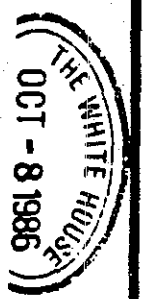
H. R. 3773

Ninety-ninth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-first day of January, one thousand nine hundred and eighty-six



An Act

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Bureau of Standards, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Technology Transfer Act of 1986".

SEC. 2. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

The Stevenson-Wydler Technology Innovation Act of 1980 is amended by redesignating sections 12 through 15 as sections 16 through 19, and by inserting immediately after section 11 the following:

"SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

"(a) GENERAL AUTHORITY.—Each Federal agency may permit the director of any of its Government-operated Federal laboratories—

"(1) to enter into cooperative research and development agreements on behalf of such agency (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 owned by the Federal agency); and

"(2) to negotiate licensing agreements under section 207 of title 35, United States Code, or under other authorities for Government-owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the Government.

"(b) ENUMERATED AUTHORITY.—Under agreements entered into pursuant to subsection (a)(1), a Government-operated Federal 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, patent licenses or assignments, or options thereto, in any invention made in whole or in part by a Federal employee under the agreement, retaining a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory deems appropriate; and

"(3) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party; and

"(4) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

"(c) CONTRACT CONSIDERATIONS.—(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

"(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this Act.

"(3)(A) Any agency using the authority given it under subsection (a) shall review employee standards of conduct for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the agency with which the employee involved is or was formerly employed).

"(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

"(4) The 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 made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization 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.

"(5)(A) If the head of the agency 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 head of an agency or his designee disapproves or requires the modification of an agreement presented under this section, the head of the agency or such designee shall

transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

"(6) Each agency shall maintain a record of all agreements entered into under this section.

"(d) DEFINITION.—As used in this section—

"(1) the term 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its 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, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the 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; and

"(2) the term 'laboratory' means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government.

"(e) DETERMINATION OF LABORATORY MISSIONS.—For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

"(f) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

SEC. 3. ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.—(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the 'Consortium') which, in cooperation with Federal Laboratories and the private sector, shall—

"(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

"(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

"(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

"(i) to the extent that such requests can be responded to with published information available to the National Tech-

nical Information Service, refer such requests to that Service, and

"(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

"(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

"(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

"(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

"(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

"(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

"(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments; and

"(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government).

"(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a representative appointed from each Federal agency with one or more member laboratories.

"(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

"(4) The Director of the National Bureau of Standards shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Bureau, as requested by the Consortium and approved by such Director.

"(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

"(6) Not later than one year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consor-

tium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made.

"(7)(A) Subject to subparagraph (B), an amount equal to 0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Bureau of Standards at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Bureau to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

"(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

"(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

"(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, or 1991.

"(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

"(8)(A) The Consortium shall use 5 percent of the funds provided in paragraph (7)(A) to establish demonstration projects in technology transfer. To carry out such projects, the Consortium may arrange for grants or awards to, or enter into agreements with, nonprofit State, local, or private organizations or entities whose primary purposes are to facilitate cooperative research between the Federal laboratories and organizations not associated with the Federal laboratories, to transfer technology from the Federal laboratories, and to advance State and local economic activity.

"(B) The demonstration projects established under subparagraph (A) shall serve as model programs. Such projects shall be designed to develop programs and mechanisms for technology transfer from the Federal laboratories which may be utilized by the States and which will enhance Federal, State, and local programs for the transfer of technology.

"(C) Application for such grants, awards, or agreements shall be in such form and contain such information as the Consortium or its designee shall specify.

"(D) Any person who receives or utilizes any proceeds of a grant or award made, or agreement entered into, under this paragraph shall keep such records as the Consortium or its designee shall determine are necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition of such proceeds and the total cost of the project in connection with which such proceeds were used.".

SEC. 4. UTILIZATION OF FEDERAL TECHNOLOGY.

(a) RESPONSIBILITY FOR TECHNOLOGY TRANSFER.—Section 11(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(a)) is amended—

(1) by inserting "(1)" after "POLICY.—"; and

(2) by adding at the end thereof the following new paragraphs:

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

"(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.".

(b) RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—(1) Section 11(b) of such Act (15 U.S.C. 3710(b)) is amended—

(A) by striking out "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time" and inserting in lieu thereof "200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions";

(B) by inserting immediately before the next to last sentence the following new sentence: "Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.";

(C) by striking out "requirements set forth in (1) and/or (2) of this subsection" in the next to last sentence and inserting in lieu thereof "requirement set forth in clause (2) of the preceding sentence"; and

(D) by striking out "either requirement (1) or (2)" in the last sentence and inserting in lieu thereof "such requirement".

(2) Section 11(c) of such Act (15 U.S.C. 3710(c)) is amended—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;";

(B) by striking out "the Center for the Utilization of Federal Technology" in paragraph (3) and inserting in lieu thereof "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer,", and by striking out "and" after the semicolon;

(C) by striking out "in response to requests from State and local government officials." in paragraph (4) and inserting in lieu thereof "to State and local government officials; and"; and

(D) by inserting immediately after paragraph (4) the following new paragraph:

"(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located."

(c) DISSEMINATION OF TECHNICAL INFORMATION.—Section 11(d) of such Act (15 U.S.C. 3710(d)) is amended—

(1) by striking out "(d)" and all that follows down through "shall—" and inserting in lieu thereof the following:

(d) DISSEMINATION OF TECHNICAL INFORMATION.—The National Technical Information Service shall—";

(2) by striking out paragraph (2);

(3) by striking out "existing" in paragraph (3), and redesignating such paragraph as paragraph (2);

(4) by striking out paragraph (4) and inserting in lieu thereof the following:

"(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;";

(5) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(6) by striking out "(c)(4)" in paragraph (4) as so redesignated and inserting in lieu thereof "(c)(3)".

(d) AGENCY REPORTING.—Section 11(f) of such Act (15 U.S.C. 3710(e)) (as redesignated by section 3(1) of this Act) is amended—

(1) by striking out "prepare biennially a report summarizing the activities" in the first sentence and inserting in lieu thereof "report annually to the Congress, as part of the agency's annual budget submission, on the activities"; and

(2) by striking out the second sentence.

