

98TH CONGRESS
2D SESSION

H. R. 5003

To establish a uniform Federal system for management, protection, and utilization of the results of federally sponsored scientific and technological research and development, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1984

Mr. FUQUA (for himself, Mr. BROWN of California, Mr. WALGREN, Mr. BOUCHER, Mr. SENSENBRENNER, and Mr. GREGG) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Science and Technology

A BILL

To establish a uniform Federal system for management, protection, and utilization of the results of federally sponsored scientific and technological research and development, and for other 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 "Uniform Science and
4 Technology Research and Development Utilization Act".

TABLE OF CONTENTS

TITLE I—POLICY

- Sec. 101. Findings.
Sec. 102. Purpose.

TITLE II—IMPLEMENTATION

Sec. 201. Functions of the Federal Coordinating Council for Science, Engineering, and Technology.

Sec. 202. Functions of the Secretary of Commerce.

TITLE III—ALLOCATION OF RIGHTS

Sec. 301. Rights of the Government and the contractor.

Sec. 302. Waiver.

Sec. 303. March-in rights.

Sec. 304. Background rights.

TITLE IV—MISCELLANEOUS

Sec. 401. Definitions.

Sec. 402. Amendments to other Acts.

Sec. 403. Relationship to antitrust laws.

Sec. 404. Effective date.

1 TITLE I—POLICY

2 FINDINGS

3 SEC. 101. The Congress, recognizing the profound
4 impact of science and technology, finds and declares that—

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

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

15 (3) inventions resulting from Government-spon-
16 sored research and development constitute a valuable
17 national resource which should be developed in a

1 manner consistent with the public interest and the eq-
2 uities of the respective parties;

3 (4) current Federal policy with respect to the allo-
4 cation of rights to the results of Government-sponsored
5 research and development delays technological prog-
6 ress, and inhibits commercial utilization of those re-
7 sults; and

8 (5) there is a need for the establishment and im-
9 plementation of a flexible Government-wide policy for
10 the management and utilization of the results of Gov-
11 ernment-sponsored research and development, and this
12 policy should promote the progress of science and the
13 useful arts, encourage the efficient commercial utiliza-
14 tion of technological developments and discoveries,
15 guarantee the protection of the public interest in the
16 United States and foreign countries, and recognize the
17 equities of the contracting parties.

18 PURPOSE

19 SEC. 102. It is the purpose of this Act to—

20 (1) establish and maintain a uniform Federal
21 policy applicable to the management and use of the re-
22 sults of Government-sponsored science and technology
23 research and development to stimulate more wide-
24 spread commercial utilization of those results for the
25 public good;

1 (2) insure the effective uniform implementation of
2 the policy created by this Act, and provide for monitor-
3 ing on a continuing basis the impact of such policy and
4 its implementation on innovation and technology devel-
5 opment;

✓ 6 (3) allocate rights to inventions by contractors
7 which result from Government-sponsored research de-
8 velopment so as to—

9 (A) encourage the participation of the most
10 qualified and competent contractors,

11 (B) foster competition,

12 (C) reduce the administrative burdens, both
13 for the Federal agencies and their contractors,
14 and

15 (D) protect the public investment in research
16 and development by promoting the widespread
17 utilization of inventions;

18 (4) provide measures to protect United States in-
19 terests in foreign countries regarding the results of
20 Government-sponsored science and technology research
21 and development; and

✓ 22 (5) amend or repeal other Acts and Executive
23 orders regarding the allocation of rights to inventions
24 which result from Government-sponsored research and
25 development.

