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JULY 10, 1986

PART C--SPECIAL PROGRAM PROVISIONS

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SEC. 1031. PROTECTION OF SENSITIVE TECHNICAL INFORMATION.

(a) SECRETARY OF ENERGY DETERMINATION.--Whenever any invention or discovery is made or conceived in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, the Secretary of Energy shall decide (in each such case) whether to assert, or not to assert, a claim that such invention or discovery is the property of the Government. Any such decision shall be made within a reasonable time.

(b) MILITARY LIASON COMMITTEE.--In making a determination under this section, the Secretary shall consider the recommendation and written determination of the Military Liaison Committee (established by section 27 of the Atomic Energy Act of 1954 (42 U.S.C. 2037)) as to whether or not, if such a claim is not asserted--

(1) national security will be compromised;

(2) sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the the nuclear weapons programs or other atomic energy defense activities of the Department

1 of Energy for which dissemination is controlled under
2 Federal statutes and regulations will be released to
3 unauthorized persons;

4 (3) an organizational conflict of interest
5 contemplated by Federal statutes and regulations will
6 result; or

7 (4) failure to assert such a claim will adversely
8 affect the operation of any program of the Naval Nuclear
9 Propulsion Program or the the nuclear weapons programs or
10 other atomic energy defense activities of the Department
11 of Energy.

12 (c) CONSULTATIONS BY COMMITTEE--(1) In making a
13 recommendation and determination under subsection (b) for
14 matters pertaining to the Naval Nuclear Propulsion Program,
15 the Committee shall consult the Director of that program.

16 (2) In making a recommendation and determination under
17 subsection (b) for matters affecting nuclear weapons and
18 other atomic energy defense activities of the Department of
19 Energy, the Committee shall consult the Assistant Secretary
20 of Energy for Defense Programs.

21 (d) CONSULTATION WITH SECRETARY OF DEFENSE.--In carrying
22 out this section, the Secretary of Energy shall consult with
23 the Secretary of Defense.

24 SEC. 3032. RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER
25 ENVIRONMENTAL LAWS.

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with the appropriations of the agency to which they are transferred.

Subsection 3024(b) would permit the Secretary of Defense to transfer to the Secretary of Energy not more than \$200 million of the funds appropriated for fiscal year 1987 to the Department of Defense for research, development, test, and evaluation for the Defense Agencies for the performance of the work for which the funds were authorized to be appropriated and would permit the merger of such funds with the appropriations of the Department of Energy.

Section 3025—Authority for construction design.—Section 3025 would permit the Secretary of Energy to use plant engineering and design funds authorized by the bill not to exceed \$2 million for each project, to carry out construction design services for any construction project. Where the design cost for such planning and design project is estimated to exceed \$300,000, the Secretary would be required to notify the appropriate committees of Congress at least 30 days before funds are obligated for design services.

Section 3026—Authority for emergency construction design.—Section 3026 would permit, in addition to any advance planning and construction design otherwise authorized by the bill, the Secretary of Energy to perform planning and design utilizing available funds for any Department of Energy national security program construction project whenever the Secretary determines that the design must proceed expeditiously to meet the needs of national defense or to protect property or human life.

Section 3027—Funds available for all national security programs of the Department of Energy.—Section 3027 would authorize, subject to the provisions of appropriation Acts, amounts appropriated pursuant to this Act for management and support activities and for general plant projects to be made available for use, when necessary, in connection with all national security programs of the Department of Energy.

Section 3028—Adjustments for pay increases.—Section 3028 would authorize such additional or supplemental appropriations as may be necessary to fund increases authorized by law for salary, pay, retirement, or other benefits for Federal employees.

Section 3029—Availability of funds.—Section 3029 would authorize, subject to a provision of an appropriation Act, amounts appropriated for "operating expenses" or for "plant and capital equipment" to remain available until expended.

Part c—Special program provisions

Section 3031—Protection of sensitive technical information.—Section 3031 would require the Secretary of Energy to decide, ~~whether to~~ whether to assert, or not to assert, a claim that an invention or discovery made or conceived under a government contract or subcontract related to the Naval Nuclear Propulsion and Nuclear Weapons Programs and other Atomic Energy Defense Activities of the Department of Energy should be the property of the government. Further, the section would require the Secretary to consider the recommendations and determinations of the Military Liaison Committee as to whether, as a result of a decision not to assert such a claim: national security will be compromised; sensitive technical information will be released to unauthorized recipi-

Invent A

on a case-by-case basis

Invent A (2 Pages)

In recommending the provisions of section 3031, the committee is mindful of the 40-year-long controversy over where the Federal government should stand with respect to inventions and discoveries arising from government-sponsored research. The principles sought to be balanced in that controversy -- allowing inventions and discoveries to be commercialized, on the one hand, and legitimate government interests to be protected, on the other -- apply equally with respect to operating contracts of government-owned, contractor-operated facilities of the Department of Energy and the Department of Defense, which are 100-percent funded by the Federal government.

