

AMENDMENT NO. 1627

Calendar No. _____

Purpose: To better integrate university and private industry into the National Laboratory system of the Department of Energy so as to speed the development of technology in areas of significant economic potential.

IN THE SENATE OF THE UNITED STATES—100th Cong., 2d Sess.

S. 1480

The Department of Energy National Laboratory Cooperative Research Initiatives Act

Referred to the Committee on Energy and Natural Resources and ordered to be printed

Ordered to lie on the table and to be printed

March 4, 1988

AMENDMENT proposed by Mr. DOMENICI (for himself, Mr. McClure, and Mr. Bingaman)

Viz:

1 Strike out all after the enacting clause and insert in

2 lieu thereof the following:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Department of Energy

5 National Laboratory Cooperative Research Initiatives

6 Act".

1 **SEC. 2. DEFINITIONS.**

2 For Purposes of this Act--

3 (1) The term "National Laboratory" means--

4 (A) Lawrence-Livermore National Laboratory;

5 (B) Lawrence-Berkeley National Laboratory;

6 (C) Los Alamos National Laboratory;

7 (D) Sandia National Laboratory;

8 (E) Fermi National Accelerator;

9 (F) Princeton Plasma Physics Laboratory;

10 (G) Idaho National Engineering Laboratory;

11 (H) Argonne National Laboratory;

12 (I) Brookhaven National Laboratory;

13 (J) Oak Ridge National Laboratory;

14 (K) Pacific Northwest Laboratory;

15 (L) Ames Laboratory;

16 (M) Stanford Linear Accelerator Center;

17 (N) Bates Linear Accelerator Facility;

18 (O) Center for Energy and Environment Research;

19 (P) Coal Fired Flow Facility;

20 (Q) Energy Technology Engineering Center;

21 (R) Hanford Engineering Development Laboratory;

22 (S) Inhalation Toxicology Research Institute;

23 (T) Laboratory for Energy-Related Health Research;

1 (U) Laboratory of Biomedical and Environmental
2 Sciences;

3 (V) Laboratory of Radiobiology and Environmental
4 Health;

5 (W) Michigan State University - DOE Plant Research
6 Laboratory;

7 (X) Notre Dame Radiation Laboratory;

8 (Y) Oak Ridge Associated Universities;

9 (Z) Radiobiology Laboratory;

10 (AA) Savannah River Ecology Laboratory;

11 (BB) Savannah River Laboratory;

12 (CC) Solar Energy Research Institute;

13 (DD) Stanford Synchrotron Radiation Laboratory.

14 Such term also includes any future government-owned,
15 contractor-operated laboratory facilities established as
16 Department of Energy Multiprogram Laboratories or
17 Program-Dedicated Facilities.

18 Such term does not include Naval Nuclear Propulsion Reactor
19 Laboratories, their contractors or subcontractors performing
20 work covered under Executive Order 12344, as codified in
21 section 7158 of title 4, United States Code.

1 (2) The term "Federal Agency" means any executive
2 agency as defined in section 105 of title 5, United
3 States Code, and the military departments defined by
4 section 102 of title 5, United States Code.

5
6 (3) The term "contract" means any contract, grant, or
7 cooperative agreement as those terms are used in
8 sections 6303, 6304, and 6305 of title 31, United
9 States Code, entered into between any Federal agency
10 and any contractor for the performance of experimental,
11 developmental, or research work funded in whole or in
12 part by the Federal Government. Such term includes any
13 assignment, substitution of parties, or subcontract of
14 any type entered into for the performance of
15 experimental, developmental, or research work under a
16 contract.

17
18 (4) The term "cooperative research and development
19 agreement" means any agreement ~~[as defined in section~~
20 ~~11 of the Stevenson-Wydler Technology Innovation Act of~~
21 ~~1980 (15 U.S.C. 3710a(d)(1))] between one or more~~
22 National Laboratories and one or more non-Federal
23 parties under which the Government, through its
24 National Laboratories, provides personnel, services,
25 facilities, equipment, or other resources with or

1: without reimbursement (but not funds to non-Federal
2: parties) and the non-Federal parties provide funds,
3: personnel, services, facilities, and equipment, or
4: other resources toward the conduct of specified
5: research or development efforts which are consistent
6: with the missions of the National Laboratory; except
7: that such term does not include a procurement contract
8: or cooperative agreement as those terms are used in
9: sections 6303, 6304, and 6305 of title 31, United
10: States Code.

11:
12: (5) The term "funding agreement" means any contract,
13: grant, or cooperative agreement entered into between
14: the Secretary of Energy and a contractor operating a
15: National Laboratory of the Department of Energy that
16: provides for such contractor to perform research and
17: development at such National Laboratory.

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TITLE I --THE DEPARTMENT OF ENERGY NATIONAL LABORATORIES

CENTERS FOR RESEARCH ON ENABLING TECHNOLOGIES

FOR HIGH TEMPERATURE SUPERCONDUCTING APPLICATIONS.

SEC. 101. FINDINGS.

