

FINAL  
Draft

DRAFT 8/4/76

94TH CONGRESS  
2D SESSION

H.R.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

JUNE 1976

Mr. introduced the following bill; which was  
read twice and referred to the Committee on the

A BILL

To establish a uniform Federal policy for intellectual  
property arising from Federally-sponsored research and  
development; to protect and encourage utilization of  
such technology and to further the public interest of  
the United States domestically and abroad; and for other  
related purposes.

1 Be it enacted by the Senate and House of Representatives  
2 of the United States of America in Congress assembled,  
3 That this Act, which may be cited as the "Federal  
4 Intellectual Property Policy Act of 1976", ~~is hereby~~  
5 ~~adopted in accordance with the authority granted by~~  
6 ~~Article I, Section 8, Clause 18 of the United States~~  
7 ~~Constitution.~~

"Title I--FEDERAL INTELLECTUAL PROPERTY POLICY

"Sec.

"101. Findings.

"102. Declaration of purpose.

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

"Sec.

"201. Federal Coordinating Council for Science,  
Engineering, and Technology.

"202. Board for Intellectual Property.

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

"CHAPTER 1.--INVENTIONS OF CONTRACTORS

- "Sec.
- "311. Criteria for the allocation of property rights  
in Subject Inventions.
- "312. Other provisions.

"CHAPTER 2.--INVENTIONS OF FEDERAL EMPLOYEES

- "Sec.
- "321. Reporting of inventions.
- "322. Criteria for the allocation of rights to  
inventions.
- "323. Application of criteria.
- "324. Review of Federal agency determinations.
- "325. Reassignment of rights.
- "326. Incentive Awards Program.
- "327. Income sharing from patent licenses.
- "328. Conflict of interest.

"Title IV--DOMESTIC AND FOREIGN PROTECTION AND LICENSING  
OF FEDERALLY-OWNED INVENTIONS

- "Sec.
- "401. Authorities of Federal agencies.
- "402. Authorities of the Department of Commerce  
in cooperation with other Federal agencies.
- "403. Authorities of General Services Administration.
- "404. Grants of an exclusive or partially exclusive  
license.

"Title V--MISCELLANEOUS

"CHAPTER 1.--OTHER RELATED PROVISIONS

- "Sec.
- "511. Definitions.
- "512. Relationship to antitrust laws.

"CHAPTER 2.--AMENDMENT TO OTHER ACTS

- "Sec.
- "521. Identified Acts amended.

"CHAPTER 3.--EFFECTIVE DATE PROVISION

- "Sec.
- "531. Effective date of Act.

1 "Title I--FEDERAL INTELLECTUAL PROPERTY POLICY

"Sec.

"101. Findings.

"102. Declaration of purpose.

2 "§ 101. Findings.

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

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

11 "(b) A Federal policy on the allocation of rights  
12 to inventions resulting from Federally-sponsored research  
13 and development should stimulate inventors, meet the needs  
14 of the Federal Government, recognize the equities of the  
15 Federal employee inventor and the Federal Government  
16 contractor, and serve the public interest; and

17 "(c) The public interest would be better served if  
18 greater efforts were made to obtain patent protection,  
19 both domestic and foreign, and to promote the interests  
20 of the United State and the commercial use of new techno-  
21 logy resulting from Federally-sponsored research and  
22 development, both in the United States and foreign  
23 countries, as appropriate.

24 "Sec. 102. Declaration of purpose.

25 "It is the purpose of this Act to:

26 "(a) Establish a uniform Federal policy for matters  
27 of intellectual property arising from Federally-sponsored  
28 research and development;

29 "(b) Provide for uniform implementation of the provisions  
30 of this Act, and to make a continuing effort to monitor  
31 such implementation;

1       "(c) To allocate rights to Federal employee inventions  
2 in an equitable manner;

3       "(d) To allocate rights to contractor inventions which  
4 result from Federally-sponsored research and development  
5 so as to

6           "(1) encourage the participation of the most  
7 qualified and competent contractors,

8           "(2) foster competition,

9           "(3) promote the widespread utilization of the  
10 inventions, and

11          "(4) reduce the administrative burdens, both for the  
12 Federal agencies and its contractors;

13       "(e) To provide for a domestic and foreign protection  
14 and licensing program to obtain commercial utilization of  
15 Federally-owned inventions, with the objective of strengthening  
16 the Nation's economy and expanding its domestic and  
17 foreign markets; and

18       "(f) To amend all other Acts and abolish the Executive  
19 Orders regarding the allocation of rights to inventions  
20 which result from Federally-sponsored research and develop-  
21 ment and the licensing of Federally-owned patents.

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

"Sec.

"201. Federal Coordinating Council for Science,  
Engineering, and Technology.

"202. Board for Intellectual Property.

5 "S 201. Federal Coordinating Council for Science,  
6 Engineering, and Technology.

7 "(a) The Federal Coordinating Council for Science,  
8 Engineering, and Technology (established by Title IV,  
9 P.L. 94-282) hereinafter referred to as the 'Council'  
10 shall make recommendations to the Director of the Office  
11 of Science and Technology Policy (OSTP) hereinafter  
12 referred to as the 'Director', with regard to:

13 "(1) Uniform and effective planning and administra-  
14 tion of Federal programs pertaining to inventions,  
15 patents, trademarks, copyrights, rights in technical  
16 data, and matters connected therewith.

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

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

25 "(b) Recommendations regarding matters set forth in  
26 subsection (a) which are made by the COUNCIL and adopted  
27 by the Director will be promulgated to the Federal agencies  
28 through appropriate channels.

29 "(c) In order to carry out the responsibilities set  
30 forth in subsections (a) and (b), the COUNCIL is authorized  
31 to --

32 "(1) Acquire data and reports from the Federal

1 agencies on the interpretation and implementation  
2 of this Act and related policies, regulations and  
3 practices.