SEC. 5. FUNCTIONS OF THE SECRETARY OF COMMERCE.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by adding at the end thereof the following new subsection:

"(g) FUNCTIONS OF THE SECRETARY.—(1) The Secretary, in consultation with other Federal agencies, may—

"(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

"(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

"(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

"(2) Two years after the date of the enactment of this subsection and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this Act. Other Federal agencies shall cooperate in the report's preparation.

"(3) Not later than one year after the date of the enactment of the Federal Technology Transfer Act of 1986, the Secretary shall submit to the President and the Congress a report regarding—

"(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

"(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.".

SEC. 6. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OR FEDERAL AGENCIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 12 the following new section:

"SEC. 13. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

"The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

"(1) inventions, innovations, or other outstanding scientific or technological contributions of value to the United States due to commercial application or due to contributions to missions of the Federal agency or the Federal government, or

"(2) exemplary activities that promote the domestic transfer of science and technology development within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.".

SEC. 7. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 13 the following new section:

"SEC. 14. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

"(a) IN GENERAL.—(1) Except as provided in paragraphs (2) and (4), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into under section 12, and inventions of Government-operated Federal laboratories licensed under section 207 of title 35, United States Code, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:

"(A)(i) The head of the agency or his designee shall pay at least 15 percent of the royalties or other income the agency receives on account of any invention to the inventor (or co-inventors) if the inventor (or each such co-inventor) was an employee of the agency at the time the invention was made. This clause shall take effect on the date of the enactment of this section unless the agency publishes a notice in the Federal Register within 90 days of such date indicating its election to file a Notice of Proposed Rulemaking pursuant to clause (ii).

"(ii) An agency may promulgate, in accordance with section 553 of title 5, United States Code, regulations providing for an alternative program for sharing royalties with inventors who were employed by the agency at the time the invention was made and whose names appear on licensed inventions. Such regulations must—

"(I) guarantee a fixed minimum payment to each such inventor, each year that the agency receives royalties from that inventor's invention;

"(II) provide a percentage royalty share to each such inventor, each year that the agency receives royalties from that inventor's invention in excess of a threshold amount;

"(III) provide that total payments to all such inventors shall exceed 15 percent of total agency royalties in any given fiscal year; and

"(IV) provide appropriate incentives from royalties for those laboratory employees who contribute substantially to the technical development of a licensed invention between the time of the filing of the patent application and the licensing of the invention.

"(iii) An agency that has published its intention to promulgate regulations under clause (ii) may elect not to pay inventors under clause (i) until the expiration of two years after the date of the enactment of this Act or until the date of the promulgation of such regulations, whichever is earlier. If an agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to the date of the enactment of this Act. If promulgation of the regulations occurs within two years after the date of the enactment of this Act, payments shall be made in accordance with such regulations, retroactive to the date of the enactment of this Act. The agency shall retain its royalties until the inventor's portion is paid under either clause (i) or (ii). Such royalties shall not be transferred to the agency's Government-operated laboratories under subparagraph (B) and shall not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rulemaking under this subparagraph.

"(B) The balance of the royalties or other income shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other income from any invention going to the laboratory where the invention occurred; and the funds so transferred to any such laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the succeeding fiscal year—

"(i) for payment of expenses incidental to the administration and licensing of inventions by that laboratory or by the agency with respect to inventions which occurred at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for invention management and licensing services;

"(ii) to reward scientific, engineering, and technical employees of that laboratory;

"(iii) to further scientific exchange among the Government-operated laboratories of the agency; or

"(iv) for education and training of employees consistent with the research and development mission and objectives of the agency, and for other activities that increase the licensing potential for transfer of the technology of the Government-operated laboratories of the agency.

Any of such funds not so used or obligated by the end of the fiscal year succeeding the fiscal year in which they are received shall be paid into the Treasury of the United States.

"(2) If, after payments to inventors under paragraph (1), the royalties received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury

of the United States and the remaining 25 percent may be used or obligated for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year. Any funds not so used or obligated shall be paid into the Treasury of the United States.

"(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed $100,000 per year to any one person, unless the President approves a larger award (with the excess over $100,000 being treated as a Presidential award under section 4504 of title 5, United States Code).

"(4) A Federal agency receiving royalties or other income as a result of invention management services performed for another Federal agency or laboratory under section 207 of title 35, United States Code, shall retain such royalties or income to the extent required to offset the payment of royalties to inventors under clause (i) of paragraph (1)(A), costs and expenses incurred under clause (i) of paragraph (1)(B), and the cost of foreign patenting and maintenance for such invention performed at the request of the other agency or laboratory. All royalties and other income remaining after payment of the royalties, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with clauses (i) through (iv) of paragraph (1)(B).

"(b) CERTAIN ASSIGNMENTS.—If the invention involved was one assigned to the Federal agency—

"(1) by a contractor, grantee, or participant in a cooperative agreement with the agency, or

"(2) by an employee of the agency who was not working in the laboratory at the time the inventon was made,

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

"(c) REPORTS.—(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.

"(2) The Comptroller General, five years after the date of the enactment of this section, shall review the effectiveness of the various royalty-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, his findings, conclusions, and recommendations for improvements in such programs.".

SEC. 8. EMPLOYEE ACTIVITIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 14 the following new section:

"SEC. 15. EMPLOYEE ACTIVITIES.

"(a) IN GENERAL.—If a Federal agency which has the right of ownership to an invention under this Act does not intend to file for

a patent application or otherwise to promote commercialization of such invention, the agency shall allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

"(b) DEFINITION.—For purposes of this section, Federal employees include 'special Government employees' as defined in section 202 of title 18, United States Code.

"(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

SEC. 9. MISCELLANEOUS AND CONFORMING AMENDMENTS.

(a) REPEAL OF NATIONAL INDUSTRIAL TECHNOLOGY BOARD.—Section 10 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3709) is repealed.

(b) CHANGES IN TERMINOLOGY OR ADMINISTRATIVE STRUCTURE.—(1) Section 3(2) of the Stevenson-Wydler Technology Innovation Act of 1980 is amended by striking out "centers for industrial technology" and inserting in lieu thereof "cooperative research centers".