1 TITLE II—IMPLEMENTATION

2 FUNCTIONS OF THE FEDERAL COORDINATING COUNCIL
3 FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

4 SEC. 201. (a) The Federal Coordinating Council for Sci-
5 ence, Engineering, and Technology (established by section
6 401 of the National Science and Technology Policy, Organi-
7 zation, and Priorities Act of 1976 (42 U.S.C. 6651) (herein-
8 after in this section referred to as the "Council") shall make
9 recommendations to the Director with regard to—

10 (1) uniform and effective planning and administra-
11 tion of Federal programs pertaining to inventions, pat-
12 ents, rights in technical data, and matters connected
13 therewith;

14 (2) uniform policies, regulations, guidelines, and
15 practices to carry out the provisions of this Act and
16 other Government objectives in the field of intellectual
17 property; and

18 (3) uniformity and effectiveness of interpretation
19 and implementation by individual Federal agencies of
20 the provisions of this Act and other related Govern-
21 ment policies, regulations, and practices.

22 For the purpose of assuring effective management of Govern-
23 ment-owned inventions, the Secretary of Commerce shall
24 chair a committee of the Council to formulate the recommen-
25 dations required by this subsection.

1 (b) Recommendations regarding matters set forth in sub-
2 section (a) which are made by the Council and adopted by the
3 Director shall be transmitted to Federal agencies through ap-
4 propriate channels.

5 (c) In order to carry out the responsibilities set forth in
6 subsections (a) and (b), the Council is authorized to—

7 (1) acquire data and reports from Federal agencies
8 on the interpretation and implementation of this Act
9 and related policies, regulations, and practices;

10 (2) review on its own initiative, or upon request
11 by a Federal agency, Federal agency implementation
12 of the provisions of this Act;

13 (3) analyze, on a continuing basis, data acquired
14 by the Council;

15 (4) consider problems and developments in the
16 fields of inventions, patents, rights in technical data,
17 and matters connected therewith and the impact there-
18 of on Government policy or uniform accommodation or
19 implementation by Federal agencies; and

20 (5) publish annually a report on Council efforts,
21 findings, and recommendations made under this section,
22 which report shall include—

23 (A) relevant statistical data regarding the
24 disposition of subject invention disclosures result-
25 ing from Government-sponsored research and de-

1 velopment, including those inventions disclosed by
2 small businesses and nonprofit organizations;

3 (B) any legislative or administrative recom-
4 mendations to better achieve the purposes of this
5 Act; and

6 (C) an analysis of the impact of Federal poli-
7 cies on the purposes of this Act.

8 FUNCTIONS OF THE SECRETARY OF COMMERCE

9 SEC. 202. For the purpose of assuring the effective
10 management of Government-owned inventions, the Secretary
11 is authorized to—

12 (1) assist Federal agency efforts to promote the li-
13 censing and utilization of Government-owned inven-
14 tions;

15 (2) assist Federal agencies in seeking and main-
16 taining protection on inventions in foreign countries, in-
17 cluding the payment of fees and costs connected there-
18 with;

19 (3) consult with and advise Federal agencies as to
20 areas of science and technology research and develop-
21 ment with potential for commercial utilization;

22 (4) promulgate regulations as described in section
23 301(c);

24 (5) publish notification of all owned inventions
25 that are available for licensing; and

1 (6) evaluate inventions referred by Federal agen-
2 cies, and patent applications filed thereon, in order to
3 identify those inventions with the greatest commercial
4 potential and to insure promotion and utilization by the
5 public of inventions so identified.

6 TITLE III—ALLOCATION OF RIGHTS

7 RIGHTS OF THE GOVERNMENT AND THE CONTRACTOR

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

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

24 (2) the contractor is not located in the United
25 States or does not have a place of business located in

1 the United States, is a foreign government, or is sub-
2 ject to the control of a foreign government;

3 (3) the contract is entered into under a program
4 that implements a formal international treaty, agree-
5 ment, or arrangement, including, but not limited to,
6 agreements of cooperation in science and technology or
7 military agreements relating to weapons development
8 or production, and it is determined by the agency that
9 rights in the Government in any subject inventions
10 beyond the license right provided in subsection (c)(3) of
11 this section are necessary for the agency to fulfill its
12 obligations under the international treaty, agreement,
13 or arrangement; or

14 (4) the agency determines, on a case-by-case
15 basis, that there are exceptional circumstances requir-
16 ing such action to better promote the policy and objec-
17 tives of section 102(3) of this Act.