4 "(2) Review on its own initiative, or upon request  
5 by a Federal agency, Federal agency implementation  
6 of the provisions of this Act.

7 "(3) Analyze on a continuing basis data acquired  
8 by the COUNCIL.

9 "(4) Consider problems and developments in the  
10 fields of inventions, patents, trademarks, copyrights,  
11 rights in technical data, and matters connected  
12 therewith and the impact of such on Federal Government  
13 policy or uniform accomodation or implementation by  
14 Federal agencies.

15 "(5) Publish annually a report on COUNCIL efforts,  
16 findings and recommendations.

17 "§ 202. Board for Intellectual Property.

18 "The Director shall establish or designate a Board or  
19 Boards for Intellectual Property (hereinafter referred  
20 to as the "BOARD") as required, to make approvals and  
21 determinations and to hear appeals as provided for in  
22 this Act. In exercising its authority and in developing  
23 its rules and procedures, the BOARD shall consult with  
24 the COUNCIL and such Federal agencies as may be  
25 appropriate. The BOARD may perform any and all acts,  
26 and issue such orders, not inconsistent with the Act,  
27 as may be necessary in the execution of its functions.  
28 Decisions of the BOARD under Sections 311.(b)(2)(C),  
29 (D), (E) and (F) of this Act, shall be appealable to  
30 the United States Court of Claims.

1 "Title III--ALLOCATION OF PROPERTY RIGHTS IN INVENTIONS  
2 RESULTING FROM FEDERALLY-SPONSORED RESEARCH  
3 AND DEVELOPMENT

4 "CHAPTER 1.--INVENTIONS OF CONTRACTORS

"Sec.

"311. Criteria for the allocation of property rights  
in Subject Inventions.

"312. Other provisions.

5 "§ 311. Criteria for the allocation of property rights  
6 in Subject Inventions.

7 "The allocation of property rights in Subject Inventions  
8 shall be determined by uniform regulations, issued by the  
9 Administrator of General Services and the Secretary of  
10 Defense, employing a single patent rights clause in all  
11 instances except as may be provided in such regulations,  
12 subject to the minimum rights acquired under Section  
13 311.(b)(2), or as provided in Section 312.(c). Such a  
14 patent rights clause shall include provisions for  
15 the following:

16 "(a) Reporting requirements and declaration of intent.--

17 The contractor shall promptly provide the sponsoring  
18 Federal agency with: (1) a disclosure of each Subject  
19 Invention which is or may be patentable under the laws  
20 of the United States; (2) an election whether the  
21 contractor intends to file a patent application on the  
22 Subject Invention; and (3) if the contractor elects to  
23 file, a declaration of the contractor's intent to com-  
24 mercialize or otherwise achieve the widespread utilization  
25 of the invention by the public. If the Federal Government  
26 contemplates publication or release of information dis-  
27 closing such invention it may allow a reasonable period  
28 of time prior to publication or release in order for a  
29 patent application to be filed thereon. The Federal  
30 Government may withhold publication or release to the  
31 public information disclosing such invention for a  
32 reasonable time in order for a patent application to be  
33 filed.

1       "(b) Minimum rights to the Federal Government and the  
2       public.--Each Federal agency shall acquire on behalf  
3       of the Federal Government at the time of contracting:

4               "(1) Where the contractor elects not to file  
5               a patent application on a Subject Invention  
6               in any country, title to such inventions,  
7               subject to any revocable or irrevocable nonexclus-  
8               ive license which the contractor may be permitted  
9               to retain; and

10              "(2) Where the contractor elects to file  
11              a patent application in accordance with sub-  
12              paragraph (c) of this section:

13                    "(A) The right to require periodic written  
14                    reports at reasonable intervals and partic-  
15                    ularly, when specifically requested by the  
16                    Federal agency, reports on the commercial  
17                    use or other form of utilization by the  
18                    public that is being made or is intended to  
19                    be made of any Subject Invention;

20                    "(B) A nonexclusive, nontransferable, irrevocable,  
21                    paid-up license to practice or have practiced  
22                    for the Federal Government any Subject  
23                    Invention throughout the world by or on  
24                    behalf of the Federal Government (including  
25                    any Federal agency), and it may acquire additional  
26                    rights to sublicense any State or domestic local  
27                    government or to sublicense any foreign  
28                    government pursuant to foreign policy considera-  
29                    tions, or any existing or future treaty or  
30                    agreement when the Federal agency determines it  
31                    would be in the national interest to acquire such  
32                    additional rights;



1           "(C) The right of the Federal agency to  
2           require the contractor to grant a nonexclusive,  
3           partially exclusive or exclusive license to a  
4           responsible applicant or applicants in any  
5           field of use of the Subject Invention upon  
6           terms reasonable under the circumstances, or  
7           to grant such licenses itself, or to require  
8           an assignment of the Subject Invention to the  
9           Federal Government, if the Federal agency determines  
10          such action is necessary because the contractor  
11          has not taken, or is not expected to take within  
12          a reasonable time, effective steps to achieve  
13          practical application of the Subject Invention  
14          in such field of use. Such determination of the  
15          Federal agency may be appealed to the BOARD.

16          "(D) The right of the BOARD to require the  
17          contractor to grant a nonexclusive, partially  
18          exclusive, or exclusive license to a responsible  
19          applicant or applicants, upon terms reasonable  
20          under the circumstances, or to determine that  
21          the Federal agency should grant such a  
22          license itself, following a hearing upon notice  
23          thereof to the public, upon a petition by an  
24          interested person justifying such hearing, if  
25          the BOARD determines, upon review of such  
26          material as the BOARD deems relevant, and after  
27          the contractor or such other interested person  
28          has had the opportunity to provide such relevant  
29          and material information as the BOARD may require,  
30          that such action is necessary:

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"( i) to alleviate health, safety, or welfare needs, provided the contractor and/or its licensees are not satisfying such needs consistent with conditions reasonable under the circumstances; or

"(ii) to the extent that the Subject Invention is required for public use by Federal regulation, provided the contractor and/or its licensees are not satisfying market needs created by the Federal regulations consistent with conditions reasonable under the circumstances.