(2) Section 4 of such Act is amended—

(A) by striking out "Industrial Technology" in paragraph (1) and inserting in lieu thereof "Productivity, Technology, and Innovation";

(B) by striking out "'Director' means the Director of the Office of Industrial Technology" in paragraph (3) and inserting in lieu thereof "'Assistant Secretary' means the Assistant Secretary for Productivity, Technology, and Innovation";

(C) by striking out "Centers for Industrial Technology" in paragraph (4) and inserting in lieu thereof "Cooperative Research Centers";

(D) by striking out paragraph (6), and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively; and

(E) by striking out "owned and funded" in paragraph (6) as so redesignated and inserting in lieu thereof "owned, leased, or otherwise used by a Federal agency and funded".

(3) Section 5(a) of such Act is amended by striking out "Industrial Technology" and inserting in lieu thereof "Productivity, Technology, and Innovation".

(4) Section 5(b) of such Act is amended by striking out "DIRECTOR" and inserting in lieu thereof "ASSISTANT SECRETARY", and by striking out "a Director of the Office" and all that follows and inserting in lieu thereof "an Assistant Secretary for Productivity, Technology, and Innovation.".

(5) Section 5(c) of such Act is amended—

(A) by striking out "the Director" each place it appears and inserting in lieu thereof "the Assistant Secretary";

(B) by redesignating paragraphs (7) and (8) as paragraphs (9) and (10), respectively; and

(C) by inserting immediately after paragraph (6) the following new paragraphs:

"(7) encourage and assist the creation of centers and other joint initiatives by State of local governments, regional organizations, private businesses, institutions of higher education, nonprofit organizations, or Federal laboratories to encourage technology transfer, to stimulate innovation, and to promote an appropriate climate for investment in technology-related industries;

"(8) propose and encourage cooperative research involving appropriate Federal entities, State or local governments, regional organizations, colleges or universities, nonprofit organizations, or private industry to promote the common use of resources, to improve training programs and curricula, to stimulate interest in high technology careers, and to encourage the effective dissemination of technology skills within the wider community;".

(6) The heading of section 6 of such Act is amended to read as follows:

"SEC. 6. COOPERATIVE RESEARCH CENTERS."

(7) Section 6(a) of such Act is amended by striking out "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(8) Section 6(b)(1) of such Act is amended by striking out "basic and applied".

(9) Section 6(e) of such Act is amended to read as follows:

"(e) RESEARCH AND DEVELOPMENT UTILIZATION.—In the promotion of technology from research and development efforts by Centers under this section, chapter 18 of title 35, United States Code, shall apply to the extent not inconsistent with this section.".

(10) Section 6(f) of such Act is repealed.

(11) The heading of section 8 of such Act is amended by striking out "CENTERS FOR INDUSTRIAL TECHNOLOGY" and inserting in lieu thereof "COOPERATIVE RESEARCH CENTERS".

(12) Section 8(a) of such Act is amended by striking out "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(13) Section 19 of such Act (as redesignated by section 2 of this Act) is amended by striking out "pursuant to this Act" and inserting in lieu thereof "pursuant to the provisions of this Act (other than sections 12, 13, and 14)".

(c) RELATED CONFORMING AMENDMENT.—Section 210 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) The provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986, shall take precedence over the provisions of this chapter to the extent that they permit or require a disposition of rights in subject inventions which is inconsistent with this chapter.".

(d) ADDITIONAL DEFINITIONS.—Section 4 of such Act (as amended by subsection (b)(2) of this section) is further amended by adding at the end thereof the following new paragraphs:

"(8) 'Federal agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined in section 102 of such title.

"(9) 'Invention' means any invention or discovery 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.).

"(10) 'Made' when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

"(11) 'Small business firm' means a small business concern as defined in section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

"(12) 'Training technology' means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.".

(e) REDESIGNATION OF SECTIONS TO REFLECT CHANGES MADE BY PRECEDING PROVISIONS.—(1) Such Act (as amended by the preceding provisions of this Act) is further amended by redesignating sections 11 through 19 as sections 10 through 18, respectively.

(2)(A) Section 5(d) of such Act is amended by inserting "(as then in effect)" after "sections 5, 6, 8, 11, 12, and 13 of this Act".

(B) Section 8(a) of such Act is amended by striking out the last sentence.

(C) Section 9(d) of such Act is amended by striking out "or 13" and inserting in lieu thereof "10, 14, or 16".

(3) Section 13(a)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "section 12" in the matter preceding subparagraph (A) and inserting in lieu thereof "section 11".

(4) Section 18 of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "sections 12, 13, and 14" and inserting in lieu thereof "sections 11, 12, and 13".

(f) CLARIFICATION OF FINDINGS AND PURPOSES.—(1) The second sentence of section 2(10) of such Act (15 U.S.C. 3701(10)) is amended by inserting ", which include inventions, computer software, and training technologies," immediately after "developments".

(2) Section 3(3) of such Act (15 U.S.C. 3702(3)) is amended by inserting ", including inventions, software, and training technologies," immediately after "developments".

Thomas F. O'Neill

Speaker of the House of Representatives.

Strom Thurmond

~~*Vice President of the United States and*~~
President of the Senate pro Tempore

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July 18, 1988

Mr. Joseph P. Allen, Director
Office of Federal Technology Management
U.S. Department of Commerce
Room 4837
Washington, D.C. 20230

Dear Mr. Allen:

I am enclosing a draft copy of the "National Competitiveness Act of 1988".

I would appreciate it if you would provide written comments on Title I of the draft bill by July 25, 1988.

Thank you in advance for your kind cooperation.

Sincerely,

MARILYN LLOYD, Chairman
Subcommittee on Energy
Research and Development

ML:Dkh

July 18, 1988 9:00

100th CONGRESS
2D Session

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

Mrs. Lloyd introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal Nonnuclear Energy Research and Development Act of 1974 to improve the transfer of technology or devices developed by the Department of Energy National Laboratories, improve interagency cooperation between the Department of Energy and the other agencies with respect to technology transfer, and to authorize a multiagency program in superconductivity research and development.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Laboratory Competitiveness Act of 1988."