As it applies to national defense activities of the Department of Energy, Federal patent law permits the government and its contractors to allocate by the terms of their funding agreements their respective interests in any inventions or discoveries arising in the course of their contracts. Section 3031 recognizes that the national defense activities of the Department of Energy involve high technology, are conducted by very few contractors at unique facilities, involve arcane technical information, and dwell in significant part in basic and applied research. The contracts under which they are pursued cannot reasonably foresee the full range of inventions or discoveries that might arise. The inventions and discoveries made or conceived under these contracts could, for example, have application to national defense, nuclear weapons proliferation, intelligence gathering, terrorism, and the security of nuclear weapons. In addition the public interest may require that

information be shared freely among the small number of contractors involved. Taken together these varied considerations make clear that general or "blanket" policies are not adequate and that there is a need for expert and tailored advice to the Secretary of Energy as to whether to assert or not assert a government claim with respect to an invention or discovery.

ents; organizational conflict of interest will result; or the operations of any Naval Nuclear Propulsion, Nuclear Weapons, or other Atomic Energy Defense Program of the Department of Energy would be adversely affected. In making its recommendations and determinations, the Military Liaison Committee would be required to consult with the Director of the Naval Nuclear Propulsion Program and the Assistant Secretary of Energy for Defense Programs on matters within their areas of expertise and purview. The Secretary of Energy, in cooperation with the Secretary of Defense, would be directed to implement the provisions of section 3031.

will

~~In recommending the provisions of section 3031, the committee is aware of the 40-year-long controversy that has existed about how the Federal government should handle rights to patents and discoveries arising from Government-sponsored research so that they can be commercialized on the one hand and that the government's legitimate right and interests protected on the other. The principles involved in the controversy also apply with respect to operating contracts of government-owned, contractor-operated facilities of the Department of Energy and the Department of Defense which are 100 percent funded by the Federal government.~~

Substitute
JWS of 7-18

~~In the past, patents and discoveries have been commercialized through the "title policy" where the government acquires the rights but allows anyone to exploit the invention, or through the "license policy" which leaves Energy should be the property of the government. Further, the section would require the Secretary to consider the recommendations and determinations of the Military Liaison Committee as to whether, as a result of a decision not to assert such a claim: national security will be compromised; sensitive technical information will be released to unauthorized recipients; organizational conflict of interest will result; or the operations of any Naval Nuclear Propulsion, Nuclear Weapons, or other Atomic Energy Defense Program of the Department of Energy would be adversely affected. In making its recommendations and determinations, the Military Liaison Committee would be required to consult with the Director of the Naval Nuclear Propulsion Program and the Assistant Secretary of Energy for Defense Programs on matters within their areas of expertise and purview. The Secretary of Energy, in cooperation with the Secretary of Defense, would be directed to implement the provisions of section 3031.~~

chronological
replication

~~In recommending the provisions of section 3031, the committee is aware of the 40-year-long controversy that has existed about how the Federal government should handle rights to patents and discoveries arising from Government-sponsored research so that they can be commercialized on the one hand and that the government's legitimate right and interests protected on the other. The principles involved in the controversy also apply with respect to operating contracts of government-owned, contractor-operated facilities of the Department of Energy and the Department of Defense which are 100 percent funded by the Federal government.~~

~~In the past, patents and discoveries have been commercialized through the "title policy" where the government acquires the rights but allows anyone to exploit the invention, or through the~~

~~"license policy" which leaves patents rights to the inventor contractor and the contractor alone can exploit the invention. If the contractor chooses not to commercialize, the government may require the owner to license others. The "title policy" approach has provided for exceptions whereby the government may waive its rights, while the "licensee policy" has provided for exceptions whereby the government can assert that a patent is "affected with the public interest."~~

