2583)" after the word "title" in section 201(d);

(B) by adding ", provided that in the case of a variety of plant the date of determination must also occur during the period of contract performance" after the word "agreement" in section 201(e);

(C) by striking from section 202(a) "when the funding agreement is for the operation of a Government-owned research or production facility" and substituting, "when the contractor is not located in the United States and does not have a place of business located in the United States or is subject to the control of a foreign government";

(D) by amending section 202(b) to read as follows:

"(b)(1) The rights of the Government under paragraph (a) shall not be exercised by a Federal agency unless it first determines that at least one of the conditions identified in subparagraphs (i)-(iii) of paragraph (a) exist and, in the case of subparagraph (a)(i) and (ii), it files with the Secretary of Commerce, within thirty days after the award of the applicable funding agreement, a statement stating such determination. In the case of a determination under paragraph (a)(ii), the statement shall include an analysis justifying the determination. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy and recommend corrective actions."

"(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that one or more Federal agencies are utilizing the authority of subparagraphs (i)-(iii) of paragraph (a) of this section in a manner that is contrary to the policies and objectives of this chapter, the Administrator is authorized to issue regulations describing classes of situations in which agencies may not exercise the authorities of those subparagraphs.";

(E) by amending subparagraphs (1)-(3) of section 202(c) to read as follows:

"(1) that the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the

administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time;

(2) that the contractor make a written election within two years after disclosure to the Federal agency, provided that in any case where publication, on sale, or public use has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Federal agency to a date that is not more than sixty days prior to the end of the statutory period, and that the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times;

(3) that a contractor electing rights in a subject invention agrees to file a patent application 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;";

(F) 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 sections 202(c)(4)-(8), 203, and 204 of this chapter to any subject invention or class of subject inventions made or which may be made under a funding agreement or class of funding agreements if the agency determines (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 substantial 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 periodically updated, of determinations made under this paragraph. In making such determinations under (A), above, the agency shall consider at least the following objectives:

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

(2) promoting the commercial utilization of such inventions;

(3) encouraging participation by private persons, including the most highly qualified persons, in Government-

sponsored experimental, developmental, or research programs; and

(4) fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.";

(G) by deleting the word "may" in section 202(c)(5) and substituting "as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this title shall" therefore;

(H) by deleting subsection (B) from section 202(c)(7) and relettering subsections (C) and (D) of section 202(c)(7) as "(B)" and "(C)" respectively;

(I) by adding the following at the end of section 203:

"A determination pursuant to this section shall not be considered as a contract dispute and shall not be subject to the Contract Disputes Act (Pub. L. 95-563). Any contractor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition to the United States Court of Claims which shall have jurisdiction to determine the matter de novo and to affirm, reverse, or modify as appropriate the determination of the Federal agency."; and

(J) by amending section 209 by deleting subparagraph (c)(2), changing "(3)" in paragraph (c) to "(2)", and changing the comma after the word "objections" in paragraph (d) to a period and deleting the remainder of section 209.



That the contractor make a written election within two years after disclosure or such additional time as may be approved by the federal agency whether the contractor will retain title to a Subject Invention; provided in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained within the U.S., the period for election of Title may be shortened by the federal agency to a date that is no more than 60 days prior to the end of the statutory period;

*Suggested language for Sec. 305  
to further define reasonable time.*