known as the Bayh-Dole Act and also as the University
complete classification of section 6(a) of Pub. L. 96–517
to the Code, see Tables.

§ 201. Definitions

As used in this chapter—

(a) The term “Federal agency” means any
executive agency as defined in section 105 of
title 5, and the military departments as de-

(b) The term “funding agreement” means any contract, grant, or cooperative agreement
entered into between any Federal agency,
other than the Tennessee Valley Authority,
and any contractor for the performance of
experimental, developmental, or research
work funded in whole or in part by the Federal
Government. Such term includes any assign-
ment, substitution of parties, or subcontract
of any type entered into for the performance
of experimental, developmental, or research
work under a funding agreement as herein de-

(c) The term “contractor” means any per-
sion, small business firm, or nonprofit organi-
zation that is a party to a funding agreement.

(d) The term “invention” means any inven-
tion or discovery which is or may be patent-
able or otherwise protectable under this title
or any novel variety of plant which is or may
be protectable under the Plant Variety Pro-
tection Act (7 U.S.C. 2321 et seq.)

(e) The term “subject invention” means any
invention of the contractor conceived or first
actually reduced to practice in the perform-
ance of work under a funding agreement: Pro-
duced. That in the case of a variety of plant,
the date of determination (as defined in sec-

(f) The term “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 condi-
tions as to establish that the invention is be-

(g) The term “made” when used in relation
to any invention means the conception or first
actual reduction to practice of such invention.

(h) The term “small business firm” means a
small business concern as defined at section 2
of Public Law 85–536 (15 U.S.C. 632) and imple-
menting regulations of the Administrator of
the Small Business Administration.

(i) The term “nonprofit organization” means
universities and other institutions of higher
education or an organization of the type de-
scribed in section 501(c)(3) of the Internal Re-
venue Code of 1986 (26 U.S.C. 501(c)) or any
nonprofit scientific or educational organiza-
tion qualified under a State nonprofit organi-

zation statute.

Stat. 3019; amended Pub. L. 98–620, title V,
§501(1), (2), Nov. 8, 1984, 98 Stat. 3364; Pub. L.
116 Stat. 1904.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in sub-
sec. (d), is Pub. L. 91–577, Dec. 24, 1970, 84 Stat. 1542, as
amended, which is classified principally to chapter 57
(§2321 et seq.) of Title 7, Agriculture. For complete
classification of this Act to the Code, see Short Title
note set out under section 2321 of Title 7 and Tables.

Section 41 of the Plant Variety Protection Act (7
U.S.C. 2401(d)), referred to in subsec. (e), was subse-
quently amended, and no longer defines the term “date of
determination”.

AMENDMENTS

States Code,” after “section 105 of title 5,” and
“United States Code” after “section 102 of title 5”.
Revenue Code of 1969” for “Internal Revenue Code of
1954”.

any novel variety of plant which is or may be protect-
able under the Plant Variety Protection Act (7 U.S.C.
2321 et seq.)” after “title”.

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
after ‘‘agreement’’.

§ 202. Disposition of rights

(a) Each nonprofit organization or small busi-
ness firm may, within a reasonable time after
disclosure as required by paragraph (c)(1) of this
section, elect to retain title to any subject in-
vention: Provided, however, That a funding
agreement may provide otherwise (i) when the
contractor is not located in the United States or
do not have a place of business located in the
United States or is subject to the control of a
foreign government, (ii) in exceptional circum-
stances when it is determined by the agency
that restriction or elimination of the right to
retain title to any subject invention will better
promote the policy and objectives of this chap-
ter (iii) when it is determined by a Government
authority which is authorized by statute or Ex-
ecutive order to conduct foreign intelligence or
counter-intelligence activities that the restric-
tion or elimination of the right to retain title to
any subject invention is necessary to protect
the security of such activities or, (iv) when the
funding agreement includes the operation of a
Government-owned, contractor-operated facility
of the Department of Energy primarily dedi-
cated to that Department’s naval nuclear prop-
ulsion or weapons related programs and all
funding agreement limitations under this sub-
paragraph on the contractor’s right to elect
title to a subject invention are limited to inven-
tions occurring under the above two programs of
the Department of Energy. The rights of the
nonprofit organization or small business firm
shall be subject to the provisions of paragraph
(c) of this section and the other provisions of
this chapter.

(b) (1) The rights of the Government under sub-
section (a) shall not be exercised by a Federal