18 (b)(1) Each determination made by a Federal agency
19 under the authority of subsection (a) of this section shall be in
20 writing and, except in the case of subsection (a)(1), the
21 agency shall, within thirty days after the award of the appli-
22 cable contract, file with the Secretary a copy of each such
23 determination. In the case of a determination under subsec-
24 tion (a)(3) or (a)(4), the statement shall include an analysis
25 supporting the determination and justifying the limitations

1 and conditions being imposed. If the Secretary believes that
2 any individual determination or pattern of determinations is
3 contrary to the terms, policy, or objectives of this Act, the
4 Secretary shall so advise the head of the agency concerned
5 and the Director and recommend corrective actions.

6 (2) Whenever the Director has determined that one or
7 more Federal agencies are utilizing the authority of subsec-
8 tion (a)(3) or (a)(4) of this section in a manner that is contrary
9 to the terms, policy, or objectives of this Act, the Director is
10 authorized to issue policies, procedures, and guidelines de-
11 scribing classes of situations in which Federal agencies may
12 not utilize the provisions of subsection (a)(3) or (a)(4) of this
13 section.

14 (c) In accordance with regulations issued by the Secre-
15 tary after public comment, each contract shall employ a
16 patent rights clause containing appropriate provisions to ef-
17 fectuate the following:

18 (1) that (A) the contractor disclose each subject
19 invention within a reasonable time after it is made, and
20 (B) the Government may receive title to any subject
21 invention not disclosed within such reasonable time;

22 (2) that, unless the Government has acquired the
23 right to title under subsection (a) of this section—

24 (A) the contractor make a written election,
25 as to the retention of title to the subject invention

1 within a reasonable time after disclosure under
2 paragraph (1) of this subsection;

3 (B) the Government may, upon request, re-
4 ceive title to any subject invention in any coun-
5 tries in which the contractor has not elected to
6 retain title within such time;

7 (C) if a contractor does not elect to retain
8 worldwide title to a subject invention, the Federal
9 agency may consider and, after consultation with
10 the contractor, grant requests for retention of
11 rights by the inventor on such terms and condi-
12 tions as deemed appropriate by the agency and
13 subject to section 303 of this Act;

14 (D) a contractor electing to retain title to a
15 subject invention shall file patent applications
16 within reasonable times;

17 (E) the Government may, upon request, re-
18 ceive title to any subject invention in any coun-
19 tries in which the contractor has failed to file
20 patent applications within the reasonable times
21 specified pursuant to subparagraph (D) of this sub-
22 section; and

23 (F) in any case when a Federal agency em-
24 ployee is either—

1 (i) a coinventor with a contractor em-
2 ployee of a subject invention, or

3 (ii) an inventor of an invention made
4 under a contract involving cosponsored, cost-
5 sharing or joint venture research or develop-
6 ment and the contractor is required to make
7 a substantial contribution of funds, facilities,
8 or equipment to the work performed under
9 the contract,

10 the Federal agency is authorized to transfer or
11 assign whatever rights it may acquire, or may
12 have the right to acquire, in the invention from its
13 employee to the contractor subject to the same
14 conditions set forth in this title as are applicable
15 to the rights the contractor derived through its
16 own contract;

17 (3) that with respect to any subject invention to
18 which a contractor elects to retain title, the Govern-
19 ment shall have (unless additional rights have been
20 taken under subsection (a) of this section) a nonexclu-
21 sive, nontransferrable, irrevocable, paid-up license to
22 make, use, and sell the subject invention throughout
23 the world by or on behalf of the Government;

24 (4) that a Federal agency may require written re-
25 ports on the commercial use or other forms of utiliza-

1 tion or efforts toward obtaining commercial utilization
2 made by the contractor or its licensees or assignees
3 with respect to any subject invention to which the con-
4 tractor elects title, pursuant to this section, except,
5 that any such report, as well as any information on uti-
6 lization or efforts toward obtaining utilization obtained
7 as part of a proceeding under section 303 of this title,
8 shall be treated by the agency as commercial or finan-
9 cial information obtained from a person and privileged
10 or confidential and not subject to disclosure under sec-
11 tion 552 of title 5, United States Code, relating to
12 freedom of information;