TITLE I. TECHNOLOGICAL COMPETITIVENESS MEASURES

SECTION 101. FINDINGS.

Section 2 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901) is amended by inserting at the end the following:

"(f) Domestic competitiveness can be greatly improved through scientific collaboration with the Department of Energy National Laboratories.

"(g) The Department of Energy National Laboratories must be perceived as easily accessible in order for industry to seriously consider the laboratories as partners for collaborative research and development ventures.

"(h) The Secretary of Energy must delegate increased management authority for technology transfer to the Managers of the Department of Energy Operations Office or other field office managers if the government is to ensure timely consideration of proposed cooperative research and development agreements.

"(i) The present Department of Energy policy of

disseminating computer software generated in its research programs through the National Energy Software Center, despite its commercialization potential, has at times benefited foreign companies more than domestic companies.

"(j) There should be a simple, timely review procedure concerning proposed agreements to utilize or further develop software and other technology generated under a Department of Energy research and development contract, or developed with Department of Energy funding.

"(k) The National Laboratories have demonstrated successes in technology transfer, but the effort can be significantly enhanced if--

"(1) industry becomes more aware of the National Laboratories' research and development projects and capabilities;

"(2) technology transfer is considered a significant part of the National Laboratories' mission;

"(3) the National Laboratories develop a better understanding of the potential needs of industry; and

"(4) industry collaborates with the National Laboratories' early enough in the research and development process to detect the potential of the products of research and development.

"(1) The National Laboratories should examine and implement new and innovative methods of communicating with private industry regarding the availability of laboratory user facilities and laboratory research and development projects.

SEC. 102. DEFINITIONS.

Subsection 9(m) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908(m)) is amended--

(a) by striking "and" at the end of paragraph (4);

(b) by striking the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(c) by inserting at the end thereof the following:

"(6) the term 'collaborative party' means a person who has entered into a cooperative research and development agreement with a National Laboratory as described in this section;

"(7) the term 'computer software' means recorded information, regardless of the form or the media in which it may be recorded, comprising computer programs or documentation thereof; and

"(8) the term 'cooperative research and development agreement,' or 'agreement' shall have the meaning given to "cooperative research and development agreement" in subsection 11(d) of the Stevenson-Wydler Technology Innovation Act of 1986,

as amended (15 U.S.C. 3710a(d));

"(9) the term 'laboratory' shall have the meaning given to it in subsection 11(d) of the Stevenson-Wydler Technology Innovation Act of 1986, as amended (15 U.S.C. 3710a(d)), except that the performance of research, development, or engineering may also be by non-government employees of a contractor of the Department of Energy;

"(10) the term 'National Laboratory' means the contractor or other person managing or operating any Department of Energy "laboratory", as such term is defined in subsection 11(d) of the Stevenson-Wydler Technology Innovation Act of 1986, as amended (15 U.S.C. 3710a(d)), except that the performance of research, development, or engineering at such 'laboratory' may also be by non-government employees of such contractor or other person;

"(10) the term 'property' is to be construed liberally to mean any invention, improvement, computer software, technical data, or innovation made as a result of the research and development activities conducted by a National Laboratory, but does not include real property; and

"(11) the term 'technical data' means recorded information of an engineering or scientific nature regardless of the form or the media in which it may be recorded."

SEC. 103. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) is further amended by adding at the end the following new subsections:

"(o)(1) GENERAL AUTHORITY. The Secretary of Energy shall promulgate through regulation, order, or written field directive--

"(A) generic cooperative research and development agreements which are not subject to further approval under paragraph (2); and

"(B) generic terms and conditions, which when included in negotiated (nongeneric) cooperative research and development agreements are not subject to further approval under paragraph (2).

"(2) The Secretary shall--

"(A) delegate to each field office manager, or Manager of a Department of Energy Operations Office, authority to approve negotiated (nongeneric) terms and conditions of cooperative research and development agreements recommended by a National Laboratory under such manager's oversight.

"(B) require each National Laboratory to delegate all authorities and responsibilities under this section to the employee who directly manages the Department of Energy laboratory.

"(3) Each National Laboratory may enter into generic agreements promulgated by the Secretary under paragraph (1) after consultation regarding the suitability of the collaborating party with the

Department of Energy field office manager or Manager of the Operations Office; or such laboratory may negotiate such agreements subject to approval pursuant to paragraph (1). Such agreements may include the disposition or use of property assigned or licensed to the National Laboratory by third parties or any property voluntarily assigned by National Laboratory employees. Such agreements may be with any other person, or combination of persons, including, but not limited to--

"(A) Federal agencies other than the Department of Energy;

"(B) units of State or local government;

"(C) industrial organizations, such as corporations, partnerships, limited partnerships, consortia, or industrial development organizations;

"(D) public and private foundations;

"(E) nonprofit organizations, such as universities; and

"(F) licensees of inventions, technical data, or computer software owned by the National Laboratory.

"(4) Any directive, order or regulation covering National Laboratory cooperative research and development agreements shall be guided by the findings in subsections 2(f) through 2(l) of this Act.

"(p) SPECIFIC AUTHORITY. Each National Laboratory may under the terms of any cooperative research and development agreement entered into pursuant to 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 licenses or assignments, or options to property made in whole or in part by a National Laboratory employee under the cooperative research and development agreement; and

"(3) to the extent consistent with the Department of Energy requirements and standards of conduct, permit employees or former employees of the National Laboratory to participate in efforts to transfer to the private sector any property such employees or former employees developed or made while in the service of the National Laboratory.

"(q) APPROVAL OF AGREEMENTS. The field office manager or the Manager of the Operations Office may disapprove or require the modification of any cooperative research and development agreement submitted to him pursuant to this section within 60 days of receipt of such agreement and recommendation by the National Laboratory. Such agreement shall be deemed approved and binding on all parties upon modification consistent with the comments of such manager, or, if such manager does not disapprove such agreement, upon the expiration of the 60 day period after the first receipt by such manager of such agreement and recommendation.