Congress makes the following findings:

(1) the Department of Energy has conducted extensive research in superconducting materials to support its programmatic activities in High Energy Physics, Magnetic Fusion Energy, Energy Storage Systems, Electric Energy Systems, and Energy Conservation pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (P.L.93-577), the Energy Reorganization Act of 1974 (P.L. 93-483), and the Department of Energy Organization Act (Public Law 95-91);

(2) recent developments in high-temperature superconducting materials hold great promise for highly efficient energy storage and transmission, medical diagnostics, magnets for physics research and fusion reactors, and smaller supercomputers;

1 (3) the United States is a world leader in basic research
2 on high-temperature superconducting materials, and programs
3 supporting this research at the Department of Defense, the
4 National Science Foundation and the Department of Energy should
5 be maintained and strengthened;

6
7 (4) international interest in the commercialization of
8 high-temperature superconducting materials is high and the key to
9 success lies in the rapid development of these materials and the
10 identification of applications; and

11
12 (5) the National Laboratories of the Department of Energy
13 have demonstrated expertise in superconductivity research and a
14 proven record in research in enabling technologies which can
15 benefit industrial efforts in product development.

1 SEC. 102. PURPOSE .--The purposes of this title are--

2
3 (1) to research critical enabling technologies to assist
4 United States industry in the commercialization of
5 high-temperature superconductors;

6
7 (2) to provide national organization and coordination in
8 the research, development and commercialization of
9 high-temperature superconductors; and

10
1 (3) to encourage private industry, university, and
2 Department of Energy National Laboratory interaction through
3 Centers for Research on Enabling Technologies at the National
4 Laboratories.

1 **SEC. 103. ESTABLISHMENT OF THE SUPERCONDUCTOR RESEARCH**
2 **INITIATIVE.--**

3
4 The Secretary of Energy shall initiate and carry out a
5 cooperative program of research on enabling superconductor
6 technology and on the practical applications of superconductor
7 technology (hereafter in this title referred to as the
8 "Superconductor Research Initiative").

1 SEC. 104. PARTICIPATION OF NATIONAL LABORATORIES OF THE
2 DEPARTMENT OF ENERGY.

3
4 (a) Mission of National Laboratories.--The Secretary of
5 Energy shall ensure that the National Laboratories of the
6 Department of Energy participate in the Initiative, to the extent
7 that such participation does not detract from the primary mission
8 of the National Laboratory.

9
0 (b) Agreements.--The Secretary of Energy shall enter into
1 such agreements with other Federal agencies, with U.S. private
2 industrial or research organizations, consortias, or with any
3 college or university as may be necessary to provide for the
4 active participation of the National Laboratories of the
5 Department of Energy in the Superconductor Research Initiative.

6
7 (c) Required Provisions.--The Superconductor Research
8 Initiative shall include provisions for one or more national
9 laboratories of the Department of Energy to conduct research and
0 development activities relating to research on high-temperature
11 superconductivity. Such activities may include research and
12 development in associated technologies including thin film and
13 bulk ceramic synthesis and processing and the characterization of
14 physical, chemical, and structural properties in materials.

1 SEC. 105. FORMATION OF COUNCIL AND CENTERS FOR RESEARCH ON
2 ENABLING TECHNOLOGIES.

3
4 (a) Council.--The Secretary of Energy shall form a council
5 to be known as the "Council for Research on Enabling
6 Technologies" (hereafter in this title referred to as the
7 "Council") which shall be composed of representatives of
8 appropriate government agencies, universities, and industry to
9 provide guidance in setting goals and strategies for the timely
10 research on critical enabling technologies in high-temperature
11 superconductors. The Council shall set guidelines for the
12 release of the technical findings and developments made by the
13 cooperative research centers established pursuant to subsection
14 (b). Guidelines for releasing technical findings set forth by
15 the Council shall be consistent with guidelines set forth by the
16 relevent agencies.

17
18 (b) Cooperative Research Centers.-- (1) The Secretary of
19 Energy shall establish cooperative research centers in enabling
20 technology for superconducting materials and applications
21 (hereafter in this title referred to as "centers") at National
22 Laboratories with appropriate university and private industry
23 participants.

1 (2) The centers shall be located at National Laboratories
2 which demonstrate expertise in--

3
4 (A) superconductivity research; and

5
6 (B) research in associated technologies including--

7
8 (i) thin film and bulk ceramic synthesis and
9 processing; and

10 (ii) characterization of physical, chemical, and
11 structural properties in materials.

12
13 (c) Avoidance of Duplication.-- The Council shall keep
14 appraised of activities taking place at the existing Research
15 Centers on Superconductivity and Superconductivity Pilot
16 Centers. In carrying out the responsibilities of subsection (a)
17 the Council shall ensure that unnecessarily duplicative research
18 or activities are not being carried out at these Centers.

1 SEC. 106. PERSONNEL EXCHANGES.--The Superconductor Research
2 Initiative ~~[shall]~~ may include provisions for temporary exchanges
3 of personnel between any domestic firm or university referred to
4 in this title and the National Laboratories of the Department of
5 Energy that are participating in the Superconductor Research
6 Initiative. The exchange of personnel ~~[shall]~~ may be subject to
7 such restrictions, limitations, terms and conditions as the
8 Secretary of Energy considers necessary in the interest of
9 national security.

1 SEC. 107. OTHER DEPARTMENT OF ENERGY RESOURCES.

2
3 (a) Availability of Resources.--The Secretary of Energy
4 shall make available to other departments or agencies of the
5 Federal Government, and to any participant in research and
6 development projects under the Superconductor Research
7 Initiative, any facilities, personnel, equipment, services, and
8 other resources of the Department of Energy for the purpose of
9 conducting research and development projects under the
10 Superconductor Research Initiative consistent with section 104.

11
12 (b) Reimbursement.--The Secretary may make facilities
13 available under this section only to the extent that the cost of
14 the use of such facilities is reimbursed by the user.