"(E) The right of the BOARD to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the Federal agency should grant such a license itself, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing, if the BOARD determines, upon review of such material as the BOARD deems relevant, and after the contractor or other interested person has had the opportunity to provide such relevant and material information as the BOARD may require, that the exclusive rights to such Subject Invention in the contractor has tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates, or to create or maintain other situations inconsistent with the antitrust laws.

1           "(F) The right of the BOARD, commencing ten  
2           years from the date the Subject Invention  
3           was made or five years after first public  
4           use or on sale in the United States, whichever  
5           occurs first, (excepting that time before  
6           Federal regulatory agencies necessary to  
7           obtain premarket clearance) to require the  
8           contractor to grant a nonexclusive, partially  
9           exclusive, or exclusive license to a responsible  
10          applicant or applicants, upon terms reasonable  
11          under the circumstances, or to determine that the  
12          Federal agency should grant such a license itself,  
13          following a hearing upon notice thereof to  
14          the public, upon a petition by a prospective  
15          licensee who has attempted unsuccessfully to  
16          obtain such a license from the contractor  
17          and justifying such a hearing, if the BOARD  
18          determines, in view of the factors set forth  
19          in Section 312.(b), that such licensing would  
20          best support the overall purposes of this Act.

21          "(3) Prior to any action pursuant to Sections  
22          311.(b)(2)(D), (E), and (F), the BOARD shall consult  
23          with the Federal agency involved.

24          "(c) Contractor's rights.--The contractor shall retain  
25          a defeasible title to only those Subject Inventions  
26          (including the right to license or assign all or part  
27          of its interests therein) on which the contractor files  
28          a United States patent application and declares its intent  
29          to achieve practical application of the Subject Invention.  
30          Such title in the contractor shall permit the contractor to  
31          retain exclusive commercial rights to the invention subject  
32          to all the rights granted to the Federal Government

1 in subsection (b) (2) above. The contractor's employee  
2 inventor may also retain the contractor's rights under  
3 this subsection with permission of the contractor at  
4 the discretion of the sponsoring Federal agency.

5 "§ 312. Other provisions.

6 "(a) Extension of contractor's exclusive commercial  
7 rights.--Each sponsoring Federal agency, for good  
8 cause shown by the contractor, may extend the period of  
9 the contractor's exclusive commercial rights provided  
10 for in Section 311.(b) (2) (F) following notice to the  
11 public and an opportunity for filing written objections.  
12 The grant of such an extension shall be based upon  
13 a determination by the Federal agency, upon review  
14 of such material as it deems relevant, and after the  
15 contractor and any other interested persons have had  
16 an opportunity to provide such relevant and material  
17 information as the Federal agency may require, that  
18 such extension would best support the overall purposes  
19 of this Act. The Federal agency determination may  
20 be appealed to the BOARD by the contractor or an  
21 interested person involved in such determination.

22 "(b) BOARD considerations. In determining whether  
23 the right to require licensing or the right of the  
24 Federal agency to license set forth in Section  
25 311.(b) (2) (F) should be exercised, the BOARD may consider,  
26 among others, the following type of factors, as  
27 appropriate:

28 "(1) The relative contributions of the Federal  
29 Government and the contractor or its assignees or  
30 licensees, if any, to the making and commercialization  
31 of the Subject Invention;

32 "(2) The relative contributions of the Federal  
33 Government and the contractor or its assignees or  
34 licensees, if any, to the field of technology to  
35 which the Subject Invention relates;

- 1           "(3) The degree to which utilization of the  
2           Subject Invention has satisfied the purposes of  
3           the program under which the Subject Invention was  
4           made;
- 5           "(4) The type and scope of the Subject Invention  
6           and the magnitude of the problem it solves;
- 7           "(5) The effect of such licensing on competition  
8           and widespread utilization of the Subject Invention;
- 9           "(6) The effect of such licensing on incentives  
10          to commercialize this and other Subject Inventions;
- 11          "(7) The extent to which the Subject Invention is  
12          concerned with the public health, safety or welfare;  
13          and
- 14          "(8) The effect of such licensing in assisting  
15          small businesses and minority business enterprises,  
16          as well as economically depressed, low-income, and  
17          labor surplus areas.

18          "When it is determined that the right to require  
19          licensing or the right of the Federal agency to  
20          license should be exercised, the BOARD may specify  
21          terms and conditions, including royalties to be charged,  
22          if any, and the duration and field of use of the license.

23          "(c) Alternative criteria for the allocation of  
24          property rights in Subject Inventions.

25          "(1) The Head of a Federal agency may deviate on a  
26          case-by-case basis from the single patent rights  
27          clause normally used provided that such deviations  
28          shall be published and reported to the COUNCIL for  
29          review in accordance with its responsibility under  
30          Section 201.(a) of this Act.

31          "(2) The regulations adopted pursuant to Section 311  
32          may permit deviation to the minimum rights acquired  
33          under Section 311.(b)(2) on a class basis in:

1           "(A) contracts involving cosponsored, cost  
2           sharing, or joint venture research when the con-  
3           tractor is required to make a substantial contri-  
4           bution of funds, facilities, or equipment to the  
5           work performed under the contract; and  
6           "(B) special contracting situations such as  
7           Federal price or purchase supports and Federal  
8           loan or loan guarantees.  
9           "(3) No deviation under this subsection shall waive  
10          in whole or in part the minimum rights to be secured  
11          for the Federal Government set forth in Section  
12          311. (b) (2) (E).

1 "CHAPTER 2.--INVENTIONS OF FEDERAL EMPLOYEES

"Sec.

