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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Science and Technology Research and Development Utilization Act".

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TITLE I—POLICY

FINDINGS

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

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

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

(3) inventions resulting from Government-sponsored research and development constitute a valuable national resource which should be developed in a

manner consistent with the public interest and the equities of the respective parties;

(4) current Federal policy with respect to the allocation of rights to the results of Government-sponsored research and development delays technological progress, and inhibits commercial utilization of those results; and

(5) there is a need for the establishment and implementation of a flexible Government-wide policy for the management and utilization of the results of Government-sponsored research and development, and this policy should promote the progress of science and the useful arts, encourage the efficient commercial utilization of technological developments and discoveries, guarantee the protection of the public interest in the United States and foreign countries, and recognize the equities of the contracting parties.

PURPOSE

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

(1) establish and maintain a uniform Federal policy applicable to the management and use of the results of Government-sponsored science and technology research and development to stimulate more widespread commercial utilization of those results for the public good;

(2) insure the effective uniform implementation of the policy created by this Act, and provide for monitoring on a continuing basis the impact of such policy and its implementation on innovation and technology development;

(3) allocate rights to inventions by contractors which result from Government-sponsored research development so as to—

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

(B) foster competition,

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

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

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

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

TITLE II—IMPLEMENTATION

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

SEC. 201. (a) The Federal Coordinating Council for Science, Engineering, and Technology (established by section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) (hereinafter in this section referred to as the "Council") shall make recommendations to the Director with regard to—

(1) uniform and effective planning and administration of Federal programs pertaining to inventions, patents, rights in technical data, and matters connected therewith;

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

(3) uniformity and effectiveness of interpretation and implementation by individual Federal agencies of the provisions of this Act and other related Government policies, regulations, and practices.

For the purpose of assuring effective management of Government-owned inventions, the Secretary of Commerce shall chair a committee of the Council to formulate the recommendations required by this subsection.

(b) Recommendations regarding matters set forth in subsection (a) which are made by the Council and adopted by the Director shall be transmitted to Federal agencies through appropriate channels.

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

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

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

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

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

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

(A) relevant statistical data regarding the disposition of subject invention disclosures resulting from Government-sponsored research and de-

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

(B) any legislative or administrative recommendations to better achieve the purposes of this Act; and

(C) an analysis of the impact of Federal policies on the purposes of this Act.

FUNCTIONS OF THE SECRETARY OF COMMERCE

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

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

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

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

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

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

(6) evaluate inventions referred by Federal agencies, and patent applications filed thereon, in order to identify those inventions with the greatest commercial potential and to insure promotion and utilization by the public of inventions so identified.

TITLE III—ALLOCATION OF RIGHTS

RIGHTS OF THE GOVERNMENT AND THE CONTRACTOR

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

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

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

the United States, is a foreign government, or is subject to the control of a foreign government;

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

(4) the agency determines, on a case-by-case basis, that there are exceptional circumstances requiring such action to better promote the policy and objectives of section 102(3) of this Act.

(b)(1) Each determination made by a Federal agency under the authority of subsection (a) of this section shall be in writing and, except in the case of subsection (a)(1), the agency shall, within thirty days after the award of the applicable contract, file with the Secretary a copy of each such determination. In the case of a determination under subsection (a)(3) or (a)(4), the statement shall include an analysis supporting the determination and justifying the limitations

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

(2) Whenever the Director has determined that one or more Federal agencies are utilizing the authority of subsection (a)(3) or (a)(4) of this section in a manner that is contrary to the terms, policy, or objectives of this Act, the Director is authorized to issue policies, procedures, and guidelines describing classes of situations in which Federal agencies may not utilize the provisions of subsection (a)(3) or (a)(4) of this section.

(c) In accordance with regulations issued by the Secretary after public comment, each contract shall employ a patent rights clause containing appropriate provisions to effectuate the following:

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

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

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

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

(B) the Government may, upon request, receive title to any subject invention in any countries in which the contractor has not elected to retain title within such time;

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

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

(E) the Government may, upon request, receive title to any subject invention in any countries in which the contractor has failed to file patent applications within the reasonable times specified pursuant to subparagraph (D) of this subsection; and

(F) in any case when a Federal agency employee is either—

(i) a coinventor with a contractor employee of a subject invention, or

(ii) an inventor of an invention made under a contract involving cosponsored, cost-sharing or joint venture research or development and the contractor is required to make a substantial contribution of funds, facilities, or equipment to the work performed under the contract,

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

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

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

tion or efforts toward obtaining commercial utilization made by the contractor or its licensees or assignees with respect to any subject invention to which the contractor elects title, pursuant to this section, except, that any such report, as well as any information on utilization or efforts toward obtaining utilization obtained as part of a proceeding under section 303 of this title, shall be treated by the agency as commercial or financial information obtained from a person and privileged or confidential and not subject to disclosure under section 552 of title 5, United States Code, relating to freedom of information;

(5) that the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, shall include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention;

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

cility consistent with the mission and objectives of such facility;

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

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

(9) such other administrative requirements as the Secretary determines to be necessary to effectuate the rights of the Government and the contractor as specified in this Act and as are not inconsistent with this Act.