1 SEC. 108. BUDGETING FOR SUPERCONDUCTIVITY RESEARCH.

2

3 To the extent the Secretary considers appropriate and
4 necessary, the ~~The~~ Secretary of Energy, in preparing the
5 research and development budget of the Department of Energy to be
6 included in the annual budget submitted to the Congress by the
7 President for fiscal years 1990, 1991, 1992, 1993, 1994, and 1995
8 under section 1105(a) of title 31, United States Code, shall
9 provide for programs, projects, and activities that encourage the
10 development of new technology in the field of superconductivity.

1 SEC. 109. COST-SHARING AGREEMENTS.

2
3 (a) Permitted Provisions.-- The Secretary of Energy shall
4 ensure that contracts for the operation of Department of Energy
5 National Laboratories provide the ~~the~~ director of each National
6 Laboratory of the Department of Energy that is participating in
7 the Superconductivity Research Initiative or the contractor
8 operating any such National Laboratory the authority to ~~may~~
9 include in any cooperative research and development agreement
10 entered into with a domestic firm, or university in conjunction
11 with the Superconductor Research Initiative, a cooperative
12 provision for the domestic firm or university to pay a portion of
13 the cost of the research and development activities.

14
15 (b) Considerations.-- The Director of each National
16 Laboratory of the Department of Energy that is participating in
17 the Superconductivity Research Initiative, in determining the
18 type and extent of its laboratory participation in carrying out
19 work for others, shall undertake such work only when facilities
20 are available and when it would not interfere with Department of
21 Energy programs, and shall be conducted in such a way as to not
22 create a future detrimental burden on the National Laboratory.

23
24 (c) ~~the~~ Limitations.-- (1) An amount equal to not more
25 than 10 percent of any National Laboratory's annual budget shall
26 be received from non-appropriated funds derived from work for

1 others contracts entered into under the Superconductor Research
2 Initiative in any fiscal year except to the extent approved in
3 advance by the Secretary of Energy.
4

5 (2) Pursuant to the authority delegated by the Secretary of
6 Energy to the National Laboratory Directors, no [Ne]- Department
7 of Energy National Laboratory may receive more than \$10,000,000
8 of non-appropriated funds under any cooperative research and
9 development agreement entered into under this subsection in
10 connection with the Superconductor Research Initiative except to
11 the extent approved in advance by the Secretary of Energy.

1 SEC. 110. DEPARTMENT OF ENERGY OVERSIGHT OF COOPERATIVE
2 AGREEMENTS RELATING TO THE SUPERCONDUCTOR RESEARCH
3 INITIATIVE.

4
5 (a) Provisions Relating to Disapproval and Modification of
6 Agreements.-- (1) The Secretary of Energy or his designee may
7 review a cooperative research and development agreement for the
8 purpose of disapproving or requiring the modification of the
9 cooperative research and development agreement ~~[if the agreement~~
10 ~~exceeds \$1,000,000]~~. If the Secretary notifies the parties to
11 the agreement of his intent to review the agreement, the
12 agreement shall provide a 30-day period within which the
13 agreement may be disapproved or modified beginning on the date
14 the agreement is submitted to the Secretary.

15
16 (2) In any case in which the Secretary of Energy or his
17 designee disapproves or requires the modification of any
18 agreement presented under this section, the Secretary of Energy
19 or such designee shall transmit a written explanation of such
20 disapproval or modification to the head of the laboratory
21 concerned.

22
23 (b) Record of Agreements.-- Each national laboratory shall
24 maintain a record of all agreements entered into under this
25 section~~[]~~ , and submit such record to the Secretary of Energy on
26 an annual basis.

1 **SEC. 111. AVOIDANCE OF DUPLICATION.**

2

3 In carrying out the Superconductivity Research Initiative,

4 the Secretary of Energy shall ensure that unnecessarily

5 duplicative research is not performed at the research facilities

6 (including the National Laboratories of the Department of Energy)

7 that are participating in the Superconductivity Research

8 Initiative.

1 SEC. 112. INTERNAL REVENUE CODE TREATMENT.
2

3 (a) Tax Exemptions.--Any cooperative agreement, association,
4 or consortium established by the Department of Energy or the
5 National Laboratories of the Department of Energy, and which is
6 consistent with the purposes of this Title, shall be treated as
7 an organization described in section 501(c)(3) of the Internal
8 Revenue Code of 1986 and exempt from tax under section 501 (a) of
9 such Code with respect to activities authorized by this Title.
10

11 (b) Basic Research Payments.-- Any amounts transferred to an
12 organization described in paragraph (a) by a participating member
13 of such an organization shall be taken into account as basic
14 research payments for purposes of section 41(a)(2) of such Code.
15

16 (c) Capital Gains Treatment.--
17

18 (1) No gain or loss shall be recognized in connection
19 with the transfer pursuant to this title of any patent,
20 copyright, trademark, trade secret, mask work, or other
21 intellectual property by or between an organization
22 described in subsection (a) and any participating member of
23 such an organization.

1 (2) If property is received in a transfer described in
2 paragraph (1), the basis of the property in the hands of the
3 transferee shall be the same as it would be in the hands of
4 the transferor.