"(r) LIMIT ON AGGREGATE AMOUNT OF AGREEMENTS. The cumulative

total of the Department of Energy funding of all cooperative research and development agreements entered into by each National Laboratory under this section may not exceed 20 percent of the National Laboratory's annual budget.

"(s) RECORDS OF AGREEMENTS. The Department of Energy headquarters, and each field office, Operations Office and National Laboratory shall maintain a record of all agreements entered into under this section.

"(t) AGREEMENT CONSIDERATIONS. A National Laboratory, in deciding what cooperative research and development agreements to negotiate, and a field office manager or Manager of the Operations Office, in deciding whether to approve such negotiated agreements, shall comply with paragraph 11(c)(4) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(4)).

"(u) DISPOSITION OF TITLE. (1) The Secretary of Energy shall dispose of the title to all property developed or made by a National Laboratory in the same manner as inventions are disposed of to small business and nonprofit contractors under chapter 18 of title 35, United States Code.

"(2) Whenever a National Laboratory develops or makes property to which the Department of Energy has determined (at the time of contracting for the management and operation of the Department of Energy laboratory) to retain title pursuant to paragraph (1), the

title to such property shall be retained by the government unless--

"(A) the laboratory at which the property is developed or made requests title to such property, and

"(B) the Secretary of Energy does not notify the National Laboratory within 90 days of such request that the property is covered by an exceptional circumstances determination, is classified or has been designated sensitive technical information in accordance with existing provisions of law, other than those provisions of law involving export control.

"(3) Other than for exceptional circumstances as authorized pursuant to paragraph (1), the Secretary may not retain title to property without first determining that the property has been classified or has been designated sensitive technical information in accordance with applicable statutes other than those involving export control. The Secretary may not use export control statutes or regulations as a basis for refusing a request for title. If the Secretary does not notify the requesting National Laboratory, such Laboratory shall be deemed to have elected and received title to the property under the Government-wide contractor provisions as specified in paragraph (1). The Secretary may recover title to any property given to a contractor should such property be subsequently classified or designated sensitive technical information in accordance with applicable statutes other than those involving export control.

"(4) Notwithstanding any other provision of law, when the Secretary of Energy permits a National Laboratory to elect and receive ownership rights under this section, such ownership rights shall be subject to a royalty free license on the part of the United States to use and reproduce such property for United States governmental purposes.

"(5) The Secretary of Energy shall promulgate appropriate regulations, directives or orders precluding any National Laboratory, which has received title to property under this section, from receiving money or other direct benefit from the use or licensing of such property for the personal benefit of the contractor managing or operating the Department of Energy laboratory. This paragraph shall not be construed to preclude such National Laboratory from using such money or direct benefit for research and development associated with activities at the laboratory or to promote technology transfer as is authorized by law.

"(v) PROTECTION OF PROPERTY. (1) Computer software and reports containing data (associated with applied research and not basic research) obtained or generated by a National Laboratory shall be held confidential and exempt from any law otherwise requiring their public disclosure for a period of up to two years as determined by the Secretary--

"(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.

"(2) A cooperative research and development agreement may provide that technical data or computer software, which meets the conditions of paragraph (1), be held confidential and exempt from any law otherwise requiring their public disclosure for a period specified in such collaborative agreement, not to exceed 7 years, if such data or software is obtained or generated--

"(A) by the Department of Energy or the National Laboratory pursuant to such cooperative research and development agreement; or

"(B) under a National Laboratory cooperative research and development agreement.

"(C) this section shall not be construed so as to restrict or limit the ability of any National Laboratory to build upon research and data produced by another National Laboratory, whether produced under a cooperative research and development agreement or otherwise.

"(3) Documentation disclosing technical data or computer software subject to nondisclosure under paragraphs (1) and (2) shall not be considered as agency records under any federal statute during the term of nondisclosure to the public.

"(w)(1) NATIONAL LABORATORY CONTRACTS. All Department of Energy

contracts to operate a laboratory shall provide terms and conditions consistent with this section.

"(2) IMPLEMENTATION. The Secretary of Energy shall immediately enter into negotiations with the National Laboratories to amend all existing contracts for the management or operation of the Department of Energy laboratories, in accordance with this section. Pending such amendment, this section shall govern the disposition of all property developed or made by the National Laboratories."

"(3) COMPENSATION. Compensation to the United States government paid by a National Laboratory in return for retaining title to any property rights shall be subject to terms negotiated in the operating contract for any Department of Energy laboratory.

"(4) MARCH-IN RIGHTS. Each funding agreement for the operation of a Department of Energy laboratory shall contain a provision allowing the Department of Energy to require the licensing to third parties of property owned by the contractor that is subject to the provisions of this Act. Such provision shall ensure that the property is licensed and commercialized by affording similar Federal march-in rights provided for property under section 203 of title 35, United States Code, but will be applicable to all property for which title was acquired by the National Laboratories under this Act.

"(5) REGULATIONS. The Department of Energy in cooperation with other interested federal agencies, shall issue within 180 days after

the date of enactment of this Act, including 30 days for public comment, regulations--

"(A) establishing a standard contract clause to implement this section in the Department of Energy contract for the management or operation of any Department of Energy laboratory; and

"(B) implementing the march-in rights under this subsection.

"(6) DEFINITION. For purposes of this subsection, "third parties" and "third party applicants" are domestic entities located in the United States whose research, development, and other activities occur substantially in the United States. Domestic entities include industrial organizations, corporations, partnerships, limited partnerships, industrial development organizations, public and private foundations, and nonprofit organizations such as universities and consortia."

SEC. 104. INTERAGENCY COOPERATION.

The Department of Energy, in implementing its authorities under the amendments made by this title, shall explore innovative ways to cooperate with other government agencies or as appropriate, and in particular, with the National Bureau of Standards, which is charged with competitiveness responsibilities under the authorities of its newly established Advanced Technology Program. The Department of Energy, in cooperating with any other Federal agency, should seek to minimize unnecessary duplication of programs, projects, and research

facilities.

TITLE II. NATIONAL SUPERCONDUCTIVITY PROGRAM

SEC. 201. FINDINGS AND PURPOSES.

