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".

SEC. 2. DEFINITIONS.

For Purposes of this Act--

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

(A) Lawrence-Livermore National Laboratory;

(B) Lawrence-Berkeley National Laboratory;

(C) Los Alomos National Laboratory;

(D) Sandia National Laboratory;

(E) Fermi National Accelorator;

(F) Princeton Plasma Physics Laboratory;

(G) Idaho National Engineering Laboratory;

(H) Argonne National Laboratory;

(I) Brookhaven National Laboratory;

(J) Oak Ridge National Laboratory;

(K) Pacific Northwest Laboratory;

(L) Ames Laboratory;

(M) Stanford Linear Accelerator Center;

(N) Bates Linear Accelerator Facility;

(O) Bettis Atomic Power Laboratory;

(P) Center for Energy and Environment Research;

(Q) Coal Fired Flow Facility;

(R) Energy Technology Engineering Center;

(S) Hanford Engineering Development Laboratory;

(T) Inhalation Toxicology Research Institute;

(U) Knolls Atomic Power Laboratory.

(V) Laboratory for Energy-Related Health Research;

(W) Laboratory of Biomedical and Environmental Sciences;

(X) Laboratory of Radiobiology and Environmental Health;

(Y) Michigan State University - DOE Plant Research Laboratory;

(Z) Morgantown Energy Technology Center;

(AA) Notre Dame Radiation Laboratory;

(BB) Oak Ridge Associated Universities;

(CC) Radiobiology Laboratory;

(DD) Savannah River Ecology Laboratory;

(EE) Savannah River Laboratory;

(FF) Solar Energy Research Institute;

(GG) Stanford Synchrotron Radiation Laboratory.

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

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

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

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

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

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

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

Sec. 2. DEFINITIONS

DOE Comments:

Suggested Clarification - The definition of "National Laboratory" should be clarified as to future lab facilities. The definition of "cooperative research and development agreement" is taken from the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a (d) (1)). That definition only applies to research performed by Federal employees, thus excluding the GOCO-generated information this legislation focuses on.

Revisions Made:

Definition of "National Laboratory" was modified to cover future laboratories.

Definition of "cooperative research and development agreement" was modified to include language from Stevenson-Wydler, clarifing its application to GOCO national laboratories.

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 programatic 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;

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

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

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

Sec. 101. FINDINGS

DOE Comments:

Suggested Clarification - The finding in sec. 101(3) on U.S. high-temperature superconducting research also should refer to programs at the Department of Defense and the Defense Advanced Research Projects Agency.

Revisions Made:

Language is modified to include reference to Department of Defense programs.

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

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

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

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

Sec. 102. PURPOSES

No DOE comments or changes.

SEC. 103. ESTABLISHMENT OF THE SUPERCONDUCTOR RESEARCH INITIATIVE.--

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

Sec. 103. ESTABLISHMENT OF INITIATIVE

DOE Comments:

No Objection - Establishes a cooperative program for superconductor research (the Initiative). DOE already has initiated a program of superconductivity collaborative research at several National Labs. The Secretary should have authority to review and approve any new cooperative research agreements.

Response:

Statuatory language is needed to assure the Initiative will be continued after changes in administration. Secretarial authority over cooperative agreements is addressed in other revisions made to this bill that provide for a chain of accountability enabling the Secretary to establish broad policy guidelines and requiring all agreements to be subject to DOE review.

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

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

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

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

Sec. 104. PARTICIPATION OF NATIONAL LABS

DOE Comments:

No Objection - Requires National Lab participation if it does not detract from primary mission. The Lab's "primary mission" should be defined clearly.

Response:

Reference and meaning of "primary mission" is not unclear. No change is needed.

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

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

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

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

(A) superconductivity research; and

(B) research in associated technologies including--

(i) thin film and bulk ceramic synthesis and processing; and

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

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

Sec. 105. FORMATION OF COUNCIL AND CENTERS

DOE Comments:

Suggested Clarification - Establishes a Council for Research on Enabling Technologies and requires Research Centers at Labs. This provision is not necessary and should be clarified to ensure ongoing efforts are not duplicated. DOE already has established Research Centers at Argonne, Lawrence-Berkeley, and Ames Labs and recently announced the establishment of Superconductivity Pilot Centers at Argonne, Los Alomos, and Oak Ridge Labs. Also, any guidelines set by the Council should be consistent with the appropriate agency's regulations.

Revisions Made:

Clarification included to prevent duplication of efforts. Also, clarification included specifying that guidelines set by Council for release of technical findings be consistent with appropriate agencies' guidelines.

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

Sec. 106. PERSONNEL EXCHANGES

DOE Comments:

Suggested Clarification - Provides for temporary personnel exchanges. The Secretary should have greater control over exchanges, and should be able to justify any restrictions for reasons other than national security.