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

20 (6) that the balance of any royalties or income
21 earned on subject inventions by a contractor operating
22 a Government-owned, contractor-operated facility (if
23 the invention was made in the facility) shall, after pay-
24 ment of expenses (including payments to inventors), be
25 used for scientific research and development in the fa-

1 cility consistent with the mission and objectives of such
2 facility;

3 (7) that the contractor, in cases when it has the
4 choice under section 301(a) to retain title to a subject
5 invention but does not elect to retain title, shall retain
6 a nonexclusive, royalty-free, paid-up, worldwide license
7 (including the right to sublicense affiliates, subsidiaries,
8 and existing licensees to whom the contractor is legally
9 obligated to sublicense) in any subject invention to
10 which the Government obtains title, which license shall
11 be revocable only to the extent necessary for the Gov-
12 ernment to grant an exclusive license; except, that the
13 contractor shall not be entitled to such a license if the
14 contractor has fraudulently failed to disclose the subject
15 invention;

16 (8) that a transfer by the contractor of the rights
17 in any subject invention will be subject to the rights of
18 the Government provided by this section and sections
19 302, 303 and 307; and

20 (9) such other administrative requirements as the
21 Secretary determines to be necessary to effectuate the
22 rights of the Government and the contractor as speci-
23 fied in this Act and as are not inconsistent with this
24 Act.

WAIVER

1

2 SEC. 302. (a) A Federal agency may at any time waive
3 all or any part of the rights of the Government under section
4 301(c) to any subject invention or class of subject inventions
5 made or which may be made under a contract or class of
6 contracts if the agency determines that—

7 (1) the interests of the Government and the gen-
8 eral public will be best served thereby; or

9 (2) the contract involves cosponsored, cost-shar-
10 ing, or joint venture research or development and the
11 contractor or other sponsor or joint venturer is required
12 to make a substantial contribution of funds, facilities,
13 or equipment to the work performed under the con-
14 tract.

15 (b) The Federal agency shall maintain a record, which
16 shall be made public and periodically updated, of determina-
17 tions made under subsection (a).

18 (c) In making determinations under subsection (a)(1), the
19 Federal agency shall consider at least the following objec-
20 tives:

21 (1) encouraging wide availability to the public of
22 the benefits of Government-sponsored research and de-
23 velopment in the shortest practicable time;

24 (2) promoting the commercial utilization of inven-
25 tions made under Government contracts;

1 (3) encouraging participation by private persons
2 (especially the most highly qualified persons) in Gov-
3 ernment-sponsored research and development pro-
4 grams; and

5 (4) fostering competition and preventing the cre-
6 ation or maintenance of situations inconsistent with the
7 antitrust laws.

8 (d) With respect to contracts in which the Government
9 retains rights under section 301(a) a Federal agency may,
10 after a subject invention has been identified, waive the rights
11 the Government has in the invention under the contract and
12 (with respect to the subject invention) proceed either (1)
13 under the rules promulgated in section 301(c) as though the
14 contractor had the right to elect to retain title, or (2) to
15 waive its rights, subject to the conditions of subsections (a),
16 (b), and (c) of section 302.

17 MARCH-IN RIGHTS

18 SEC. 303. (a) Where a contractor has elected to retain
19 title to a subject invention under section 301 or 302, the
20 Federal agency shall have the right, pursuant to policies, pro-
21 cedures, and guidelines of the Secretary and subject to the
22 provisions of subsection (b) of this section, to grant or require
23 the contractor or his assignee to grant a nonexclusive, par-
24 tially exclusive, or exclusive license to a responsible applicant
25 or applicants, upon terms reasonable under the circum-

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

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

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

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

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

BACKGROUND RIGHTS

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

5 (b) No contract shall contain a provision allowing a Fed-
6 eral agency to require the licensing to third parties of inven-
7 tions owned by the contractor that are not subject inventions
8 unless such provision has been approved by the head of the
9 agency and a written justification has been signed by the
10 head of the agency. Any such provision shall clearly state
11 whether the licensing may be required in connection with the
12 practice of a subject invention, a specifically identified work
13 object, or both. The head of the agency may not delegate the
14 authority to approve such provisions or to sign the justifica-
15 tion required for such provisions.