(a) FINDINGS. The Congress finds that--

(1) recent discoveries of high-temperature superconducting materials could result in significant new applications of these materials in such areas as microelectronics, computers, power systems, transportation, medical imaging, and nuclear fusion, among others; and, as is often the case with revolutionary scientific advances, most potential applications lie beyond our ability to predict them;

(2) full application of the new superconductors is expected to require long-term commitments by the public and private sector to support appropriate research and development programs;

(3) the Nation's economic competitiveness and strategic well-being depends substantially on the development and application of critical advanced technologies such as those anticipated to evolve from the new superconducting materials;

(4) the United States manufacturing industries confront strong competition in both domestic and world markets; leading foreign industrial countries, as well as developing nations, are increasingly taking advantage of modern technology and production techniques, innovative management focused on quality, less expensive labor, and favorable government support to produce manufactured products which

applications of high temperature superconductors, including, but not limited to, applications relating to thin film technology, communications technology, sensors, space power and propulsion to achieve the purposes of this title.

SEC. 207. INTERNATIONAL COOPERATION.

The President, as part of the Superconductivity Program, shall establish a program of international cooperation in the conduct of fundamental and basic research on superconducting materials. Such program of international cooperation shall include the exchange of basic information and data, as well as the development of international standards for the use and application of superconducting materials.

provided pursuant to Title I of this Act. Within 180 days of the date of enactment of this Act, and for the two succeeding years thereafter, the Secretary shall submit annual reports in writing on the implementation of these authorities with respect to Superconductivity research and development to the House Committee on Science, Space, and Technology and to the Senate Committee on Energy and Natural Resources. Such report shall include recommendations for improvements in the technology transfer between government and industry and management of property developed or made at the National Laboratories.

SEC. 204. NATIONAL BUREAU OF STANDARDS.

In achieving the purposes of this title, the Director of the National Bureau of Standards shall conduct a program of fundamental research and to establish materials standards to accelerate the use and application of the new superconducting materials, and continue to establish and operate a Superconductivity Center Focusing on Electronic Applications at the National Bureau of Standards in Boulder, Colorado.

SEC. 205. NATIONAL SCIENCE FOUNDATION.

The Director of the National Science Foundation shall conduct a program of fundamental research to achieve the purposes of this title.

SEC. 206. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

The Administrator of the National Aeronautics and Space Administration shall conduct programs to promote the commercial

in the planning and implementation of the program.

(c) PROGRAM PLAN. The Director of the Office of Science and Technology Policy shall submit a written Superconductivity Program plan to the Committee on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate, within 9 months after the date of the enactment of this Act.

(d) REPORTS. (1) The Federal Coordinating Council on Science, Engineering, and Technology shall annually report to the Director of the Office of Science and Technology Policy on its findings as to the progress of the Superconductivity Program.

(2) The Director of the Office of Science and Technology Policy shall prepare an annual written report setting forth and evaluating the findings of the Federal Coordinating Council on Science, Engineering, and Technology received by the Office pursuant to paragraph (1). This report shall be submitted with the President's proposed budget for the government to the Committees on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate.

SEC. 203. DEPARTMENT OF ENERGY.

The Secretary of Energy shall conduct a program in superconductivity research and development utilizing the authorities

establish a 5-year National Federal Program on Advanced Superconductivity Research and Development (hereafter in this Act referred to as the "Superconductivity Program").

(2) The Director of the Office of Science and Technology Policy shall draw upon the recommendations and advice of the National Commission on Superconductivity and shall work in close collaboration with the Office of Management and Budget in developing the Superconductivity Program.

(b) CONTENT AND SCOPE OF PROGRAM. The Director of the Office of Science and Technology Policy shall include in the Superconductivity Program--

(1) goals and priorities for advanced superconductivity research and development to be carried out by individual departments and agencies and organizational elements therein;

(2) the guidance for responsibility in the conduct of advanced superconductivity research and development among the departments, agencies, and organizational program elements of the departments and agencies;

(3) estimates of current and proposed funding levels for such activities for the 5 years following the enactment of this Act for each of the participating departments, agencies, and organizational elements therein; and

(4) proposals for the participation by industry and academia

and agencies of the Federal Government involved in research and development on superconductors;

(9) a committed Federal program effort with appropriate long-term goals, priorities, and provided with adequate resources is necessary for the rapid development and application of the new superconducting materials; and

(10) a national program should serve as a test of new agency authorities directed at technological competitiveness such as those provided to the Department of Energy.

(b) PURPOSES. The purposes of this title are--

(1) to establish a 5-year national program effort to research and develop new high-temperature superconducting materials with appropriate goals and priorities; and to establish a program for the technology transfer initiatives provided in title I of this Act.

(2) to designate the appropriate roles, mechanisms and responsibilities of various Federal departments and agencies in implementing such a national research and development program effort.

SEC. 202. RESPONSIBILITIES OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY; NATIONAL FEDERAL PROGRAM ON SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT.

(a) ESTABLISHMENT OF PROGRAM. (1) The Director of the Office of Science and Technology Policy, working through the Federal Coordinating Council for Science, Engineering and Technology, shall

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL STATEMENT

Mr. OAKAR. Mr. Speaker, I rise in support of the HUD appropriation bill. This bill provides housing for our people and further provides funding for NASA including Lewis Research Center. We are still insisting that Lewis get the lead for the electrical power of the space station. This vote is supportive of that purpose.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985

The SPEAKER. Pursuant to House Resolution 484 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5167.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the Armed Forces for procurement, for research, development, test, and evaluation, for operation and maintenance, and for working capital funds, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, and for other purposes, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Thursday, May 24, 1984, titles IV, V, VI, VII, VIII, and IX were open to amendment at any point.

Are there further amendments to these titles?

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, I wish to engage in a colloquy with the gentleman from Wisconsin (Mr. ASPIN), the distinguished chairman of the Subcommittee on Military Personnel and Compensation, and with the gentleman from Virginia (Mr. WHITEHURST) regarding the health care privileges for former spouses of military retirees.

Mr. ASPIN. I will be happy to participate.

Mrs. SCHROEDER. As the gentleman from Wisconsin is aware, he and I have discussed the need for further legislation authorizing health care, as well as commissary and exchange privileges, for the long-term former spouses who contributed to our country alongside their military husbands. I think we both recognize that the Uniformed Services Former Spouses' Protection Act was a critical first step, but that it does not cover all the deserving spouses.