Revisions Made:

This language is identical to language DOE accepted for the semiconductor portion of the DOD authorization bill. In conference "shall" was changed to "may" (section 3144 at page 234 of DOD Conference Report). The same change is made here.

SEC. 107. OTHER DEPARTMENT OF ENERGY RESOURCES.

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

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

Sec. 107. OTHER DOE RESOURCES

DOE Comments:

No Objection - Allows use of DOE facilities on a reimbursable basis or as a DOE contribution. DOE is already doing this.

No changes needed.

SEC. 108. BUDGETING FOR SUPERCONDUCTIVITY RESEARCH.

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

Sec. 108. BUDGETING FOR SUPERCONDUCTIVITY RESEARCH

DOE Comments:

OBJECTIONABLE - Requires Secretary to request funding for the Initiative. This impinges on executive discretion and has no time limit. (Our FY 89 budget request includes funding.)

Revision Made:

Language included to clarify that Secretary may exersise discretion on this point. This will make the language almost identical to semiconductor language included in the DOD authorization bill. Also, a time limit is included.

SEC. 109. COST-SHARING AGREEMENTS.

(a) Permitted Provisions.-- The Secretary of Energy shall delegate to the [The] director of each National Laboratory of the Department of Energy that is participating in the Superconductivity Research Initiative or the contractor operating any such National Laboratory the authority to [may] include in any cooperative research and development agreement entered into with a domestic firm, or university in conjunction with the Superconductor Research Initiative, a cooperative provision for the domestic firm or university to pay a portion of the cost of the research and development activities.

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

(c) [(b)] Limitations.-- (1) An amount equal to not more than 10 percent of any National Laboratory's annual budget shall be received from non-appropriated funds derived from work for

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

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

Sec. 109. COST-SHARING AGREEMENTS

DOE Comments:

OBJECTIONABLE - Permits Lab Director to include cost-sharing provision in cooperative R&D agreements, limited to a total of 10% of that lab's annual budget or $10,000 of non-appropriated funds per agreement. The Secretary should have authority to review and approve any cooperative agreements. DOE is not given sufficient control to prevent the labs from entering into agreements beyond these limitations.

Revisions Made:

Modifications are made specifying that the Secretary of Energy shall delegate authority to the Labs to enter into cost sharing agreements. Title 4 includes revisions giving DOE authority to review all agreements into which all Labs enter. References are also included here to clarify revisions made in title 4 that any Lab director authority granted shall be delegated by the Secretary.

A paragraph is also included here to clarify that work for others, agreed to by the Labs, can only be performed when facilities are available, and it must not interfere with DOE programs or create future detrimental burdens to the Labs.

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

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

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

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

Sec. 110. DOE OVERSIGHT OF COOPERATIVE AGREEMENTS

DOE Comments:

OBJECTIONABLE -- Limits DOE oversight of agreements to a 30-day approval period (for agreements in excess of $1,000,000) or no approval at all (for agreements of $1,000,000 or less). This provision would allow contractors to perform R&D for other private parties, using taxpayer dollars. This would contravene longstanding policy, based upon the Atomic Energy Act of 1954, that the Labs not compete with private industry, and undertake work for others only when the facilities are available and when it would not interfere with DOE programs, and it would not create a future detrimental burden on the Lab. As the Lab is Government property, and uses taxpayer dollars, only a Federal official can make those decisions. Nor should the Secretary, a cabinet-level officer, be forced to justify his disapproval of an agreement involving Federal expenditures to a contractor employee. While the Labs are required to keep records of all agreements, they are under no obligation to inform DOE.

Revisions Made:

The $1,000,000 threshold is deleted to assure that DOE has authority to review all agreements negotiated by the Labs. Language is also added to assure that records of agreements kept by the Labs are submitted annually to DOE.

This bill does not contravene the policy of the Atomic Energy Act of 1954, prohibiting Lab competition with private industry. Language was included in section 109 clarifying the Labs' obligations regarding work for others.

No changes are made in language requiring the Secretary to transmit written explanations of modifications and disapprovals to the head of concerned laboratories. If laboratory managers are to be able to negotiate cooperative agreements with outside parties in an expedited manner, it is extremely important that DOE disapprovals and modifications be relayed quickly to lab directors, along with explanations.

Delays in negotiations have created serious barriers to the labs being able to deal with the private sector. Without quickly understanding why modifications or approvals have been made, Lab managers could be helpless in trying to understand what form of new contract could be negotiated.

SEC. 111. AVOIDANCE OF DUPLICATION.

In carrying out the Superconductivity Research Initiative, the Secretary of Energy shall ensure that unnecessarily duplicative research is not performed at the research facilities (including the National Laboratories of the Department of Energy) that are participating in the Superconductivity Research Initiative.

Sec. 111. AVOIDANCE OF DUPLICATION.