Substitute this of 7-16

The committee has carefully drafted section 3031 so that it would not change existing patent policies. The section fully recognizes the exceptions contained in current law in the case of Naval Nuclear Propulsion, Nuclear Weapons and related programs, and the statutory-waivers of government rights permitted by existing law. Section 3031, however, also recognizes that the defense activities of the Department of Energy involve high technology, are conducted by ~~very few contractors at a few unique facilities and involve arcane technical information. The nature of certain design and process information and its potential application could have serious implications for national defense, nuclear weapons proliferation, intelligence gathering, terrorism, and the security of nuclear weapons.~~ Because only a few government contractors are involved, information must be freely shared among them and situations where a contractor may be forced to choose between his corporate profit-making interests and service to the government under a contract should be eliminated or minimized. Where questions concerning patent and licensing rights become intertwined with the above concerns, decisions by the Secretary of Energy to assert or not to assert claims should be based on the best advice available. Also, the complexity and seriousness of the information precludes the general use of "class waivers" or "installation waivers."

Section 27 of the Atomic Energy Act of 1954 established the Military Liaison Committee as a vehicle for consultation and advice between the Department of Defense and the Department of Energy on matters involving the military applications of nuclear energy. The Committee, whose chairman is appointed by the President and confirmed by the Senate, is the primary clearing house for atomic energy information exchanges between the two departments. As such, the Committee would be an invaluable aid to the Secretary's decisions. In addition, the Director of the Naval Nuclear Propulsion Program established by Executive Order 12344 (made permanent by section 7158 to title 42 United States Code), and the Assistant Secretary of Energy for Defense Programs are the most knowledgeable sources of advice to the Secretary on the respective programs under their purview.

Move to end of Section (P168)

~~By recommending the advisory policy contained in section 3031, the committee makes no judgments concerning the correctness of current patent policy, or does the committee intend this provision to be used to delay or stifle the commercialization of inventions where permitted by law and otherwise appropriate. The committee has included the requirement that the Secretary act within a "reasonable time" following the procedural and decisional requirements of existing law and regulations. The committee found that the differing decision schedules contained in those laws and regulations~~



do not permit establishment of a firm deadline for the Secretary's decision. The committee expects, however, that in most cases the Secretary's decision will be made within six months after a question is presented to him for final action under existing procedures.

Section 3032—Restriction on use of funds to pay penalties under environmental laws.—Section 3032 would prohibit the use of authorized funds to pay penalties, fines, forfeitures or settlements, or to perform work on services required by any other Federal, state, or local agency due to the failure of any defense activity or facility of the Department of Energy to comply with environmental requirements where the Secretary of Energy finds: compliance from a practical standpoint impossible within the time prescribed; or where the President has specifically requested funds for compliance and the Congress has not provided the funds, or the funds for compliance have been appropriated but sequestered, or deferred, or rescinded by law.

Section 3033—Study of production reactor safety.—Section 3033 would require an independent assessment by the National Academy of Sciences of the safety of the "N" production reactor at Hanford, Washington. This reactor is similar in some respects to the Chernobyl reactor in the Ukraine. The study would review any technical safety issues and report concurrently to the Congress and to the Secretary of Energy, who is directed to provide his comments to the Congress.

Section 3034—Regulation of mixed radioactive and hazardous waste.—Section 3034 would express the sense of Congress that commending the State of Colorado, the Department of Energy, and the Environmental Protection Agency for concluding an agreement in principal with respect to regulation of hazardous and radioactive mixed wastes at the Department of Energy's Rocky Flats Plant north of Denver, Colorado, which manufactures plutonium parts for nuclear weapons. This plant generates both nonradioactive toxic wastes and radioactive toxic wastes called mixed waste. Pursuant to section 6926 of title 42, United States Code, the State of Colorado has had authority to regulate nonradioactive toxic waste through the granting of permits and enforcement actions. Up to now, the United States government has interpreted the Atomic Energy Act of 1954 to give the Department of Energy sole authority to regulate mixed waste activities (such as processing, storage shipping, burial, etc.).

The agreement in principal could serve a model for similar agreements in other states. The agreement envisions a final agreement that would commit the Department of Energy to submit applications for hazardous and mixed waste activities for review by both the State of Colorado and the Environmental Protection Agency, provide for joint permit to be issued, and provide that the State would enforce regulations. This would be the first time that a State would be granted authority to regulate atomic energy defense activities.

Under the agreement, the parties would jointly develop technical requirements and schedules for cleanup and the Environmental Protection Agency would authorize Colorado to regulate mixed wastes by September 30, 1986.