1 **SEC. 113. ANTITRUST TREATMENT.**

2

3 Any cooperative agreement, association, or consortia created

4 by the Department of Energy or the National Laboratories of the

5 Department of Energy pursuant to the provisions of this Title,

6 shall be considered a joint research and development venture

7 within the meaning of section 2(a)(6) of the National Cooperative

8 Research Act of 1984 (15 U.S.C. 4301 et seq.), for purposes of

9 such Act.

TITLE II --TECHNOLOGY MANAGEMENT AT THE DEPARTMENT OF ENERGY

NATIONAL LABORATORIES

1 Sec. 200. Findings.

2
3 The Congress finds that--

4
5 (1) private industry has great interest in scientific
6 collaboration with the Department of Energy National
7 Laboratories but only if the present Department of Energy
8 laboratory contracting process can be streamlined and
9 intellectual property associated with joint ventures,
10 adequately protected;

11
12 (2) contracts for the operation of the Department of
13 Energy National Laboratories must provide the Directors of
14 such Laboratories with sufficient management authority for
15 intellectual property ~~[must be granted~~
16 ~~to the Director of the Department~~
17 ~~of Energy National Laboratories]~~ to ensure that they can
18 negotiate with industry to set up cooperative research and
19 development agreements; This authority shall be subject to
20 periodic audit and oversight by the Secretary of Energy, the

1 **Inspector General and the Comptroller General as well as**
2 **Congress.**

1 (3) the present Department of Energy policy of
2 disseminating computer software publically, via the National
3 Energy Software Center, despite its commercialization
4 potential, has at times, benefited foreign companies and
5 there should be timely, consistent review procedure to
6 ensure that commercialization potential is considered when
7 software is developed under a Department of Energy contract
8 or may have involved some Department of Energy funding;
9

10 (4) the Department of Energy National Laboratories
11 must be perceived as "user-friendly" in order for industry
12 to seriously consider the laboratories partners for
13 collaborative research and development ventures;
14

15 (5) the National Laboratories must aggressively seek
16 contact with private industries to ensure that they
17 recognize the technical and scientific expertise resident in
18 these laboratories, in addition to publicizing the
19 availability of user facilities and technological projects
20 in ~~process~~ progress, and
21

22 (6) the National Laboratories have demonstrated
23 successes in technology transfer into the private sector but
24 the effort can be significantly enhanced if--

1 (A) industry becomes more aware of the
2 laboratories research and development projects and
3 capabilities;

4 (B) technology transfer is considered a
5 significant part of the laboratory's mission;

6 (C) the laboratories become better educated in
7 industry market requirements; and

8 (D) industry gets involved with the laboratories
9 early enough in the research and development process to
10 direct development of commercially viable products.

1 Sec. 201. Duties and authorities of the Secretary of Energy.

2
3 The Secretary of Energy shall:

4
5 (1) review all existing regulations, policies
6 procedures, and administrative processes associated with the
7 Department of Energy's National Laboratories Directors'
8 ability to:

9
10 (A) form cooperative relationships and enter into
11 cooperative research and development agreements with
12 private industry or universities;

13
14 (B) undertake "work-for others"; and

15
16 (C) operate user facilities.

17
18 (D) review standards of conduct for resolving
19 potential conflicts of interest to make sure they
20 adequately establish guidelines for situations likely
21 to arise through the use of the authorities granted in
22 this Act, included, but not limited to cases where
23 present or former National Laboratory employees or
24 their partners negotiate licenses or assignments of

1 titles to inventions or negotiate cooperative research
2 and development agreements with Federal agencies
3 including the Department of Energy or the
4 contractor-operator with which the employee involved is
5 or was formerly employed.

6
7 (2)(A) review all public laws and related procedures
8 requiring public disclosure of technical data to ensure that
9 they are as consistent as legally possible with the
10 purposes of the this Act.

11
12 (B) survey non-federal parties interested in
13 entering into cooperative research and development
14 agreements with the National Laboratories to
15 determine if adequate safeguards exist for
16 insuring the confidentiality and proprietary
17 value of technical data.

18
19 (C) based on the results of the study develop
20 policy recommendations that shall be submitted to
21 the Congress.

22
23 (3) formulate and carry out a comprehensive set of
24 policy guidelines to advance the goals of this act, based on
25 the review required under paragraphs (1) and (2).

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(4) report to Congress and the President within 90 days the status of this review and implement the policy guidelines within 180 days of enactment of this bill.

1 **SEC. 202. PURPOSE.**

2
3 The purpose of this title is to better meet the continuing
4 responsibility of the Federal Government to ensure the full use
5 of the results of the Nation's Federal investment in the National
6 Laboratories' research and development in meeting international
7 competition.

1 SEC. 203. POLICY.

2
3 It is the policy of Congress that

4
5 (1) intellectual property rights in technology ~~or~~
6 ~~devices~~ developed at the National Laboratories be ~~or~~
7 ~~controlled in a manner that promotes~~ managed so as to
8 promote ~~the use of such technology and devices to improve~~
9 ~~the competitiveness advantage~~ of ~~the~~ United
10 States industries ~~or~~;

11
12
13 (2) the Secretary of Energy promulgate policy
14 guidelines dealing with cooperative research and development
15 agreements and intellectual property rights arising under
16 such agreements; and

17
18 (3) the Laboratory Directors devise implementing
19 procedures consistent with the policy guidelines set forth
20 by the Secretary;

1 **Sec. 204. DEFINITIONS.**

2
3 For purposes of this title--

4
5 (1) The term "invention" means any invention which is
6 or may be patentable or otherwise protected under Title 35,
7 United States Code, or any novel variety of plant which is
8 or may be protectable under the Plant Variety Protection Act
9 (7 U.S.C. 2321 et seq.);