DOE Comments:

Suggested Clarification - Requires the Secretary to prevent unnecessarily duplicative research but does not require that the Secretary be informed of all the research being performed. If sections 109 and 110 are enacted, cooperative research could occur without formal notification to the Secretary.

Revisions Made:

Language is added to section 110 (b) to require Lab directors to notify DOE annually of all cooperative agreements entered into.

SEC. 112. INTERNAL REVENUE CODE TREATMENT.

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

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

(c) Capital Gains Treatment.--

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

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

Sec. 112. INTERNAL REVENUE CODE TREATMENT.

No DOE comments or changes made.

SEC. 113. ANTITRUST TREATMENT.

Any cooperative agreement, association, or consortia created by the Department of Energy or the National Laboratories of the Department of Energy pursuant to the provisions of this Title, shall be considered a joint research and development venture within the meaning of section 2(a)(6) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.), for purposes of such Act.

Sec. 113. ANTITRUST TREATMENT.

No DOE comments or changes made.

Chromatography/Mass Spectrometry (GC/MS) analysis (an AOAC approved method of confirmation analysis for sulfonamide residues).

Recently, because of continuing, unacceptable levels of sulfamethazine residue violations, the Agency has increased the number of tissue samples taken from swine for testing. This has increased the numbers of analyses to be conducted at FSIS's laboratories (or by accredited laboratories under contract to FSIS), and has led to a reexamination of FSIS's laboratory procedures for laboratory testing for sulfamethazine residues, and to the conclusion that changes should be made regarding routine use of GC/MS confirmation where the violative level was close to the tolerance, and regarding the routine analysis of more than one tissue from an animal.

FSIS has compared the results of STLC-F analyses which were positive for sulfamethazine with concentrations between 0.11 and 0.15 ppm with the results of the GC/MS confirmation analyses. This comparison revealed that all positive STLC-F analyses were confirmed as such under subsequent GC/MS analyses. Because of the accuracy of STLC-F analyses and because use of GC/MS to confirm STLC-F analyses is costly and time consuming, FSIS will no longer do confirmation testing on each positive STLC-F test of muscle tissue falling between 0.11 and 0.15 ppm. Confirmation testing using GC/MS will be performed only periodically as a quality control measure.

As stated, FSIS currently analyzes the liver sample for the presence of SMZ residues and, if violative SMZ residues are found, then the muscle sample is analyzed. However, because the known ratio for SMZ presence in liver to muscle is 3:1, the level in one can be calculated based upon the level found in the other. For example, if the residue concentration in the liver is 0.12 ppm, the residue concentration in the muscle tissue is estimated to be 0.04 ppm; the liver would contain violative residues, but the muscle tissue would not. Therefore, to better utilize its laboratory resources during this intensified monitoring period, FSIS will analyze muscle tissue samples only, and, if violative, the inspector will be notified and the liver will be condemned and disposed of in accordance with the requirements of 9 CFR Part 314 of the Federal meat inspection regulations.

In instances where an establishment seeks a faster laboratory report, FSIS will permit such establishment to send the liver tissue of the animal to an accredited laboratory at its own expense for sulfonamide analysis and will accept the results of that analysis.

Done at Washington, DC, on April 8, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-8813 Filed 4-20-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

[Docket No. 80222-8022]

Access of U.S. Scientists to Foreign Research Facilities

AGENCY: Federal Technology Management Division, Office of the Under Secretary for Economic Affairs.

ACTION: Request for information.

SUMMARY: The Federal Technology Transfer Act of 1986 (Pub. L. 99-502) requires directors of federal laboratories, when evaluating offers for cooperative research agreements involving participants subject to control of a foreign government or company, to consider whether such government grants U.S. entities access to its own facilities and opportunities to enter into similar cooperative arrangements.

The President, through Executive Order No. 12591 of April 10, 1987, ordered agencies to consult with the United States Trade Representative (USTR) in making this evaluation. USTR has requested the assistance of the Department of Commerce in collecting relevant information concerning foreign practices.

This information will assist the Department in working with federal agencies in implementing the Act and in preparing its own required reports to Congress. It should also assist Executive branch officials responsible for developing, evaluating and/or negotiating bilateral science and technology agreements with foreign governments, as well as related implementing agreements.

The Department is particularly interested in obtaining from the private sector specific information concerning (a) the denial by foreign governments of opportunities to do research in foreign facilities or to enter into formal cooperative relationships, and (b) the effect of current policies governing foreign access to federal laboratories on private sector willingness to enter into cooperative agreements with such laboratories. The Department is not soliciting any confidential or proprietary information.

DATE: Comments should be received on or before June 1, 1988, but certain information, as indicated under Supplementary Information below, will be welcome at any time.