16 (c) A Federal agency shall not require the licensing of
17 third parties under any such provision unless the head of the
18 agency determines that the use of the invention by others is
19 necessary for the practice of a subject invention or for use of
20 a work object of the contract and that such action is neces-
21 sary to achieve the practical application of the subject inven-
22 tion or work object. Any such determination shall be on the
23 record after an opportunity for an agency hearing, and the
24 contractor shall be given prompt notification of the determi-
25 nation by certified or registered mail.

1 TITLE IV—MISCELLANEOUS

2 DEFINITIONS

3 SEC. 401. As used in this Act (excluding section 402),
4 the term—

5 (1) “person” means any person as defined in sec-
6 tion 1 of title 1, United States Code, or other entity;

7 (2) “Government” means the Government of the
8 United States of America;

9 (3) “Federal agency” means an executive agency
10 (as defined in section 105 of title 5, United States
11 Code), and the military departments (as defined in sec-
12 tion 102 of title 5, United States Code);

13 (4) “small business firm” means a small business
14 concern as defined in section 2 of the Small Business
15 Act (15 U.S.C. 632) and implementing regulations of
16 the Administrator of the Small Business Administra-
17 tion; and

18 (5) “nonprofit organization” means universities
19 and other institutions of higher education or an organi-
20 zation of the type described in section 501(c)(3) of the
21 Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3))
22 and exempt from taxation under section 501(a) of the
23 Internal Revenue Code of 1954 (26 U.S.C. 501(a)), or
24 any nonprofit scientific or educational organization
25 qualified under a State nonprofit organization statute;

1 (6) "contract" means any contract, grant, or co-
2 operative agreement entered into between any Federal
3 agency (other than the Tennessee Valley Authority)
4 and any person other than a small business firm or
5 nonprofit organization where a purpose of the contract
6 is the conduct of experimental, developmental, or re-
7 search work; and such term includes any assignment,
8 substitution of parties, or subcontract of any tier en-
9 tered into or executed for the conduct of experimental,
10 developmental, or research work in connection with the
11 performance of that contract;

12 (7) "contractor" means any person or entity
13 (other than a Federal agency, nonprofit organization,
14 or small business firm) which is a party to the contract;

15 (8) "Secretary" means the Secretary of Com-
16 merce;

17 (9) "Director" means the Director of the Office of
18 Science and Technology Policy, or his designee;

19 (10) "invention" means any invention or discovery
20 which is or may be patentable or otherwise protectable
21 under title 35, United States Code, or any novel vari-
22 ety of plant which is or may be protectable under the
23 Plant Variety Protection Act (7 U.S.C. 2321 et seq.);

24 (11) "subject invention" means any invention of a
25 contractor conceived or first actually reduced to prac-

1 tice in the performance of work under a contract,
2 except that in the case of a variety of plant, the date
3 of determination (as defined in section 41(d) of the
4 Plant Variety Protection Act (7 U.S.C. 2401(d)) must
5 also occur during the period of contract performance;

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

15 (13) "antitrust law" means the laws included
16 within the definition of the term "antitrust laws" in
17 section 1 of the Clayton Act (15 U.S.C. 12), as
18 amended.

19 AMENDMENTS TO OTHER ACTS

20 SEC. 402. The following Acts are hereby amended as
21 follows:

22 (1) Section 205(a) of the Act of August 14, 1946
23 (7 U.S.C. 1624(a); 60 Stat. 1090), is amended by
24 striking the last sentence thereof.

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

5 (3) Section 106(c) of the National Traffic and
6 Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c);
7 80 Stat. 721) is repealed.