10
11 (2) The term "subject invention" means any invention of
12 a National Laboratory first conceived or reduced to practice
13 in the performance of work under a contract or funding
14 agreement for the operation of a National Laboratory;

15
16 (3) The term "made" when used in conjunction with any
17 invention means the conception or first actual reduction to
18 practice of such invention;

19
20 (4) The term "technical data" means recorded
21 information of a scientific or technical nature regardless
22 of form or the media on which it may be recorded;

1 (5) The term "commercially valuable technical data"
2 means applied technology which may have near term commercial
3 value or which arose under a cooperative research and
4 development agreement. The term does not apply to basic
5 research;

6
7 ~~[(5)]~~ (6) The term "computer software" means
8 recorded information, regardless of form or the media on
9 which it may be recorded, comprising computer programs or
10 documentation thereof;

11
12 ~~[(6)]~~ (7) The term "intellectual property" means
13 patents, trademarks, copyrights, trade secrets, mask works,
14 and other forms of comparable ~~[intellectual]~~ property
15 rights ~~[enacted by Congress or the States]~~;

16
17 ~~[(7)]~~ (8) The term "collaborative party" means a
18 party to a cooperative research and development agreement as
19 defined in paragraph (4);

20
21 ~~[(8)]~~ (9) The term "laboratory owned" means any
22 rights in intellectual property conveyed under this title to
23 a contractor operating a National Laboratory or any rights
24 in intellectual property arising under the operating
25 contract for a National Laboratory where rights are not
26 expressly taken by the United States Government or by a
27 subcontractor;

1 (10) The term "Director of a National Laboratory"
2 means the Department of Energy contractor operator's
3 employee, directing the management or operation of any
4 National Laboratory;

5
6 (11) The term "laboratory manager or operator" means
7 the contractor who has signed a management and operating
8 contract with the Department of Energy (but only with
9 respect to activities relating to such management or
10 operation).

11
12 (12) The term "third parties" means domestic entities
13 located in the United States who agree to manufacture and to
14 conduct research, and development substantially in the
15 United States including--

16
17 (A) Federal agencies other than the Department of
18 Energy;

19
20 (B) units of State or local government;

21
22 (C) industrial organizations, such as
23 corporations, partnerships, limited partnerships,
24 consortia, or industrial development organizations;

25
26 (D) public and private foundations;

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(E) nonprofit organizations such as
universities; and

(F) licensees of inventions, technical data, or
computer software owned by the laboratory manager
or operator.

1 SEC. 205. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

2 (a) General Authority.--The Secretary of Energy shall
3 develop policy guidelines under which he shall ensure that
4 contracts for the operation of Department of Energy National
5 Laboratories provide the Directors of such laboratories with the
6 authority: [permit the Director of any of its National
7 Laboratories:]

8
9 (1) to enter into cooperative research and development
10 agreements and to negotiate the terms and conditions of
11 such agreements [on behalf of the Department of Energy]
12 with--

13
14 (A) other federal agencies;

15 (B) units of state or local government;

16 (C) industrial organizations including
17 corporations, partnerships, and limited partnerships,
18 consortia, and industrial development organizations;

19 (D) public and private foundations;

20 (E) nonprofit organizations including
21 universities; or

22 (F) other persons including licensees of
23 inventions, technical data or computer software owned
24 by the National Laboratory; and

1 (2) to negotiate intellectual property licensing
2 agreements for National Laboratory owned inventions,
3 technical data or computer software, assigned or licensed to
4 the National Laboratory by third parties, including voluntary
5 assignment by employees.

Employees

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9 (b) Specific Authority. -- ~~[Under cooperative research and~~
10 ~~development agreements entered into pursuant to subsection~~
11 ~~(a)(1), the Director of a National Laboratory may]~~ Each
12 Director of a National Laboratory may negotiate and include
13 provisions in any cooperative research and development agreement
14 entered into pursuant to this section permitting the laboratory
15 manager or operator, on behalf of the United States to --

16
17 (1) accept, retain, and use funds, personnel,
18 services, and property from collaborating parties and
19 provide personnel, services, and property to
20 collaborating parties;

21
22 (2) grant or agree to grant in advance to a
23 collaborat ~~[ing]~~ ive party, intellectual property
24 licenses or assignments, or options thereto, in any
25 invention, technical data or computer software, made in
26 whole or in part by ~~[a National Laboratory employee]~~

1 an employee of a laboratory manager or operator under
2 the cooperative research and agreement; and

3
4 (3) to the extent consistent with Department of
5 Energy ~~[requirements and standards of conduct,]~~
6 regulations, orders, and directives pertaining to
7 conflict of interest, permit employees or former
8 employees of ~~[the National Laboratory]~~ a laboratory
9 manager or operator to participate in efforts to ~~[~~
10 ~~commercialize]~~ transfer to the private sector
11 inventions, technical data or computer software, ~~[they~~
12 ~~]~~ such employees developed or made while in the
13 service of ~~[the National Laboratory]~~ such laboratory
14 manager or operator.

