

Subsec. (c)(7)(D), Pub. L. 98-620, §501(8), added cl. (D). Former cl. (D) redesignated (E).

Subsec. (c)(7)(E), Pub. L. 98-620, §501(8), redesignated former cl. (D) as (E) and inserted provisions placing a limit on the amount of royalties that the contract operators of Government-owned laboratories are entitled to retain after paying patent administrative expenses and a share of the royalties to inventors, requiring payment of amounts in excess of such limits to the United States Treasury, and requiring that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(g)(7) of Pub. L. 112-29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Pub. L. 112-29, §13(b), Sept. 16, 2011, 125 Stat. 327, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent issued before, on, or after that date."

Amendment by section 20(i)(2) of Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(7) of Pub. L. 112-29, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

### § 203. March-in rights

(a) With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this chapter, the Federal agency under whose funding agreement the subject invention was made shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the Federal agency determines that such—

(1) action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) action is necessary because the agreement required by section 204 has not been obtained or waived or because a licensee of the

exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to section 204.

(b) A determination pursuant to this section or section 202(b)(4)<sup>1</sup> shall not be subject to chapter 71 of title 41. An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, 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 Federal Claims, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, as appropriate, the determination of the Federal agency. In cases described in paragraphs (1) and (3) of subsection (a), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.

(Added Pub. L. 96-517, §6(a), Dec. 12, 1980, 94 Stat. 3022; amended Pub. L. 98-620, title V, §501(9), Nov. 8, 1984, 98 Stat. 3367; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 107-273, div. C, title III, §13206(a)(14), Nov. 2, 2002, 116 Stat. 1905; Pub. L. 111-350, §5(i)(2), Jan. 4, 2011, 124 Stat. 3850.)

#### REFERENCES IN TEXT

Section 202(b)(4), referred to in subsec. (b), was redesignated section 202(b)(3) of this title by Pub. L. 111-8, div. G, title I, §1301(h), Mar. 11, 2009, 123 Stat. 829.

#### AMENDMENTS

2011—Subsec. (b), Pub. L. 111-350 substituted "chapter 71 of title 41" for "the Contract Disputes Act (41 U.S.C. §601 et seq.)".

2002—Pub. L. 107-273 redesignated par. (1) as subsec. (a) and former subpars. (a) to (d) as pars. (1) to (4), respectively, redesignated former par. (2) as subsec. (b), struck out quotation marks and comma before "as appropriate", and substituted "paragraphs (1) and (3) of subsection (a)" for "paragraphs (a) and (c)".

1992—Par. (2), Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1984—Pub. L. 98-620 designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

### § 204. Preference for United States industry

Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the re-

<sup>1</sup> See References in Text note below.