WAIVER

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

(1) the interests of the Government and the general public will be best served thereby; or

(2) the contract involves cosponsored, cost-sharing, or joint venture research or development and the contractor or other sponsor or joint venturer is required to make a substantial contribution of funds, facilities, or equipment to the work performed under the contract.

(b) The Federal agency shall maintain a record, which shall be made public and periodically updated, of determinations made under subsection (a).

(c) In making determinations under subsection (a)(1), the Federal agency shall consider at least the following objectives:

(1) encouraging wide availability to the public of the benefits of Government-sponsored research and development in the shortest practicable time;

(2) promoting the commercial utilization of inventions made under Government contracts;

(3) encouraging participation by private persons (especially the most highly qualified persons) in Government-sponsored research and development programs; and

(4) fostering competition and preventing the creation or maintenance of situations inconsistent with the antitrust laws.

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

MARCH-IN RIGHTS

SEC. 303. (a) Where a contractor has elected to retain title to a subject invention under section 301 or 302, the Federal agency shall have the right, pursuant to policies, procedures, and guidelines of the Secretary and subject to the provisions of subsection (b) of this section, to grant or require the contractor or his assignee to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circum-

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

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

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

(3) to meet requirements for public use specified by Federal regulation which are not reasonably satisfied by the contractor or his assignees or licensees.

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

BACKGROUND RIGHTS

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

(b) No contract shall contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the head of the agency and a written justification has been signed by the head of the agency. Any such provision shall clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The head of the agency may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

(c) A Federal agency shall not require the licensing of third parties under any such provision unless the head of the agency determines that the use of the invention by others is necessary for the practice of a subject invention or for use of a work object of the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination shall be on the record after an opportunity for an agency hearing, and the contractor shall be given prompt notification of the determination by certified or registered mail.

TITLE IV—MISCELLANEOUS

DEFINITIONS

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

(1) "person" means any person as defined in section 1 of title 1, United States Code, or other entity;

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

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

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

(5) "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute;

(6) "contract" means any contract, grant, or cooperative agreement entered into between any Federal agency (other than the Tennessee Valley Authority) and any person other than a small business firm or nonprofit organization where a purpose of the contract is the conduct of experimental, developmental, or research work; and such term includes any assignment, substitution of parties, or subcontract of any tier entered into or executed for the conduct of experimental, developmental, or research work in connection with the performance of that contract;

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

(8) "Secretary" means the Secretary of Commerce;

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

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

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

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

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

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

AMENDMENTS TO OTHER ACTS

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

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

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

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

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

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

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

"Sec. 152. Repealed".

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

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

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

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

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

no reporting of inventions pursuant to this paragraph shall be in conflict with or require the reporting of any subject invention earlier than required under section 301(c) of the Uniform Science and Technology Research and Development Utilization Act or its implementing regulations or section 202(c)(1) of title 35 of the United States Code or its implementing regulations;";

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) by adding ", except that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur

during the period of contract performance" immediately after "agreement" in section 201(e);

(C) in section 202(a)—

(i) by amending clause (i) to read as follows: "(i) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government"; and

(ii) by striking "or (iii)" and inserting in lieu thereof the following: ", (iii) when the funding agreement is entered into under a program that implements a formal international treaty, agreement, or arrangement including, but not limited to, agreements of cooperation in science and technology or military agreements relating to weapons development or production, and it is determined by the agency that rights in the Government greater than a nonexclusive license are necessary for the agency to fulfill its obligations under the international treaty, agreement, or arrangement; or (iv)";

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

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

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

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

"(1) That the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

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

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

due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.";

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

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

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

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

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

ment or class of funding agreements if the agency determines (A) that the interests of the United States and the general public will be best served thereby; or (B) the funding agreement involves cosponsored, cost sharing, or joint venture research or development and the contractor or other sponsor or joint venturer is required to make or has made a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement. The agency shall maintain a record, which shall be made public and periodically updated, of determinations made under this paragraph.

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

"(A) encouraging the wide availability to the public of the benefits of Government-sponsored research and development in the shortest practicable time;

"(B) promoting the commercial utilization of inventions made under Government funding agreements;

"(C) encouraging participation by private persons (especially the most highly qualified persons) in Government-sponsored research and development programs; and

"(D) fostering competition and preventing the creation or maintenance of situations inconsistent with the antitrust laws.";

(J) by adding at the end of section 203 the following: "A determination pursuant to this section shall not be considered a contract dispute and shall not be subject to the Contract Disputes Act (41 U.S.C. 601 et seq.). Any contractor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Court of Claims, which shall have jurisdiction to determine the manner de novo and to affirm, reverse, or modify as appropriate, the determination of the Federal agency."; and

(K) by amending section 206 to read as follows:

"§ 206. Uniform clauses and regulations

"The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter.".

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

(17) Section 10(a) of the Act of June 29, 1935 (7 U.S.C. 427i(a)) is amended by striking the last sentence thereof.

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

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

(20) Section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d)) is repealed.

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

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

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

RELATIONSHIP TO ANTITRUST LAWS

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

EFFECTIVE DATE

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

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

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