15
16 (c) In determining whether to enter into a cooperative
17 research and development agreement the Laboratory Director shall
18 determine that--

19
20 (1) facilities at the National Laboratory are
21 available to do the work that is the subject of the
22 cooperative research and development agreement;

23
24 (2) the work that is the subject of the
25 cooperative research and development agreement would
26 not interfere with Department of Energy programs;

1 (3) the work that is the subject of the
2 cooperative research and development agreement would
3 not create a future detrimental burden on the National
4 Laboratory;

5
6 (4) the proposed cooperative research and
7 development agreement is consistent with other
8 guidelines that the Secretary of Energy may prescribe
9 consistent with the policies set forth in this Act
10 provided that such guidelines are first published for
11
12 public comment in the Federal Register.

13
14
15 ~~[(e)] (d) Approval of Agreement by Secretary.--[(1) If~~
16 ~~the value of an agreement entered into under this section does~~
17 ~~not exceed \$1,000,000, the agreement shall not be subject to the~~
18 ~~approval of the Secretary of Energy.~~

19
20 ~~(2) When the value of the agreement exceeds \$1,000,000,~~
21 ~~but does not exceed \$10,000,000 (the maximum amount for~~
22 ~~a cooperative research and development agreement), t]~~

23 The Secretary of Energy or his designee may disapprove
24 or require the modification of the agreement. The
25 agreement shall provide a 30-day period beginning on
26 the date the agreement is presented to the Secretary of
27 Energy or his designee by the ~~[head]~~ Laboratory

1 Director of the National Laboratory concerned, within
2 which such action shall be taken. In any case in which
3 the Secretary of Energy or his designee disapproves or
4 requires the modification of any cooperative agreement
5 presented under this section, the Secretary or his
6 designee shall transmit a written explanation of such
7 disapproval or modification to the ~~f-head~~ Laboratory
8 Director of the National Laboratory concerned. If such
9 action is not taken within this thirty day period, the
10 cooperative research and development agreement shall be
11 deemed approved.

12
13 ~~f-(d)~~ (e) Limit on Percentage Of the Total Work

14 Cooperative Research and Development Agreements Can Comprise at
15 the National Laboratories. The cumulative total of
16 non-appropriated funds of all agreements entered into by each
17 National Laboratory Director under this section shall not exceed
18 an amount equal to 10 percent of that laboratory's annual
19 budget.

20
21 ~~f-(e)~~ Records of Agreements.--Each National Laboratory
22 shall maintain a record of all agreements entered into under this
23 section, and shall submit it to the Secretary of Energy on an
24 annual basis.

1 SEC. 206. CONTRACT CONSIDERATIONS.--(a) Regulations and
2 Procedures.--(1) ~~[The Office of Federal Procurement Policy may~~
3 ↓ The Secretary of Energy shall issue within 180 days after
4 enactment of this Act regulations or set forth suitable
5 procedures for implementing the provisions of Section 205 ↓
6 ~~(a)(1) ↓~~ after public comment. Implementation of Section 205 ~~↓~~
7 ~~(a)(1) ↓~~ shall not be delayed until issuance of such regulations.

8
9
10 (2) Any regulations covering National Laboratory
11 cooperative research and development agreements under
12 Section 205 ~~↓ (a)(1) ↓~~ shall be guided by the purpose of
13 this Act.

14
15 (3) The Office of Federal Procurement Policy shall
16 review such regulations referred to in subparagraph (1) for
17 consistency with this Act before issuance of such
18 regulations.

Section 206 continued

1 (b) Agreement Considerations.--The Director of the National
2 laboratory in deciding what cooperative research and development
3 agreements to enter into shall:

4
5 (1) give special consideration to small business
6 firms and consortia involving small business firms; and

7
8 (2) give preference to business units located in
9 the United States, which agree that products embodying
10 inventions, technical data or computer software, made
11 under the cooperative research and development
12 agreement or produced through the use of such
13 inventions, technical data or computer software, will
14 be developed and manufactured substantially in the
15 United States.

16
17 (3) in the case of any industrial organizations or
18 other person subject to the control of a foreign
19 company or government, as appropriate, take into
20 consideration whether or not such foreign government
21 permits United States agencies, organizations, or other
22 persons to enter into cooperative research and
23 development agreements and licensing agreements; and

1 (4) provide universities the opportunity to
2 participate in such cooperative agreements when such
3 participation will contribute to the purpose of this
4 legislation.

5
6
7 (c) Record of Agreements.--The ~~[Department of Energy]~~
8 Director of each National Laboratory shall maintain a record of
9 all agreements entered into under this section and submit it to
10 the Secretary of Energy on an annual basis. ?

1 SEC. 407. PATENT OWNERSHIP AND THE CONDITIONS OF OWNERSHIP.--

2 (a) Disposal of Title to Inventions.--Notwithstanding
3 section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182),
4 section 9 of the Federal Nonnuclear Energy Research and
5 Development Act of 1974 (42 U.S.C. 5908), or other provision of
6 law, the Secretary of Energy shall dispose of the title to any
7 subject invention made in the performance of a Department of
8 Energy contract to operate any National Laboratory in the same
9 manner as applied to small business and nonprofit organizations
10 under Chapter 18 of title 35, United States Code.