ADDRESS: Comments should be mailed or delivered by hand to Mr. Joseph P. Allen, Acting Director, Federal Technology Management Division, Office of the Under Secretary for Economic Affairs, United States Department of Commerce, Room 4839 Herbert C. Hoover Building, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Allen at the above address or by telephone at (202) 377-8101.

SUPPLEMENTARY INFORMATION: In 1986 Congress passed, and the President signed, the Federal Technology Transfer Act of 1986 (Pub. L. 99-502). This statute seeks to promote the transfer of commercially useful technologies from federal laboratories to the private sector by encouraging the laboratories to enter into cooperative research and development arrangements with private industry, universitites, state and local governments, and others. The laboratories are authorized to agree in advance to convey exclusive rights to any inventions made by a federal employee resulting from the arrangement.

On April 10, 1987, President Reagan issued Executive Order No. 12591 which has as its principal themes (a) incentives for inventors in federal laboratories; (b) decentralized management of technology at those laboratories; and (c) effective and balanced international scientific and technological cooperation.

As such, the President and Congress recognized that adequate incentives are needed to encourage the private sector to take the time, trouble, and risk inherent in developing an invention, determining its commercial potential, and bringing it to the marketplace.

The President and the Congress recognized that technology complexes such as Silicon Valley, Route 128, Research Triangle and Forrestal Center had evolved around major universities which could transfer the results of research on an exclusive basis, thus providing business with a powerful incentive to enter into arrangements with them and to take the risks inherent in bringing a new technology to the marketplace (see S. Rep. No. 283, 99th Congress, Second Session).

President Reagan believed that federal laboratories could overcome the barriers which in the past had precluded effective collaboration with the private sector and, as such, had served to retard the commercialization of federal laboratory research. Congress believed

that by eliminating these restraints, the 300+ federal laboratories—which spend about $18 billion annually on R&D and employ one-sixth of the nation's scientists and engineers—could also serve as nuclei for successful research and development arrangements.

The Federal Technology Transfer Act of 1986 aims at creating a climate for improved scientific collaboration between the public and private sectors by removing the unnecessary legal and organizational barriers that had previously existed. To this end, the new law—

—Permitted agencies to allow their laboratories to enter into cooperative research agreements and to negotiate exclusive patent licensing arrangements;
—Required that agencies give at least 15% of royalties received from licensing an invention to the federally employed inventor with the remainder going to the laboratory; and
—Created a preference for domestic development of resulting technologies.

The latter aspect is particularly significant. Because of the size of the taxpayers' investment in the federal research establishment, Congress wanted to make sure that U.S. citizens would be the principal beneficiaries of the new efforts to adapt technology developed at federal laboratories to commercial use—efforts which, if successful, were expected to lead to new efficiencies, products, markets, industries and jobs, and, more generally, to improved international competitiveness.

To achieve its purpose, Congress took several specific actions. For example, it required laboratory directors, when evaluating possible research agreements, to give preferences to small businesses (see 15 U.S.C. 3710a(c)(4)(A)) and to businesses located in the United States which agree to substantially manufacture domestically products that incorporate inventions made under an agreement or products made through the use of processes developed under an agreement (see 15 U.S.C. 3710(c)(4)(B)).

Congress wanted to make sure that laboratory directors considered projects which are most likely to benefit employment in the United States or the technical development of U.S. companies.

In addition, concerns have been raised about the policies adopted by federal laboratories toward allowing foreign scientists access to state-of-the-art research facilities funded by the taxpayers without obtaining an appropriate quid pro quo. Laboratories have pursued such policies for a variety of reasons. In many cases, it reflects a commendable commitment to furthering international scientific cooperation and training foreign scientific personnel. In others, the motive is a practical one: it ensures a supply of trained personnel for far less money than a laboratory would have to pay U.S. nationals for the same work.

However, for a variety of reasons, members of Congress have frequently questioned Federal practices in this area and indeed continue to do so.

The Department is aware of concerns that foreign governments may have refused to allow American firms access to foreign research facilities or opportunities to enter into foreign-sponsored cooperative agreements and licensing arrangements, or that they are willing to do so only under onerous conditions—that is, that such governments have sought access to our most valuable technology while denying us comparable access to theirs. On the other hand, there is also speculation that some American firms may have failed to pursue efforts by foreign governments to include them in important research projects, including those relating to superconductivity.

The Federal Technology Transfer Act requires federal laboratory directors to take into consideration, when evaluating cooperative proposals involving industrial organizations or other persons subject to the control of a foreign government, whether such foreign government permits U.S. agencies, organizations or other persons to enter into cooperative research and development agreements and licensing arrangements (15 U.S.C. 3710a(c)(4)(B)). As the conferees explained this, "(w)hen evaluating whether to grant access by (sic) a foreign company, the Federal laboratories may examine the willingness of the foreign government to open its own laboratories to U.S. firms" (see House Conference Report No. 953, 99th Congress, Second Session at 16).