Mr. ASPIN. If the gentlewoman will yield, Mr. Chairman, the gentlewoman is correct that the Former Spouses' Protection Act authorized medical, exchange, and commissary privileges for a limited number of long-term former spouses. There are, however, many other former spouses of long-term military marriages who do not meet the present criteria spelled out in that law.

Mrs. SCHROEDER. During full committee consideration of the 1985 Defense authorization bill, you stated that you would hold hearings on the health care issue, including discussion of H.R. 2715, introduced by the gentleman from Virginia (Mr. WHITEHURST). You added that you did not want to put off this issue until next year's authorization—that it needs to be addressed now.

Mr. ASPIN. Yes, I agree. I consider this an important issue, but there also are a number of questions that should be addressed, particularly the cost. I would hope that we could hold early hearings. As the gentlewoman can appreciate, the actual timing of hearings will depend on the progress of the Defense authorization bill, which we are considering today, and on our schedule for conference with the Senate. It is my intention, however, to address the former spouse medical issue expeditiously and, if it proves to be noncontroversial, to attempt to bring it before the House under suspension of the rules as the gentlewoman has requested.

Mrs. SCHROEDER. I thank the gentleman. I appreciate your concern for this issue and will be happy to help in any way to expedite this matter. Also, I wish to compliment the distinguished gentleman from Virginia (Mr. WHITEHURST) who has worked so hard on behalf of the military spouses.

Mr. WHITEHURST. Mr. Chairman, if the gentlewoman will yield, I commend my colleagues from Wisconsin and Colorado for their concern for the needs of former spouses. This is a very deserving group. I hope we can move rapidly on this issue, preferably before the Senate completes action on the Defense authorization bill. It is my understanding that expanded medical, commissary, and exchange benefits for former spouses may be considered as a part of Senate deliberations on the authorization bill. Early action in the House would be helpful in facilitating an agreement between the House and Senate on this legislation. My bill now has 82 cosponsors, and I appreciate the high priority the distinguished chairman is attaching to this issue.

Mr. ASPIN. Let me assure the gentleman from Virginia that I plan to move rapidly on this matter, and I appreciate his leadership on this issue.

□ 1700

AMENDMENT OFFERED BY MR. NICHOLS

Mr. NICHOLS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NICHOLS: Page 131, after line 2, insert the following new title (and redesignate the succeeding titles and sections accordingly):

TITLE VIII—PROCUREMENT REFORM

SHORT TITLE

SEC. 801. This title may be cited as the "Defense Spare Parts Procurement Reform Act".

CONGRESSIONAL FINDINGS AND POLICY DIRECTION

SEC. 802. The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to elimination of excessive pricing or replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.

PERSONNEL EVALUATIONS TO INCLUDE EMPHASIS ON COMPETITION AND COST SAVINGS

SEC. 803. (a) Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2317. Encouragement of competition and cost savings

"The Secretary of Defense shall establish procedures to ensure that personnel appraisal systems of the Department of Defense give appropriate recognition to efforts to increase competition and achieve cost savings in areas relating to contracts coverd by this chapter.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2317. Encouragement of competition and cost savings.".

IDENTIFICATION OF SOURCES OF SUPPLIES

SEC. 804. (a) Section 2384 of title 10, United States Code, is amended to read as follows:

"§ 2384. Supplies: identification of supplier and sources

"(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished, and the

contractor's identification number for the supplies.

"(b) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract for supplies require that the contractor identify—

"(1) the name of the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

"(2) the national stock number of the item or, if there is no such number, the identification number of the actual manufacturer or producer or of each source; and

"(3) the source of any technical data delivered under the contract.

"(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.".

(b) The item relating to such section in the table of sections at the beginning of chapter 141 of such title is amended to read as follows:

"2384. Supplies: identification of supplier and sources.".

PROHIBITION OF LIMITING DIRECT SALES BY SUBCONTRACTORS TO THE UNITED STATES

SEC. 805. (a) Chapter 141 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

"(a) Except as provided in subsection (b), each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

"(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) like those made, or services like those furnished, by the subcontractor under the contract (or any follow-on production contract); or

"(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

"(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2402. Prohibition of contractors limiting subcontractor sales directly to the United States.".

DEFINITIONS

SEC. 806. Section 2302 of title 10, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) 'Technical data' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature. It does not include computer software.

"(5) 'Unlimited rights' means, with respect to technical data required to be delivered to the United States under a contract, legal authority of the United States to use, duplicate, and disclose the technical data for any purpose and the legal authority to have or permit others to do so.

"(6) 'Developed at private expense' means, with respect to an item (or technical data relating to an item) delivered to the United States under a contract, developed without direct payment by the United States under a provision of the contract which requires the performance of the development effort.".

PLANNING FOR PROCUREMENT OF SUPPLIES

SEC. 807. Section 2304 of title 10, United States Code, is amended by adding at the end thereof the following new subsections:

"(j) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

"(1) when the appropriate officials of the Department are making an assessment of the most advantageous procedure for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

"(A) through the supply system of the Department of Defense; and

"(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

"(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

"(k)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, an offeror submitting a proposal for a contract shall furnish information in the proposal identifying—

"(A) with respect to all items that will be delivered to the United States under the contract (other than items to which paragraph (2) applies), those items for which technical data will not be provided to the United States; and

"(B) with respect to technical data that will be delivered to the United States under the contract, any of such technical data that will not be provided with unlimited rights.

"(2) With respect to items that will be delivered to the United States under a contract described in paragraph (1) with respect to which it would be impracticable to ascertain, at the time the contract is entered into, the information required to be furnished under that paragraph, the contract shall require that the contractor provide identifying information similar to that required to be furnished under that paragraph at a time to be specified in the contract.

"(3) The Secretary of Defense shall ensure that information furnished under paragraph (1) is considered in selecting the contracting for the contract.".