- " 321. Reporting of inventions.
- " 322. Criteria for the allocation of rights to inventions.
- " 323. Application of criteria.
- " 324. Review of Federal agency determinations.
- " 325. Reassignment of rights.
- " 326. Incentive Awards Program.
- " 327. Income sharing from patent licenses.
- " 328. Conflict of interest.

2 "§ 321. Reporting of inventions.

3 "All inventions made by Federal employees while under  
4 the administrative jurisdiction of a Federal agency shall  
5 be reported to the designated authority of that Federal  
6 agency.

7 "§ 322. Criteria for the allocation of rights to inventions.

8 "Subject to prescribed rules and regulations issued by  
9 the Commissioner of the Patent and Trademark Office, each  
10 Federal agency shall determine the respective rights of the  
11 Federal Government and of the Federal employee-inventor  
12 in and to any invention made by a Federal employee while  
13 under the administrative jurisdiction of such agency, in  
14 accordance with the following criteria:

15 "(a) The Federal Government shall obtain, subject to  
16 paragraph (c) of this section, the entire right, title  
17 and interest in and to all inventions made by any Federal  
18 employee which bear a relation to the duties of the Federal  
19 employee-inventor, or are made in consequence of his  
20 employment;

21 "(b) A Federal employee shall be entitled to retain  
22 the entire right, title and interest in and to any  
23 invention made by the employee-inventor, subject to a  
24 nonexclusive, nontransferable, irrevocable, paid-up  
25 license to practice or have practiced for the Federal  
26 Government any such invention throughout the world by  
27 or on behalf of the Federal Government (including any  
28 Federal agency) in any case where the invention does not

1 bear a relation to the duties of the employee-inventor  
2 or was not made in consequence of his employment, but  
3 was made with a contribution by the Federal Government  
4 of facilities, equipment, materials, funds, or informa-  
5 tion, or of time or services of other Federal employees  
6 on official duty; and further, the Federal agency may  
7 acquire additional rights to sublicense any State or  
8 domestic local government or to sublicense any foreign  
9 government pursuant to foreign policy considerations, or  
10 any existing or future treaty or agreement where the  
11 Federal agency determines it would be in the national  
12 interest to acquire such additional rights;

13 "(c) The Federal employee may obtain the entire right,  
14 title and interest in and to an invention in any country,  
15 subject to the license and sublicensing rights set forth  
16 in subsection (b), where the Federal agency determines that  
17 there is insufficient interest in the invention to justify  
18 seeking patent protection in that country, although the  
19 Federal Government may have taken title to the invention  
20 or may be entitled to the entire, right, title and  
21 interest therein under subsection (a), provided however,  
22 nothing in this paragraph shall prevent a Federal agency  
23 from publishing or dedicating to the public such an  
24 invention if it is in the public interest; and

25 "(d) A Federal employee shall be entitled to retain  
26 the entire right, title and interest in and to any  
27 invention made by the employee in any case not  
28 falling within subsections (a), (b), or (c).

29 "§ 323. Application of criteria.

30 "(a) In applying the criteria of Section 322 to the  
31 facts and circumstances relating to the making of any  
32 particular invention,



1       "(1) it shall be presumed that an invention falls  
2       within the criteria of Section 322.(a) when made by  
3       an employee who is employed or assigned to (A) invent  
4       or improve or perfect any art, machine, manufacture,  
5       or composition of matter, (B) conduct or perform  
6       research, development work, or both, (C) supervise,  
7       direct, coordinate, or review Federally-financed or  
8       conducted research, development work, or both, or  
9       (D) act in a liaison capacity among Federal or  
10       non-Federal agencies, or individuals engaged in such  
11       work; and

12       "(2) it shall be presumed that an invention falls  
13       within the criteria of Section 322.(b) when made  
14       by any other employee.

15       "(b) Either presumption of subsection (a) may be  
16       rebutted by the facts or circumstances attendant upon  
17       the conditions under which any particular invention  
18       is made.

19       "§ 324. Review of Federal agency determinations.

20       "Federal agency determinations regarding the respective  
21       rights of the Federal Government and the Federal  
22       employee-inventor are to be reviewed in accordance with  
23       prescribed rules and regulations issued pursuant to  
24       Section 322 where

25       "(1) the Federal agency determines not to acquire  
26       all right, title and interest in an invention, or

27       "(2) the employee-inventor who is aggrieved by  
28       the determination requests such a review.

29       "§ 325. Reassignment of rights.

30       "Where a Federal agency finds on the basis of new  
31       evidence that it has acquired rights in an invention  
32       greater than the Federal Government is entitled to

1 assert under the criteria of Section 322, the Federal  
2 agency shall adjust such inequity by granting greater  
3 rights to the Federal employee-inventor necessary to  
4 correct the inequity.

5 "§ 326. Incentive Awards Program.

6 "(a) Incentive Awards may be granted to Federal  
7 employee inventors in order to:

8 "(1) Monetarily reward or otherwise recognize  
9 Federal employees for inventions; and

10 "(2) Stimulate inventive creativeness and encourage  
11 Federal employees to disclose their inventions  
12 and thus to enhance the transfer and utilization  
13 of related technology.

14 "(b) These awards shall be granted pursuant to the  
15 provisions of Title 5, Chapter 45 and Title 10, Chapter  
16 57, and in accordance with implementing regulations thereunder  
17 except as modified herein. Existing statutory provisions  
18 for awards shall remain unaffected by this section.

19 "(c) The amount of the award for an invention will  
20 be based on:

21 "(1) The extent to which the invention advances the  
22 state of the art;

23 "(2) The scope of the application of the invention;

24 "(3) The importance of the invention in terms of  
25 its value and benefits to the Federal Government;  
26 and

27 "(4) The extent to which the invention has achieved  
28 utilization by the public.