The President, in Executive Order No. 12591, also directs heads of agencies, when negotiating cooperative agreements and licensing arrangements with foreign persons or industrial organizations, to consider (a) whether those governments have policies to protect U.S. intellectual property rights, and (b) whether such governments have adequate national security export controls.

Agency heads are required to consult with the USTR in evaluating these various factors.

The policies adopted by laboratory directors and their parent agencies toward access by foreign scientists may have particular relevance under the Federal Technology Transfer Act. The Department is seeking information as to whether current U.S. policies regarding access to laboratories by foreign scientists are deterring American firms from pursuing opportunities for cooperative research with the Government laboratories.

If so, this would deny the firms and the public as a whole the benefits of developing technologies. It would deny the laboratories the chance to obtain from the private partner funds, personnel, services, facilities, equipment and other resources that could be used in the conduct of specified research as well as royalties from resulting inventions.

The USTR has requested the Department of Commerce, through the Office of the Under Secretary for Economic Affairs, to obtain relevant information which can be used in implementing the President's instruction. The information should also be helpful to appropriate federal agencies in drafting, analyzing, and negotiating bilateral science and technology agreements with foreign governments or related implementing arrangements.

Because of the importance of the issue, and because of the clear relationship of the request to its own responsibilities to report periodically to Congress on the implementation of the Federal Technology Management Act, the Department has agreed to provide this assistance. Accordingly, the Office of the Under Secretary is requesting public comment on any or all of the following matters:

(1) Has your organization even sought and been denied an opportunity to participate in a foreign research and development venture, whether purely private or sponsored/funded by a foreign government or quasi-government institution? If private, do you have any evidence or reason to believe that the denial was instigated by the foreign government involved? Was your organization permitted to participate, but only on terms which made participation impossible or impractical? Which country is involved? Do you have reason to believe its policies are improving?

(2) To what extent, if any, has your institution's willingness to participate in cooperative arrangements with federal laboratories been favorably or unfavorably affected by current U.S. practices governing access by foreign scientists to such laboratories? What policies or procedures would you recommend be changed or adopted?

(3) If your institution is a college, university or other nonprofit

organization which has entered into cooperative agreements with the private sector, have you encountered any corporate concern regarding foreign access to your facilities and, if so, how have you attempted to address these?

(4) What criteria would you recommend for determining whether an industrial organization is subject to "the control of a foreign company or government" as required by Section 3710a(c)(4)(B) of Title 15 of the United States Code?

(5) What recommendations can you make for improving the Federal Technology Transfer Act or the way it is administered?

Comments, particularly those relating to Question 1, are requested by June 1, 1988 but information requested will be welcome on a continuing basis. All comments will be considered. Examples of situations described in Question 1 that arose prior to this notice should be submitted as soon as possible to assist us in evaluating any pending international science and technology agreements. The Department specifically requests that replies not include information of a confidential or proprietary nature.

The information collection requested by this notice has been approved by the Office of Management and Budget under Control No. 0608-0059.

Dated: April 11, 1988.

Barry Beringer,

Associate Under Secretary for Economic Affairs.

[FR Doc. 88-8718 Filed 4-20-88; 8:45 am]

BILLING CODE 3510-18-M

International Trade Administration

[A-570-007]

Barium Chloride From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on barium chloride from the People's Republic of China. The review covers China National Chemicals Import and Export Corporation (Sinochem) and the periods April 6, 1984 through September 30, 1984 and October 1, 1985 through September 30, 1986. The review indicates the existence of dumping margins during both periods.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 21, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1987 the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 313) the final results of its last administrative review of the antidumping duty order on barium chloride from the People's Republic of China (49 FR 40635, October 17, 1984). The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on November 18, 1986 (51 FR 41649). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS").

In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of barium chloride, a chemical compound having the formula BaCl2 or BaC12-2H20, currently classifiable under TSUSA item 417.7000 and HS item 2827.38.00.

The review covers Sinochem and the periods April 6, 1984 through September 30, 1984 and October 1, 1985 through September 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for foreign inland freight, ocean freight and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

We have concluded that the economy of the PRC is state-controlled for purposes of this administrative review. As a result, section 773(c) of the Tariff Act requires us to use either the prices or the constructed value of such or similar merchandise sold by a country or countries whose economy is not state-controlled. Section 353.8 of the Commerce Regulations establishes a preference for determining foreign market value based upon sales prices in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

After an analysis of countries which produce barium chloride, we determined that India and Peru were the countries most comparable to the PRC in their stages of economic development. However, the Indian Embassy declined to permit us to contact Indian firms, and the firm contacted in Peru did not respond.

Lacking information on sales of barium chloride from a country at a stage of economic development comparable to that of the PRC, in accordance with § 353.8(c) of the Commerce Regulations we calculated foreign market value based on the Chinese factors of production as valued in a non-state-controlled-economy country at a stage of economic development reasonably comparable to that of the PRC.