11 *Regulatory*

12 (b) Retention of Title by United States.--(1) Whenever a
13 National Laboratory manager or operator makes an invention to
14 which the Department of Energy has determined (at the time of
15 contracting for the management and operation of the National
16 Laboratory) to retain title:

17
18 (A) for exceptional circumstances under section
19 202(a)(ii) of title 35, United States Code; or

20
21 (B) because the invention is made in the course of or
22 under a funding agreement described in section 202(a)(iv) of
23 title 35, United States Code, the title to such invention
24 shall be retained by the Government unless the National
25 Laboratory at which the invention is made requests title to

1 such invention and the Secretary of Energy does not notify
2 the Director of the National Laboratory within 90 days after
3 receipt of such request that the invention is covered by an
4 exceptional circumstances determination or has been
5 designated sensitive technical information as authorized by
6 Federal statutes ~~[other than those involving export control~~

deemed to be

v f ze

~~]~~

8
9 (2) The Secretary may not use export control statutes or
10 regulations as ~~[a]~~ the sole basis for refusing a request for
11 title.

12
13 (3) The Secretary may not retain title to a subject
14 invention under the exception set forth at Section 202(a)(iv) of
15 title 35, United States Code, without first determining that the
16 invention has been classified or has been designated sensitive
17 technical information as authorized by applicable statutes ~~[~~
18 ~~other than those involving export control]~~. If the Secretary
19 does not notify the requesting National Laboratory, the
20 laboratory shall be deemed to have elected title to the invention
21 under the Government-wide contractor patentable ownership
22 provisions of chapter 18 of title 35, United States Code.

1 ~~[SEC. 208. TECHNICAL DATA OR COMPUTER SOFTWARE AND THE~~
2 ~~CONDITIONS OF OWNERSHIP (a) Rights Retained by a National~~
3 ~~Laboratory. Notwithstanding any other provision of law, the~~
4 ~~Secretary of Energy shall delegate the authority to permit a~~
5 ~~National Laboratory to elect ownership to any intellectual~~
6 ~~property rights that can be established to protect commercially~~
7 ~~valuable technical data or computer software obtained or~~
8 ~~generated under a Department contract for the operation of such~~
9 ~~National Laboratory subject to a royalty free license to use and~~
10 ~~reproduce such technical data or computer software for United~~
11 ~~States Governmental purposes.~~

12
13 ~~(b) Protection of Technical Data and Computer~~
14 ~~Software (1) Technical data or computer software obtained or~~
15 ~~generated by a National Laboratory shall not be disclosed to the~~
16 ~~public if the Director of the National Laboratory or his designee~~
17 ~~determines that~~

18
19 ~~(A) the technical data or computer software is~~
20 ~~commercially valuable; [and] or~~

21
22 ~~(B) the technical data has been generated as a result~~
23 ~~of or under a cooperative research and development agreement~~
24 ~~that provides for the total reimbursement by the non-federal~~
25 ~~parties; and~~

1 ~~[(B)] (C) there is a reasonable expectation that~~
2 ~~disclosure of the technical data or computer software could~~
3 ~~cause substantial harm to the commercial application of such~~
4 ~~information.~~

5
6 ~~(2) A cooperative research and development agreement which~~
7 ~~provides that technical data or computer software which meets the~~
8 ~~conditions of paragraph (1) obtained or generated~~

9
10 ~~(A) by the Department of Energy or the National~~
11 ~~Laboratory pursuant to a cooperative research and~~
12 ~~development agreement; or~~

13
14 ~~(B) under a National Laboratory cooperative research~~
15 ~~and development,~~

16
17 ~~shall not be disclosed to the public for a period of 2 years.~~

18
19 ~~(3) Documentation disclosing technical data or computer~~
20 ~~software subject to nondisclosure under paragraphs (1) and (2)~~
21 ~~shall not be considered as agency records under the Freedom of~~
22 ~~Information Act during the term of nondisclosure to the public.~~

1 ~~(c) Regulations. [The Office of Federal Procurement~~
2 ~~Policy,] (1) The Department of Energy, in cooperation with~~
3 ~~other interested federal agencies, shall issue within 180 days~~
4 ~~after the date of enactment of this title including 30 days for~~
5 ~~public comment, regulations establishing a standard contract~~
6 ~~clause to implement [this] sections 407 and 408 in the~~
7 ~~Department of Energy contract for the operation of any National~~
8 ~~Laboratory.~~

9
10 ~~(2) The Office of Federal Procurement Policy shall review~~
11 ~~such regulations for consistency with this Act prior to the~~
12 ~~issuance of such regulations under paragraph (1).~~

13
14 ~~(2) In the event the Department of Energy regulations are~~
15 ~~not issued within the time prescribed the sole responsibility~~
16 ~~shall be transferred to the Office of Federal Procurement Policy.~~

†

1 SEC. ~~209.~~ 208. SPECIAL RULE FOR WAIVER OF GOVERNMENT LICENSE
2 RIGHTS.--

3 Any of the rights of the Government or obligations of a
4 National Laboratory described in chapter 18 of title 35, United
5 States Code, including the license reserved in section 202 (c)
6 (4) of title 35, United States Code, may be waived or omitted if
7 the Secretary of Energy determines that the interests of the
8 United States and the general public will be better served or the
9 objectives and policies of this title will be better promoted by
10 such waiver or omission. A waiver or omission shall be
11 considered--

12
13 (1) if it is necessary to obtain a uniquely or highly
14 qualified contractor; or

15
16 (2) if invention involves cosponsored, cost sharing or
17 joint venture research and development, and the contractor,
18 cosponsor or joint venturer is making substantial
19 contribution of funds, facilities or equipment to the work
20 performed on the invention; or

21
22 (3) if the invention will require substantial
23 additional investment in development before a product is

1 **created and it is expected that the primary market for such**
2 **product is the United States Government.**