29 "(d) Awards for an invention of up to \$10,000 may be  
30 granted by the Head of a Federal agency. Awards in  
31 excess of \$10,000 but not in excess of \$50,000 may be  
32 granted

1       "(1) for Federal civilian employees by the Head of the  
2       Federal agency with the approval of the Civil  
3       Service Commission,

4       "(2) for members of the Armed Forces with the  
5       approval of the Secretary of Defense, and

6       "(3) for members of the United States Coast  
7       Guard when not operating as a service in the  
8       Navy with the approval of the Secretary of  
9       Transportation,

10      upon recommendation that the invention is highly exceptional  
11      and unusually outstanding. Awards in excess of \$50,000 may  
12      be made in those instances where the Head of the Federal  
13      agency, based upon the value and benefit of the inventor's  
14      contribution, recommends to the Chairman of the Civil  
15      Service Commission and the Director of the Office of  
16      Management and Budget that a Presidential award be made.  
17      Upon endorsement of both the Chairman of the Civil Service  
18      Commission and the Director of the Office of Management  
19      and Budget and approval by the President, an award in  
20      excess of \$50,000 and an honorary recognition, may be  
21      granted as deemed appropriate.

22      "(e) A cash award under this section is in addition  
23      to the regular pay of the recipient. Acceptance of  
24      a cash award under this section constitutes an agreement  
25      that any use by the Federal Government of an idea, method,  
26      or device for which the award is made does not form the  
27      basis of a further claim of any nature against the  
28      Federal Government by the recipient, his heirs, or  
29      assigns.

30      "(f) A cash award and expense for honorary recognition  
31      of a Federal employee-inventor shall be paid from the  
32      fund or appropriation of the Federal agency primarily  
33      benefiting. The Head of the Federal agency shall determine

1 the amount to be paid by each Federal agency for Federal  
2 agency awards and the President shall determine the  
3 amount of the award to be paid by each Federal agency  
4 for Presidential awards made under subsection (d).

5 "(g) Nothing contained in this section shall be  
6 construed to limit the discretionary power of the Federal  
7 agency to grant or not grant an incentive award under  
8 this section.

9 "S 327. Income sharing from patent licenses.

10 "In addition to awards as provided in Section 326, in  
11 instances where a Federal agency grants income bearing  
12 patent licenses for an invention, such Federal agency  
13 may share the income received with the Federal employee-  
14 inventor.

15 " 328. Conflict of interest.

16 "Determinations of an appointing official pursuant to  
17 Section 208(b) of Title 18, United States Code, regarding  
18 the promotion of a Federal employee's invention by such  
19 employee shall be subject to regulations prescribed by  
20 the Civil Service Commission.

1 "Title IV--DOMESTIC AND FOREIGN PROTECTION AND LICENSING  
2 OF FEDERALLY-OWNED INVENTIONS

"Sec.

"401. Authorities of Federal agencies.

"402. Authorities of the Department of Commerce  
in cooperation with other Federal agencies.

"403. Authorities of General Services Administration.

"404. Grants of an exclusive or partially exclusive  
license.

3 "S 401. Authorities of Federal agencies.

4 "The Federal agencies are authorized:

5 "(a) To apply for, obtain and maintain patents or other  
6 forms of protection in the United States and in foreign  
7 countries on inventions in which the Federal Government  
8 owns a right, title or interest;

9 "(b) To promote the licensing of inventions covered by  
10 Federally-owned patent applications, patents or other  
11 forms of protection obtained with the objective of  
12 maximizing utilization by the public of the inventions  
13 covered thereby.

14 "(c) To grant nonexclusive, exclusive, or partially  
15 exclusive licenses under Federally-owned patent applica-  
16 tions, patents or other forms of protection obtained  
17 royalty-free or for royalties or other consideration,  
18 and on such terms and conditions including the grant to  
19 the licensee the right of enforcement pursuant to the  
20 provisions of Title 35, Chapter 28, USC, as deemed  
21 appropriate in the public interest.

22 "(d) To make market surveys and other investigations  
23 for determining the potential of inventions for domestic  
24 and foreign licensing and other forms of utilization;  
25 to acquire technical information and engage in negotiations  
26 and other activities for promoting the licensing and  
27 the purpose of enhancing their marketability and  
28 public utilization.

1       "(e) To withhold publication or release to the public  
2 information disclosing any invention in which the Federal  
3 Government owns a right, title or interest for a reasonable  
4 time in order for a patent application to be filed.

5       "(f) To undertake the above and all other suitable  
6 and necessary steps to protect and administer rights to  
7 inventions on behalf of the Federal Government either  
8 directly or through contract;

9       "(g) To transfer custody and administration, in  
10 whole or in part, to the Department of Commerce or to  
11 other Federal agencies, of the right, title or interest  
12 in any invention for the purpose of administering the  
13 authorities set forth in subsections (a) through (d),  
14 without regard to the provisions of the Federal Property  
15 and Administrative Services Act of 1949 (40 U.S.C. 471);  
16 and

17       "(h) To designate the Department of Commerce as recipient  
18 of any or all funds received from fees, royalties or other  
19 management of Federally-owned inventions authorized  
20 under this Act.

21       "§ 402. Authorities of the Department of Commerce in  
22 cooperation with other Federal agencies.

23       "The Department of Commerce is authorized in cooperation  
24 with other Federal agencies:

25       "(a) To coordinate a program for assisting all  
26 Federal agencies in carrying out the authorities set  
27 forth in Section 401 above;

28       "(b) To publish notification of all Federally-  
29 owned inventions that are available for licensing;

30       "(c) To evaluate inventions referred by Federal  
31 agencies and patent applications filed thereon in order  
32 to identify those inventions with the greatest commercial

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

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

7 "(e) To accept custody and administration, in whole  
8 or in part, of the right, title and interest in any  
9 invention for the purposes set forth in Sections 401.(a)  
10 through (d), with the approval of the Federal agency  
11 concerned without regard to the provisions of the  
12 Federal Property and Administrative Service Act of  
13 1949 (40 U.S.C. 471);

14 "(f) To receive funds from fees, royalties or other  
15 management of Federally-owned inventions authorized  
16 under this Act; provided, however, that such funds  
17 will be used only for the purpose of this Act; and

18 "(g) To undertake these and such other functions either  
19 directly or through contracts as are necessary and  
20 appropriate to accomplish the purposes of Title IV  
21 of this Act.