We valued PRC materials, labor, and energy on the basis of publicly available price and cost information from

One Hundredth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-eight

An Act

To keep secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the bankruptcy code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended—

(1) in paragraph (50) by striking "and" at the end, and

(2) in paragraph (51) by striking the period at the end and inserting in lieu thereof a semicolon, and

(3) by adding at the end the following:

"(52) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant protected under title 35;

"(C) patent application;

"(D) plant variety;

"(E) work of authorship protected under title 17; or

"(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law; and

"(53) 'mask work' has the meaning given it in section 901(a)(2) of title 17.".

(b) EXECUTORY CONTRACTS LICENSING RIGHTS TO INTELLECTUAL PROPERTY.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

"(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

"(B) to retain its rights (including a right to to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

"(i) the duration of such contract; and

"(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

"(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—

"(A) the trustee shall allow the licensee to exercise such rights;

"(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

"(C) the licensee shall be deemed to waive—

"(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

"(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

"(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

"(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract or any agreement supplementary to such contract—

"(i) perform such contract; or

"(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.".

SEC. 2. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) Application of Amendments.—The amendments made by this Act shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

One Hundredth Congress of the United States of America

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"(B) to retain its rights (including a right to to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

"(i) the duration of such contract; and

"(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

"(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—

"(A) the trustee shall allow the licensee to exercise such rights;

"(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

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Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

SEC. TECHNOLOGY MANAGEMENT AT DOE NATIONAL LABORATORIES

I. DEFINITIONS

As used in this title--

(a) The term "National laboratory" means:

(1) Lawrence-Livermore National Laboratory

(2) Lawrence-Berkeley

(3) Los Alamos National Laboratory

(4) Sandia National Laboratory

(5) Fermi National Laboratory

(6) Princeton Plasma Physics Laboratory

(7) Idaho National Engineering Laboratory

(8) Argonne National Laboratory

(9) Brookhaven National Laboratory

(10) Oak Ridge National Laboratory

(11) Pacific Northwest Laboratory

(b) The term "federal agency" means any executive agency as defined in section 105 of Title 5, United States Code, and the military departments as defined by section 102, Title 5, United States Code.

(c) The term "contract" means any contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31, United States Code, entered into between any Federal agency 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 assignment, substitution of parties, or subcontract of any type

entered into for the performance of experimental, developmental, or research work under a contract as herein defined.

(d) The term "cooperative research and development agreement" means any agreement as defined in section 3710a.(d)(1) of Title 15, United States Code.

(e) The term "invention" means any invention which is or may be patentable or otherwise protected 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.).

(f) The term "made" when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

(g) The term "technical data" means recorded information of a scientific or technical nature regardless of form or the media on which it may be recorded.

(h) The term "computer software" means recorded information regardless of form or the media on which it may be recorded comprising computer programs or documentation thereof.

(i) The term "intellectual property" means patents, trademarks, copyrights, trade secrets or the protection of semiconductor chip products.

II. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

(a) General Authority -- The Secretary of DOE shall permit the Director of any of its National laboratories:

(1) to enter into cooperative research and development agreements on behalf of DOE (subject to

subsection (c) of this section) with other federal agencies; units of state or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions, technical data or computer software owned by the laboratory); and

(2) to negotiate intellectual property licensing agreements for laboratory owned inventions, technical data or computer software, made at the laboratory and other inventions, technical data or computer software, of laboratory employees that may be voluntarily assigned to the laboratory.

(b) Enumerated Authority.-- Under agreements entered into pursuant to subsection (a)(1), a National laboratory may (subject to subsection (c) of this section)--

(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

(2) grant or agree to grant in advance to a collaborating party, intellectual property licenses or assignments, or options thereto, in any invention, technical data or computer software, made in whole or in part by a laboratory employee under the agreement; and

(3) to the extent consistent with DOE requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions, technical data or computer software, they made while in the service of the laboratory

(c) Contract Considerations.--

(1) OFPP may issue regulations or suitable procedures for implementing the provisions of subsection (a)(1) after public comment; however, implementation of subsection (a)(1) shall not be delayed until issuance of such regulations.

(2) Any regulations covering laboratory agreements under subsection (a)(1) shall be guided by the purposes of this Act.

(3) The National laboratory director in deciding what cooperative research and development agreements to enter into shall--

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions, technical data or computer software, made under the cooperative research and development agreement or produced through the use of such inventions, technical data or computer software, will be manufactured substantially in the United States and, in the case of any industrial organizations or other

person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(4)(A) If the Secretary of DOE or his designee desires an opportunity to disapprove or require the modification of any such agreement, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the Secretary of DOE or his designee disapproves or requires the modification of an agreement presented under this section, the Secretary or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(5) DOE shall maintain a record of all agreements entered into under this section.