8 (4) Section 12(a) of the National Science Founda-
9 tion Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360) is
10 repealed.

11 (5)(A) Section 152 of the Atomic Energy Act of
12 1954 (42 U.S.C. 2182; 68 Stat. 943) is repealed,
13 except that such section shall continue to be effective
14 with respect to any application for a patent in which
15 the statement under oath referred to in such section
16 has been filed or requested to be filed by the Commis-
17 sioner of Patents and Trademarks prior to the effective
18 date of this Act.

19 (B) The item relating to section 152 in the table
20 of contents of the Atomic Energy Act of 1954 is
21 amended to read as follows:

“Sec. 152. Repealed”.

22 (6) The National Aeronautics and Space Act of
23 1958 (42 U.S.C. 2451 et seq.; 72 Stat. 426) is
24 amended—

1 (A) by striking out section 305 thereof (42
2 U.S.C. 2457), but subsections (c), (d), and (e) of
3 such section shall continue to be effective with re-
4 spect to any application for patents in which the
5 written statement referred to in subsection (c) of
6 such section has been filed or requested to be filed
7 by the Commissioner of Patents and Trademarks
8 prior to the effective date of this Act;

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

17 (C) by striking out the period at the end of
18 section 203(c) thereof (42 U.S.C. 2473(c)) and in-
19 serting in lieu thereof a semicolon, and by adding
20 at the end thereof the following new paragraph:

21 "(14) to provide effective contractual provisions
22 for the reporting of the results of the activities of the
23 Administration, including full and complete technical
24 reporting of any invention made in the course of or
25 under any contract of the Administration, except that

1 no reporting of inventions pursuant to this paragraph
2 shall be in conflict with or require the reporting of any
3 subject invention earlier than required under section
4 301(c) of the Uniform Science and Technology Re-
5 search and Development Utilization Act or its imple-
6 menting regulations or section 202(c)(1) of title 35 of
7 the United States Code or its implementing regula-
8 tions;”;

9 (D) striking out, in section 203(c) thereof (42
10 U.S.C. 2473(c)), the following: “(including patents
11 and rights thereunder)”;

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

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

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

19 (8) Section 4 of the Helium Act Amendments of
20 1960 (50 U.S.C. 167b; 74 Stat. 920) is amended by
21 striking all after “utilization” and inserting in lieu
22 thereof a period.

23 (9) Section 32 of the Arms Control and Disarm-
24 ament Act (22 U.S.C. 2572; 75 Stat. 634) is repealed.

1 (10) Subsection (e) of section 302 of the Appala-
2 chian Regional Development Act of 1965 (40 U.S.C.
3 App. 302(e); 79 Stat. 5) is repealed.

4 (11) Subsections (a) through (k), (m), and (n) of
5 section 9 of the Federal Nonnuclear Energy Research
6 and Development Act of 1974 (42 U.S.C. 5908; 88
7 Stat. 1887) are repealed.

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

10 (13) Section 3 of the Act of April 5, 1944 (30
11 U.S.C. 323; 58 Stat. 191), is repealed.

12 (14) Section 8001(c)(3) of the Solid Waste Dispos-
13 al Act (42 U.S.C. 6981(c)(3); 90 Stat. 2829) is re-
14 pealed.

15 (15) Chapter 38 of title 35, United States Code,
16 is amended—

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

21 (B) by adding “, except that in the case of a
22 variety of plant, the date of determination (as de-
23 fined in section 41(d) of the Plant Variety Protec-
24 tion Act (7 U.S.C. 2401(d)) must also occur

1 during the period of contract performance” imme-
2 diately after “agreement” in section 201(e);

3 (C) in section 202(a)—

4 (i) by amending clause (i) to read as fol-
5 lows: “(i) when the contractor is not located
6 in the United States or does not have a place
7 of business located in the United States or is
8 subject to the control of a foreign govern-
9 ment”; and