22 "§ 403. Authorities of the General Services Administration.

23 "The Administrator of General Services is authorized to  
24 promulgate regulations specifying the terms and conditions  
25 upon which any Federally-owned invention may be licensed  
26 on a nonexclusive, partially exclusive, or exclusive basis.

27 "§ 404. Grants of an exclusive or partially exclusive license.

28 "(a) Federal agencies may grant exclusive or partially  
29 exclusive licenses in any invention covered by a Federally-  
30 owned domestic patent or patent application only if,  
31 after notice to the public and opportunity for filing  
32 written objections, it is determined that:

33 "(1) The interests of the Federal Government  
34 and the public will best be served by the proposed

1 license, in view of the applicant's intentions,  
2 plans, and ability to bring the invention to  
3 practical application or otherwise promote the  
4 invention's utilization by the public;

5 "(2) The desired practical application has  
6 not been achieved, or is not likely expeditiously  
7 to be achieved, under any nonexclusive license which  
8 has been granted, or which may be granted, on the  
9 invention;

10 "(3) Exclusive or partially exclusive licensing is  
11 a reasonable and necessary incentive to call forth  
12 the investment of risk capital and expenditures  
13 to bring the invention to practical application  
14 or otherwise promote the invention's utilization  
15 by the public; and

16 "(4) The proposed terms and scope of exclusivity  
17 are not greater than reasonably necessary to  
18 provide the incentive for bringing the invention  
19 to practical application or otherwise promote the  
20 invention's utilization by the public;

21 provided that, a Federal agency shall not grant such  
22 exclusive or partially exclusive license if it determines  
23 that the grant of such license will tend substantially  
24 to lessen competition or result in undue concentration  
25 in any section of the country in any line of commerce  
26 to which the technology to be licensed relates, or to  
27 create or maintain other situations inconsistent with  
28 the antitrust laws.

29 "(b) After consideration of whether the interests  
30 of the Federal Government or United States industry in  
31 foreign commerce will be enhanced, Federal agencies  
32 may grant exclusive or partially exclusive licenses in  
33 any invention covered by a foreign patent application



1 or patent after notice to the public and opportunity  
2 for filing written objections; provided that, a Federal  
3 agency shall not grant such exclusive or partially  
4 exclusive license if it determines that the grant of such  
5 license will tend substantially to lessen competition  
6 or result in undue concentration in any section of the  
7 country in any line of commerce to which the technology  
8 to be licensed relates, or to create or maintain other  
9 situations inconsistent with the antitrust laws.

10 "(c) The Federal agency shall maintain a record of  
11 determinations to grant exclusive or partially exclusive  
12 licenses.

13 "(d) Any grant of an exclusive or partially exclusive  
14 license shall contain such terms and conditions as the  
15 Federal agency may determine to be appropriate for the  
16 protection of the interests of the Federal Government  
17 and the public, including provisions for the following:

18 "(1) Periodic written reports at reasonable  
19 intervals, and when specifically requested by  
20 the Federal agency on the extent of the commercial  
21 or other use by the public that is being made or  
22 is intended to be made of the invention;

23 "(2) A nonexclusive, nontransferable, irrevocable,  
24 paid-up license to practice or have practiced  
25 for the Federal Government the licensed invention  
26 throughout the world by or on behalf of the Federal  
27 Government (including any Federal agency), and  
28 the additional right to sublicense any State  
29 or domestic local government or to sublicense any  
30 foreign government pursuant to foreign policy  
31 considerations, or any existing or future treaty  
32 or agreement if the Federal agency determines it  
33 would be in the national interest to retain such  
34 additional rights; and

1           "(3) The right in the Federal agency to terminate  
2           such license in whole or in part unless the  
3           licensee demonstrates to the satisfaction of the  
4           Federal agency that the licensee has taken  
5           effective steps, or within a reasonable time  
6           thereafter is expected to take such steps, necessary  
7           to accomplish substantial commercial or other use  
8           of the invention by the public.

9           "(4) The right in the Federal agency, commencing  
10           three years after the grant of a license, to require  
11           the licensee to grant a nonexclusive or partially  
12           exclusive license to a responsible applicant or  
13           applicants, upon terms reasonable under the circum-  
14           stances, and in appropriate circumstances to terminate  
15           the license in whole or in part, following a hearing  
16           upon notice thereof to the public, upon a petition  
17           by an interested person justifying such hearing, if  
18           the Federal agency determines, upon review of such  
19           material as it deems relevant, and after the licensee,  
20           or other interested person, has had the opportunity to  
21           provide such relevant and material information as  
22           the Federal agency may require, that such license  
23           has tended substantially to lessen competition or  
24           to result in undue concentration in any section of  
25           the country in any line of commerce to which the  
26           technology relates or to create or maintain other  
27           situations inconsistent with the antitrust laws.

1 "Title V--MISCELLANEOUS

2 "CHAPTER 1.--OTHER RELATED PROVISIONS

"Sec.

"511. Definitions.

"512. Relationship to antitrust laws.

3 "§ 511. Definitions

4 "As used in this Act--

5 "(a) The term 'Federal agency' means an 'executive  
6 agency' as defined by Section 105 of Title 5, United  
7 States Code, and the military departments defined by  
8 Section 102 of Title 5, United States Code.