III. PATENT OWNERSHIP AND THE CONDITIONS ON OWNERSHIP

(a) Notwithstanding section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), or other provision of law, the Secretary of Energy shall dispose of the patentable ownership of any invention made in the performance

of a Department contract to operate any National laboratory in the same manner as applied to small business and nonprofit organizations under Chapter 38 of Title 35 of the United States Code and its implementing regulations.

(b) Whenever a National laboratory makes an invention to which the Department of Energy has elected or reserved the right to patentable ownership at the time of contracting--

(1) for exceptional circumstances under section 202(a)(ii) of Title 35, United States Code, or

(2) because the invention will be made in the course of or under a funding agreement described in section 202(a)(iv) of Title 35, United States Code,

the patentable ownership of such invention shall be or become the property of the government unless the inventing laboratory requests such ownership of such invention and the Secretary of Energy does not notify the laboratory within three months after the laboratory request that the exceptional circumstances identified in the contract in accordance with subsection 202(a)(ii) of Title 35, United States Code, applies to the invention and requires government ownership of the invention or the invention has been classified or has been designated sensitive technical information as authorized by federal statutes. If the Secretary does not notify the requesting contractor, the contractor shall retain patentable ownership of the invention under the government-wide contractor patentable ownership provisions of sections 200-206 of Title 35, United States Code.

(c) Any of the rights of the government or obligations of a National laboratory described in sections 200-204 of Title 35, United States Code may be waived or omitted if the agency determines:

(1) that the interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified contractor; or

(2) that the award involved co-sponsored, cost sharing or joint venture research and development, and the contractor, co-sponsor or joint venturer is making substantial contribution of funds, facilities or equipment to the work performed under the award.

IV. TECHNICAL DATA OR COMPUTER SOFTWARE AND THE CONDITIONS ON OWNERSHIP

(a) Notwithstanding any other provision of law, the Secretary of DOE shall permit its National laboratories to retain ownership to any intellectual property rights that can be established to protect technical data or computer software obtained or generated under a Department contract with such laboratory in exchange for a license to meet agency needs.

(b) Disclosure of Technical Data and Computer Software.

(2) Technical data or computer software obtained or generated by a National laboratory shall not be disclosed to the public if the Director of the laboratory or his or her designee determines that--

(A) the technical data or computer software is commercially valuable; and

(B) there is a reasonable expectation that disclosure of the technical data or computer software could cause substantial harm to the commercial application of such information.

(c) Technical data or computer software obtained or generated under a National laboratory cooperative research and development agreement shall not be disclosed to the public if--

(1) the Director of the laboratory or his or her designee determines, that;

(A) the technical data or computer software is commercially valuable; and

(B) there is a reasonable expectation that disclosure of the technical data or computer software could cause substantial harm to the commercial application of such information; or

(2) such cooperative research and development agreement provides that technical data or computer software obtained or generated by the agency pursuant to such cooperative research and development agreement shall not be disclosed to the public.

(d) The Office of Federal Procurement Policy, in cooperation with other interested federal agencies, shall issue within 180 days from enactment including 30 days for public comment, regulations establishing a standard contract clause to implement this subsection consistent to the extent possible with

the government-wide standard patent rights clause developed to implement sections 200-204 of Title 35, United States Code.

V. INTELLECTUAL PROPERTY CONTRACT PROVISIONS

(a) Any Department of Energy contract to operate a National laboratory shall provide--

(1) that any royalties or income that is earned by the laboratory from the licensing of laboratory-owned intellectual property rights in any fiscal year shall be used as authorized under subsection 202(c)(7)(E) of Title 35, United States Code; and section 3710c.(a)(1)(B)(i)-(iv) of Title 15, United States Code.

(2) that the costs of obtaining legal protection for intellectual property rights in any invention, technical data or computer software, made by the laboratory under the contract shall be paid for by DOE to the extent not offset by royalty income earned from the licensing of laboratory-owned intellectual property rights.

(3) that the management of intellectual property rights, including procurement of intellectual protection and licensing, in connection with inventions, technical data and computer software, made by the contractor at a National laboratory shall be the responsibility of the Director of the laboratory at which the invention, technical data or computer software is made.

VI. EFFECTIVE DATE

This title shall take effect on the date of enactment. All existing contracts with National laboratories shall be

immediately amended to reflect this Title. Pending such amendment, the provisions of this Title shall govern the disposition of all intellectual property rights covering inventions, technical data or computer software, generated in performance of DOE contracts with the National laboratories.

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entered into for the performance of experimental, developmental, or research work under a contract as herein defined.