10 (ii) by striking “or (iii)” and inserting in
11 lieu thereof the following: “, (iii) when the
12 funding agreement is entered into under a
13 program that implements a formal interna-
14 tional treaty, agreement, or arrangement in-
15 cluding, but not limited to, agreements of co-
16 operation in science and technology or mili-
17 tary agreements relating to weapons devel-
18 opment or production, and it is determined
19 by the agency that rights in the Government
20 greater than a nonexclusive license are nec-
21 essary for the agency to fulfill its obligations
22 under the international treaty, agreement, or
23 arrangement; or (iv)”;

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

1 “(b)(1) The rights of the Government under paragraph
2 (a) shall not be exercised by a Federal agency unless it first
3 determines that at least one of the conditions identified in
4 clauses (i) through (iv) of paragraph (a) exists. Except in the
5 case of paragraph (a)(iv), the agency shall file with the Secre-
6 tary of Commerce, within thirty days after the award of the
7 applicable funding agreement, a statement stating such deter-
8 mination. In the case of a determination under paragraph (a)
9 (ii) or (iii), the statement shall include an analysis justifying
10 the determination. If the Secretary of Commerce believes
11 that any individual determination or pattern of determina-
12 tions is contrary to the policies and objectives of this chapter
13 or otherwise not in conformance with this chapter, the Secre-
14 tary shall so advise the head of the agency concerned and the
15 Director of the Office of Science and Technology Policy, and
16 recommend corrective actions.

17 “(2) Whenever the Director of the Office of Science and
18 Technology Policy has determined that one or more Federal
19 agencies are utilizing the authority of clauses (i) through (iii)
20 of paragraph (a) in a manner that is contrary to the policies
21 and objectives of this chapter, the Director is authorized to
22 issue policies, procedures, and guidelines describing classes of
23 situations in which agencies may not exercise the authorities
24 of those clauses.”;

1 (E) by amending paragraphs (1), (2), and (3)
2 of section 202(c) to read as follows:

3 “(1) That the contractor disclose each subject in-
4 vention to the Federal agency within a reasonable time
5 after it becomes known to contractor personnel respon-
6 sible for the administration of patent matters, and that
7 the Federal Government may receive title to any sub-
8 ject invention not disclosed to it within such time.

9 “(2) That the contractor make a written election
10 within two years after disclosure to the Federal agency
11 (or such additional time as may be approved by the
12 Federal agency) whether the contractor will retain title
13 to a subject invention, except that (A) in any case
14 where publication, on sale, or public use, has initiated
15 the one year statutory period in which valid patent
16 protection can still be obtained in the United States,
17 the period for election may be shortened by the Feder-
18 al agency to a date that is not more than sixty days
19 prior to the end of the statutory period, and (B) the
20 Federal Government may receive title to any subject
21 invention in which the contractor does not elect to
22 retain rights or fails to elect rights within such times.

23 “(3) That a contractor electing rights in a subject
24 invention agrees to file a patent application prior to
25 any statutory bar date that may occur under this title

1 due to publication, on sale, or public use, and shall
2 thereafter file corresponding patent applications in
3 other countries in which it wishes to retain title within
4 reasonable times, and that the Federal Government
5 may receive title to any subject inventions in the
6 United States or other countries in which the contrac-
7 tor has not filed patent applications on the subject in-
8 vention within such times.”;

9 (F) by inserting a period after the word
10 “world” in paragraph (c)(4) thereof and striking
11 out the remainder of that subsection;

12 (G) by striking “may” in section 202(c)(5)
13 and inserting in lieu thereof “as well as any infor-
14 mation on utilization or efforts at obtaining utili-
15 zation obtained as part of a proceeding under sec-
16 tion 203 of this chapter shall”;

17 (H) by striking clauses (A) and (B) in section
18 202(c)(7) and redesignating clauses (C) and (D) of
19 such section as clauses (A) and (B), respectively;

20 (I) by adding the following new paragraph at
21 the end of section 202:

22 “(g)(1) A Federal agency may at any time waive all or
23 any part of the rights of the United States, under paragraphs
24 (c) (4) through (8) of this section and section 204 of this chap-
25 ter, to any subject inventions made under a funding agree-

1 ment or class of funding agreements if the agency determines
2 (A) that the interests of the United States and the general
3 public will be best served thereby; or (B) the funding agree-
4 ment involves cosponsored, cost sharing, or joint venture re-
5 search or development and the contractor or other sponsor or
6 joint venturer is required to make or has made a substantial
7 contribution of funds, facilities, or equipment to the work per-
8 formed under the funding agreement. The agency shall main-
9 tain a record, which shall be made public and periodically
10 updated, of determinations made under this paragraph.