1 SEC. ~~210~~ 209. INTELLECTUAL PROPERTY CONTRACT PROVISIONS.

2 (a) Contract Provisions.--Any Department of Energy ~~+~~
3 ~~contract~~ + funding agreement to operate a National laboratory
4 shall provide--

5
6 (1) that any royalties or income that is earned by the
7 manager or operator of a ~~+~~ National Laboratory from
8 the licensing of laboratory-owned intellectual property
9 rights in any fiscal year shall be used as authorized under
10 subsection 202(c)(7)(E) of title 35, United States Code and
11 section 13(a)(1)(B)(i)-(iv) and section 13(a)(2)-(4) of the
12 Stevenson-Wydler Technology Innovation Act of 1980 (15
13 U.S.C. 3710c(a)(1)(B)(i)-(iv) and 3710c(a)(2)-(4);

14
15 (2) that the costs of obtaining and protecting
16 intellectual property rights in any invention, technical
17 data or computer software, owned by the National Laboratory
18 shall be paid for by ~~+~~ ~~the Department of Energy to the~~
19 ~~extent not offset by royalty income earned from the~~
20 ~~licensing of National Laboratory owned intellectual property~~
21 ~~rights; ~~+~~~~ the National Laboratories under standard
22 operating funds or as a cost shared expense under a
23 cooperative research and development agreement;
24

1 (3) that Department of Energy establish procedures to
2 have the management of intellectual property rights,
3 including procurement and retention of such rights as well
4 as licensing of such rights, in connection with
5 laboratory-owned inventions, commercially valuable technical
6 data and computer software shall be the responsibility of
7 the Director of the National Laboratory at which the
8 invention, technical data, or computer software are made,
9 developed or assigned.

10
11 (4) The Secretary of Energy shall promulgate
12 appropriate regulations, orders, or directives precluding
13 any laboratory manager or operator who has received title to
14 intellectual property under this section from receiving
15 money or other benefit from the use or licensing of such
16 property for the benefit of the laboratory manager or
17 operator, except for research and development associated
18 with activities at the National Laboratory, to promote
19 technology transfer as authorized by laws, or in special
20 circumstances, as may be approved by the appropriate
21 Department of Energy manager of the Operations Office.

22
23 (b) Compensation.--(1) Subject to paragraph (2), in
24 return for retaining title to any intellectual property rights in
25 any invention or discovery made in performance of a Department of
26 Energy cooperative research agreement, the National Laboratory

1 contractor shall pay to the United States reasonable compensation
2 based on the value of the technology transferred. The amount of
3 the payment arising as a result of the transfer shall be set by
4 an arbitration board consisting of one member selected by the
5 contractor, one member selected by the Secretary of Energy, and
6 one member jointly selected by the contractor and the Secretary.
7 In determining the payment, the arbitration board shall set an
8 amount that is proportionate with the research and development
9 costs funded by the United States. The arbitration board shall
10 have discretion to permit the payment to be made in installments
11 according to the extent the contractor uses or employs the
12 intellectual property.

13
14 (2) Provided that this subsection shall not apply if:

15
16 (A) the contractor is operating the National
17 Laboratory for no profit or fee beyond expenses; and

18
19 (B) the contractor is offering the intellectual
20 property for fair market value and any value or
21 royalties the contractor derives from the intellectual
22 property will be returned to the National Laboratory or
23 the Federal Treasury in accordance with Section
24 202(c)(7)(E) of title 35, United States Code.

1 SEC. ~~[211]~~ 210. MARCH-IN RIGHTS.

2 (a) Rights.--The Secretary of Energy may require the
3 licensing to third parties of all intellectual property owned by
4 the laboratory manager or operator that is subject to the
5 provisions of this Act in the same manner as provided under
6 section 203 of title 35, United States Code.

7
8 ~~[Each funding agreement for the operation of a National~~
9 ~~Laboratory shall contain a provision allowing the Department of~~
10 ~~Energy to require the licensing of the intellectual property~~
11 ~~rights to third parties of inventions, technical data, or~~
12 ~~software owned by the contractor that are subject to the~~
13 ~~provisions of this title for any of the reasons described in 35~~
14 ~~U.S.C. 203(1)(a-d). Such provision will ensure that the~~
15 ~~technology is licensed and commercialized by affording similar~~
16 ~~Federal march in rights provided for inventions under section~~
17 ~~203, title 35, United States Code, but will be applicable to~~
18 ~~all intellectual property for which title was acquired by the~~
19 ~~National Laboratory Directors under this title.]~~

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~~[(c) Regulations. [The Office of Federal Procurement Policy,] (b) The Department of Energy, in cooperation with other interested federal agencies, shall issue within 180 days from enactment including thirty (30) for public comment, regulations to implement the march in rights under this section.~~

~~(c) In the event the Department of Energy does not issue the regulations referred to above in the prescribed time frame, the responsibility for issuing the regulations shall be transferred to the Office of Federal Procurement Policy.]~~

6-10-82

1 SEC. ~~412~~ 411. EFFECTIVE DATE.--This title shall take effect
2 on the date of enactment. The Secretary of Energy shall
3 immediately enter into negotiations with the contractors of the
4 National Laboratories to amend all existing contracts for the
5 operation of the National Laboratories, to reflect this Title.
6 Pending such amendment, the provisions of this title shall govern
7 the disposition of all intellectual property rights covering
8 laboratory-owned inventions, technical data, and computer
9 software, generated in performance of Department of Energy
10 contracts for the operation of the Department of Energy National
11 Laboratories.