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(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

(2) grant or agree to grant in advance to a collaborating party, intellectual property licenses or assignments, or options thereto, in any invention, technical data or computer software, made in whole or in part by a laboratory employee under the agreement; and

(3) to the extent consistent with DOE requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions, technical data or computer software, they made while in the service of the laboratory

(c) Contract Considerations.--

(1) OFPP may issue regulations or suitable procedures for implementing the provisions of subsection (a)(1) after public comment; however, implementation of subsection (a)(1) shall not be delayed until issuance of such regulations.

(2) Any regulations covering laboratory agreements under subsection (a)(1) shall be guided by the purposes of this Act.

(3) The National laboratory director in deciding what cooperative research and development agreements to enter into shall--

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions, technical data or computer software, made under the cooperative research and development agreement or produced through the use of such inventions, technical data or computer software, will be manufactured substantially in the United States and, in the case of any industrial organizations or other

person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(4)(A) If the Secretary of DOE or his designee desires an opportunity to disapprove or require the modification of any such agreement, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the Secretary of DOE or his designee disapproves or requires the modification of an agreement presented under this section, the Secretary or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

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of a Department contract to operate any National laboratory in the same manner as applied to small business and nonprofit organizations under Chapter 38 of Title 35 of the United States Code and its implementing regulations.

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the patentable ownership of such invention shall be or become the property of the government unless the inventing laboratory requests such ownership of such invention and the Secretary of Energy does not notify the laboratory within three months after the laboratory request that the exceptional circumstances identified in the contract in accordance with subsection 202(a)(ii) of Title 35, United States Code, applies to the invention and requires government ownership of the invention or the invention has been classified or has been designated sensitive technical information as authorized by federal statutes. If the Secretary does not notify the requesting contractor, the contractor shall retain patentable ownership of the invention under the government-wide contractor patentable ownership provisions of sections 200-206 of Title 35, United States Code.

(c) Any of the rights of the government or obligations of a National laboratory described in sections 200-204 of Title 35, United States Code may be waived or omitted if the agency determines:

(1) that the interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified contractor; or

(2) that the award involved co-sponsored, cost sharing or joint venture research and development, and the contractor, co-sponsor or joint venturer is making substantial contribution of funds, facilities or equipment to the work performed under the award.

IV. TECHNICAL DATA OR COMPUTER SOFTWARE AND THE CONDITIONS ON OWNERSHIP

(a) Notwithstanding any other provision of law, the Secretary of DOE shall permit its National laboratories to retain ownership to any intellectual property rights that can be established to protect technical data or computer software obtained or generated under a Department contract with such laboratory in exchange for a license to meet agency needs.

(b) Disclosure of Technical Data and Computer Software.

(2) Technical data or computer software obtained or generated by a National laboratory shall not be disclosed to the public if the Director of the laboratory or his or her designee determines that--

(A) the technical data or computer software is commercially valuable; and

(B) there is a reasonable expectation that disclosure of the technical data or computer software could cause substantial harm to the commercial application of such information.

(c) Technical data or computer software obtained or generated under a National laboratory cooperative research and development agreement shall not be disclosed to the public if--

(1) the Director of the laboratory or his or her designee determines, that;

(A) the technical data or computer software is commercially valuable; and

(B) there is a reasonable expectation that disclosure of the technical data or computer software could cause substantial harm to the commercial application of such information; or

(2) such cooperative research and development agreement provides that technical data or computer software obtained or generated by the agency pursuant to such cooperative research and development agreement shall not be disclosed to the public.

(d) The Office of Federal Procurement Policy, in cooperation with other interested federal agencies, shall issue within 180 days from enactment including 30 days for public comment, regulations establishing a standard contract clause to implement this subsection consistent to the extent possible with

the government-wide standard patent rights clause developed to implement sections 200-204 of Title 35, United States Code.

V. INTELLECTUAL PROPERTY CONTRACT PROVISIONS

(a) Any Department of Energy contract to operate a National laboratory shall provide--

(1) that any royalties or income that is earned by the laboratory from the licensing of laboratory-owned intellectual property rights in any fiscal year shall be used as authorized under subsection 202(c)(7)(E) of Title 35, United States Code; and section 3710c.(a)(1)(B)(i)-(iv) of Title 15, United States Code.

(2) that the costs of obtaining legal protection for intellectual property rights in any invention, technical data or computer software, made by the laboratory under the contract shall be paid for by DOE to the extent not offset by royalty income earned from the licensing of laboratory-owned intellectual property rights.

(3) that the management of intellectual property rights, including procurement of intellectual protection and licensing, in connection with inventions, technical data and computer software, made by the contractor at a National laboratory shall be the responsibility of the Director of the laboratory at which the invention, technical data or computer software is made.

VI. EFFECTIVE DATE

This title shall take effect on the date of enactment. All existing contracts with National laboratories shall be

immediately amended to reflect this Title. Pending such amendment, the provisions of this Title shall govern the disposition of all intellectual property rights covering inventions, technical data or computer software, generated in performance of DOE contracts with the National laboratories.