11 “(2) In making determinations under subparagraph
12 (1)(A) of this paragraph, the agency shall consider at least
13 the following objectives:

14 “(A) encouraging the wide availability to the
15 public of the benefits of Government-sponsored re-
16 search and development in the shortest practicable
17 time;

18 “(B) promoting the commercial utilization of in-
19 ventions made under Government funding agreements;

20 “(C) encouraging participation by private persons
21 (especially the most highly qualified persons) in Gov-
22 ernment-sponsored research and development pro-
23 grams; and

1 “(D) fostering competition and preventing the cre-
2 ation or maintenance of situations inconsistent with the
3 antitrust laws.”;

4 (J) by adding at the end of section 203 the
5 following: “A determination pursuant to this sec-
6 tion shall not be considered a contract dispute and
7 shall not be subject to the Contract Disputes Act
8 (41 U.S.C. 601 et seq.). Any contractor, assignee,
9 or exclusive licensee adversely affected by a de-
10 termination under this section may, at any time
11 within sixty days after the determination is issued,
12 file a petition in the United States Court of
13 Claims, which shall have jurisdiction to determine
14 the manner de novo and to affirm, reverse, or
15 modify as appropriate, the determination of the
16 Federal agency.”; and

17 (K) by amending section 206 to read as fol-
18 lows:

19 **“§ 206. Uniform clauses and regulations**

20 “The Secretary of Commerce may issue regulations
21 which may be made applicable to Federal agencies imple-
22 menting the provisions of sections 202 through 204 of this
23 chapter and shall establish standard funding agreement provi-
24 sions required under this chapter.”.

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

4 (17) Section 10(a) of the Act of June 29, 1935 (7
5 U.S.C. 427i(a)) is amended by striking the last sen-
6 tence thereof.

7 (18) Section 427(b) of the Federal Mine Safety
8 and Health Act of 1977 (30 U.S.C. 937(b)) is amended
9 by striking the last sentence thereof.

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

13 (20) Section 21(d) of the Federal Fire Prevention
14 and Control Act of 1974 (15 U.S.C. 2218(d)) is re-
15 pealed.

16 (21) Section 6(b) of the Solar Photovoltaic Energy
17 Research, Development, and Demonstration Act of
18 1978 (42 U.S.C. 5585(b)) is amended by striking out
19 “7, 8, and 9” and inserting in lieu thereof “7 and 8”.

20 (22) Section 12 of the Native Latex Commercial-
21 ization and Economic Development Act of 1978 (7
22 U.S.C. 178j) is repealed.

23 (23) Section 408 of the Water Research and De-
24 velopment Act of 1978 (42 U.S.C. 7879) is repealed.

1 RELATIONSHIP TO ANTITRUST LAWS

2 SEC. 403. Nothing in this Act shall be deemed to
3 convey to any person immunity from civil or criminal liabili-
4 ty, or to create any defense to actions, under any antitrust
5 law.

6 EFFECTIVE DATE

7 SEC. 404. (a) This Act shall take effect six months after
8 the date of the enactment of this Act.

9 (b) After the effective date of this Act, each Federal
10 agency is authorized, notwithstanding any other law govern-
11 ing the disposition of rights in subject inventions, to allow a
12 contractor or an inventor to retain title to subject inventions
13 made under contracts awarded prior to the effective date of
14 this Act, subject to the same terms and conditions as would
15 apply under this Act had the contract been entered into after
16 the effective date of this Act.

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