9 "(b) The term 'Federal employees' means all employees  
10 as defined in 5 U.S.C. 2105 and members of the uniformed  
11 services shall be subject to the provisions of this Act.

12 "(c) The term 'contract' means any contract or  
13 grant entered into between any Federal agency and any  
14 person for the performance of experimental, developmental,  
15 or research work substantially funded by the Federal Govern-  
16 ment. Such term includes any assignment, substitution of  
17 parties, or subcontract of any tier entered into for the  
18 performance of experimental, developmental, or research  
19 work under a contract.

20 "(d) The term 'contractor' means any person and any  
21 public or private corporation, partnership, firm,  
22 association, institution, or other entity that is a  
23 party to the contract.

24 "(e) The term 'invention' means any invention or  
25 discovery and includes any art, method, process, machine,  
26 manufacture, design, or composition of matter, or any  
27 new and useful improvement thereof, or any variety of  
28 plant, which is or may be patentable or otherwise  
29 protectable under the laws of the United States.

1       "(f) The term 'Subject Invention' means any invention  
2 or discovery of the contractor conceived or first actually  
3 reduced to practice in the course of or under a contract.

4       "(g) The term 'practical application' means to manu-  
5 facture in the case of a composition or product, to  
6 practice in the case of a process, or to operate in the  
7 case of a machine or system, and, in each case, under  
8 such conditions as to establish that the invention is  
9 being worked and that its benefits are available to the  
10 public either on reasonable terms or through reasonable  
11 licensing arrangements.

12       "(h) The term 'person' means any individual, partnership,  
13 corporation, association, institution, or other entity.

14       "(i) The term 'made', when used in relation to any  
15 invention, means the conception or first actual reduction  
16 to practice of such invention.

17       "(j) The term 'antitrust law' means--

18       "(1) the Act entitled "An Act to protect trade  
19 and commerce against unlawful restraints and  
20 monopolies", approved July 2, 1890 (15 U.S.C. 1  
21 et seq.), as amended;

22       "(2) the Act entitled 'An Act to supplement existing  
23 laws against unlawful restraints and monopolies,  
24 and for other purposes', approved October 15, 1914  
25 (15 U.S.C. 12 et seq.) as amended;

26       "(3) the Federal Trade Commission Act (15 U.S.C.  
27 41 et seq.), as amended;

28       "(4) sections 73 and 74 of the Act entitled 'An  
29 Act to reduce taxation to provide revenue for  
30 the Federal Government, and for other purposes',  
31 approved August 27, 1894 (15 U.S.C. 8 and 9), as  
32 amended; and

33       "(5) the Act of June 19, 1936, chapter 592 (15  
34 U.S.C. 13, 13a, 13b, and 21a).

1     § 512. Relationship to Antitrust Laws.  
2         "Nothing in this Act shall be deemed to convey  
3     to any individual, corporation, or other business  
4     organization immunity from civil or criminal liability,  
5     or to create defenses to actions, under the Antitrust  
6     Laws.

1 "CHAPTER 2.--AMENDMENT TO OTHER ACTS

"Sec.  
"521. Identified Acts Amended.

2 "§ 521. Identified Acts Amended.

3 "The following identified Acts are hereby amended  
4 as set forth below:

5 "(a) Section 10(a) of the Act of June 29, 1935, as  
6 added by Title 1 of the Agricultural Research  
7 and Marketing Act of August 14, 1946

8 "Section 10(a) of the Act of June 29, 1935, as added  
9 by Title 1 of the Act of August 14, 1946 (60 Stat. 1085) is  
10 amended by striking out the following: 'Any contracts  
11 made pursuant to this authority shall contain requirements  
12 making the results of research and investigations available  
13 to the public through dedication, assignment to the  
14 Government, or such other means as the Secretary shall  
15 determine.' (Amends 7 U.S.C.427i(a).)

16 "(b) Section 205(a) of the Agricultural Research and  
17 Marketing Act of August 14, 1946

18 "Section 205(a) of the Act of August 14, 1946 (60 Stat.  
19 1090, as amended) is amended by striking out the following  
20 language: 'Any contract made pursuant to this section  
21 shall contain requirements making the result of such  
22 research and investigations available to the public by  
23 such means as the Secretary of Agriculture shall determine.'  
24 (Amends 7 U.S.C. 1624(a).)

25 "(c) Section 501(c) of the Federal Coal Mine Health  
26 and Safety Act of 1969

27 "Section 501(c) of the Federal Coal Mine Health and  
28 Safety Act of 1969 (P.L. 91-173; 83 Stat. 742) is amended  
29 by striking out the following language thereof: 'No  
30 research, demonstrations, or experiments shall be carried  
31 out, contracted for, sponsored, cosponsored, or authorized  
32 under authority of this Act, unless all information, uses,

1 products, processes, patents, and other developments  
2 resulting from such research, demonstrations, or experiments  
3 will (with such exception and limitation, if any, as the  
4 Secretary or the Secretary of Health, Education, and  
5 Welfare may find to be necessary in the public interest)  
6 be available to the general public.' (Amends 30 U.S.C.  
7 951(c).)

8 "(d) Section 106(c) of the National Traffic and Motor  
9 Vehicle Safety Act of 1966

10 "Section 106(c) of the National Traffic and Motor Vehicle  
11 Safety Act of 1966 (P.L. 89-563; 80 Stat. 721) is repealed.  
12 (Amends 15 U.S.C. 1395(c).)

13 "(e) Section 12 of the National Science Foundation  
14 Act of 1950

15 "Section 12 of the National Science Foundation Act of  
16 1950 (P.L. 90-407, 82 Stat. 360) is repealed. (Amends  
17 42 U.S.C. 1871(a).)

18 "(f) Section 152 of the Atomic Energy Act of 1954

19 "Section 152 of the Atomic Energy Act of 1954 (P.L.  
20 83-703; 68 Stat. 943) is repealed. (Amends 42 U.S.C.  
21 2182.)

22 "(g) The National Aeronautics and Space Act of 1958

23 "The National Aeronautics and Space Act of 1958 (P.L.  
24 85-568; 72 Stat. 426; as amended) is amended by --

25 "(1) repealing section 305 thereof; provided, however,  
26 that subsections (c), (d), and (e) of said section 305  
27 shall continue to be effective with respect to any  
28 application for patents in which the written statement  
29 referred to in subsection (c) of said section 305 has  
30 been filed or requested to be filed by the Commissioner  
31 of Patents and Trademarks prior to the effective date  
32 of this Act (amends 42 U.S.C. 2457);

1       "(2) striking out the following language in subsection  
2       306(a) thereof: (1) '(as defined by section 305)'; and  
3       (2) 'the Inventions and Contributions Board, established  
4       under section 305 of this Act' and inserting in lieu  
5       thereof the following language: 'an Inventions and  
6       Contributions Board which shall be established by the  
7       Administrator within the Administration' (amends 42  
8       U.S.C. 2458);

9       "(3) inserting at the end of section 203.(c) thereof  
10       the following new subparagraph: '(14) To provide  
11       effective contractual provisions for the reporting  
12       of the results of the activities of the Administration,  
13       including full and complete technical reporting of  
14       any innovation made in the course of or under any  
15       contract of the Administration.'

16       "(4) inserting at the end of section 203 thereof the  
17       following new subsection: '(d) For the purposes of  
18       chapter 17 of title 35 of the United States Code the  
19       Administration shall be considered a defense agency of  
20       the United States.' (amends 42 U.S.C. 2478); and

21       "(5) striking out the following from section 203  
22       thereof: '(including patents and rights thereunder)'.  
23       (Amends 42 U.S.C. 2473.)

24       "(h) Section 6 of the Coal Research and Development  
25       Act of 1960

26       "Section 6 of the Coal Research and Development Act  
27       of 1960 (P.L. 86-599; 74 Stat. 337) is repealed. (Amends  
28       30 U.S.C. 666.)

29       "(i) Section 4 of Helium Act of Amendments of 1960

30       "Section 4 of Helium Act Amendments of 1960 (P.L.  
31       86-777; 74 Stat. 920) is amended by striking out the



1 following language thereof: 'Provided, however, that  
2 all research contracted for, sponsored, cosponsored,  
3 or authorized under authority of this Act shall be pro-  
4 vided for in such a manner that all information, uses,  
5 products, processes, patents, and other developments  
6 resulting from such research developed by Government  
7 expenditure will (with such exceptions and limitations,  
8 if any, as the Secretary may find to be necessary in  
9 the interest of national defense) be available to the  
10 general public: And provided further, that nothing  
11 contained herein shall be construed as to deprive the  
12 owner of any background patent relating thereto to  
13 such rights as he may have thereunder.' (Amends 50  
14 U.S.C. 167b.)

15 "(j) Subsection (b) of Section 4 of the Saline  
16 Water Conversion Act of 1961

17 "Subsection (b) of section 4 of the Saline Water  
18 Conversion Act of 1961 (P.L. 87-295; 75 Stat. 628), as  
19 amended by Subsection (d) of Section 6 of the Saline Water  
20 Conversion Act of 1971, P.L. 92-60, is repealed. (Amends  
21 42 U.S.C. 1954(b).)

22 "(k) Section 32 of the Arms Control and Disarmament  
23 Act of 1961

24 "Section 32 of the Arms Control and Disarmament Act  
25 of 1961 (P.L. 87-297; 75 Stat. 634) is repealed. (Amends  
26 22 U.S.C. 2572.)

27 "(l) Section 303 of the Water Resources Act of 1964

28 "Section 303 of the Water Resources Act of 1964  
29 (P.L. 88-379, 78 Stat. 332) is repealed. (Amends 42  
30 U.S.C. 1961c-3.)

31 "(m) Subsection (e) of Section 302 of the Appalachian  
32 Regional Development Act of 1965

33 "Subsection (e) of section 302 of the Appalachian  
34 Regional Development Act of 1965 (P.L. 89-4; 79 Stat.5;  
35 as amended) is repealed. (Amends 40 U.S.C. App. 302(e).)

1       "(n) Subsection (c) of Section 204 of the Solid  
2           Waste Disposal Act

3       "Subsection (c) of section 203 of the Solid Waste  
4       Disposal Act (P.L. 89-272; 79 Stat. 997) is repealed.  
5       (Amends 42 U.S.C. 3253(c).)

6       "(o) Section 216 of Title 38, United States Code

7       "Section 216 of Title 38, United States Code, is  
8       amended by deleting subsection (a)(2) thereof and by  
9       redesignating subsection (a)(3) thereof as '(a)(2)'.  
10      (Amends 38 U.S.C. 216(a)(2).)

11      "(p) Section 9 of Federal Nonnuclear Energy  
12          Research and Development Act of 1974

13      "Section 9 of the Federal Nonnuclear Energy Research  
14      and Development Act of 1974, Public Law 93-577, is repealed  
15      except for paragraph (1) of Section 9.

16      "(q) Section 3 of the Saline Water Conversion  
17          Program Authorization Act for Fiscal Year 1977

18      "Section 3 of the Saline Water Conversion Program  
19      Authorization Act for Fiscal Year 1977, P.L. 94-316, is  
20      repealed.

21      "(r) Reserved.

22      "(s) Reserved.

23      "(t) Reserved.

1 "CHAPTER 3.--EFFECTIVE DATE PROVISION

"Sec.

"531. Effective date of Act.

2 "This Act shall take effect on the first day of the  
3 seventh month beginning after the date of enactment of  
4 this Act, except that section \_\_\_\_ shall take effect  
5 immediately and regulations implementing this Act may  
6 be issued prior to such day.