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

SEC. 808. (a)(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2386 the following new section:

"§ 2386a. Rights in technical data and computer software

"(a) A contract for supplies entered into by the Department of Defense which provides for delivery of technical data or computer software to the United States shall provide that the United States shall have unlimited rights in—

"(1) technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

"(2) computer software required to be originated or developed under a Government contract or generated as a necessary part of performing a contract;

"(3) computer data bases prepared under a Government contract consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

"(4) technical data necessary to enable manufacture of end-items, components, and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under a Government contract or subcontract in which experimental, developmental, or research work is or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense;

"(5) technical data and computer software prepared or required to be delivered under a Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

"(6) technical data pertaining to end-items, components, or processes prepared or required to be delivered under a Government contract or subcontract for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements;

"(7) manuals or instructional materials prepared or required to be delivered under the contract or any subcontract of the contract for installation, operation, maintenance, or training purposes;

"(8) technical data or computer software which is in the public domain or which has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure; and

"(9) technical data or computer software for which unlimited rights in such data or software are otherwise provided for under the contract.

"(b)(1) Each contract fo the acquisition of supplies which includes a requirement for the contractor to furnish technical data or computer software to the United States shall provide—

"(A) that the contractor agrees to have a data management system approved by the Department of Defense in operation before the United States accepts delivery of any data required to be delivered to the United States under the contract; and

"(B) that the United States may ignore, correct, or cancel any restriction on the release of technical data or computer software that is not authorized by the contract if the contractor fails to substantiate, within 60 days after receiving a written request from the United States for such substantiation, the propriety of the restriction.

"(2) Each contract described in paragraph (1) shall provide that if—

"(A) the contractor asserts that the United States is not entitled to unlimited rights in technical data relating to an item, component, or process; and

"(B) the assertion is not sustained and it is determined that the assertion was not substantially justified,

the contractor shall be required to pay to the United States the costs to the United States of contesting the assertion.

"(3) Rights of the United States under paragraphs (1)(B) and (2) may not be asserted after the end of the three year period beginning on the date of final payment by the United States under the contract, unless the contract provides for a different period of time.

"(4) Notwithstanding the inspection and acceptance by the United States of technical data furnished under a contract and notwithstanding any provision of the contract concerning the conclusiveness of such in-

spection and acceptance, the contractor shall warrant in the contract that all technical data delivered under the contract will at the time of delivery to the United States conform with the specifications and all other requirements of the contract or the contractor will correct the technical data to so conform. The period of such a warranty shall be as provided for in the contract.

"(c) The Secretary of Defense shall prescribe by regulation standards for determining whether a contract entered into by the Department of Defense shall provide that, after a time to be specified in the contract, the United States shall have the right to use (or have used) for any purpose of the United States all technical data (including technical data of subcontractors at any tier) required to be delivered to the United States under the contract. The time specified in a contract with respect to such a right of the United States in any such data may not exceed seven years from the date the data was required to be delivered to the United States or the date an item to which such data relates was required to be delivered to the United States, whichever is earlier.

"(d) Nothing in this section shall be construed as affecting rights of the United States or of any contractor or subcontractor with respect to patents, copyrights, or any other law establishing particular rights in technical data.

"(e) In this section, 'technical data', 'unlimited rights', and 'developed at private expense' have the meaning given those terms in section 2302 of this title.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2386 the following new item:

"2386a. Rights in technical data and computer software."

(b)(1) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall develop a plan for a system for the acquisition and management of technical data appropriate for the acquisition of supplies under the jurisdiction of that department. The plan shall address the possibility of a uniform system that would allow exchange of information among the military departments and the Defense Logistics Agency. The plan shall also address the possibility of a centralized system to identify the repository location of technical data relating to any item and the types of data on file in that repository.

(2) The Secretary of Defense shall ensure that the plan developed under paragraph (1) is implemented no later than five years after the date of the enactment of this Act.

COMPETITION ADVOCATES

SEC. 808. (a) Chapter 137 of title 10, United States Code, is amended by inserting after section 2306 the following new section:

"§ 2306a. Competition advocates

"(a) The head of each agency shall designate a person within that agency to be the competition advocate for the agency and shall designate a competition advocate for each procuring activity of the agency. The competition advocates shall promote the use of competitive methods of procurement.

"(b) The head of each agency shall prescribe by regulation the functions of competition advocates. Such regulations shall provide that each competition advocate shall—

"(1) advocate changes to policies and procedures to encourage maximum consideration of opportunities for competition during the acquisition process (including the supply process); and

"(2) challenge practices and procedures that inhibit competition, including unnecessarily restrictive statements of agency needs, unnecessarily detailed or restrictive specifications, use of procurement method codes, and other actions that could result in an inappropriate noncompetitive procurement.

"(c) The head of each agency shall ensure that—

"(1) programs designed to increase competitive procurement of supplies are maintained and periodically reassessed;

"(2) there is a system within the agency for review of noncompetitive acquisitions; and

"(3) each competition advocate within the agency has access to personnel within the agency who can advise the competition advocate in specialized areas relating to competition, including persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

"(d) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.".

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2306 the following new item:

"2306a. Competition advocates.".

ANNUAL REPORT

SEC. 810. Chapter 137 of title 10, United States Code, is amended by adding after section 2317 (as added by section 803) the following new section:

"§ 2318. Annual report on competition for supplies.

"(a) The Secretary of Defense shall submit to Congress, not later than December 15 of each year, a report on the management by that department of the acquisition of supplies during the preceding fiscal year.

"(b) Each report under this section shall include—

"(1) a report on the activities of the competition advocates of the Department of Defense during the preceding fiscal year; and

"(2) the rate of competition for contracts for supplies entered into by the Department during the preceding fiscal year, shown (A) by the number of contracts awarded competitively as a percentage of the total number of contracts awarded, and (B) by the dollar value of contracts awarded competitively as a percentage of the total dollar value of contracts awarded.

"(c) All information in reports under this section shall be shown for the Department as a whole and for each of the military departments and the Defense Logistics Agency.".

(b) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 2317 (as added by section 803) the following new item:

"2318. Annual report on competition for supplies.".

PUBLICATION OF PROPOSED REGULATIONS

SEC. 811. Section 2303 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A regulation prescribed under this chapter by the Secretary of Defense or the Secretary of a military department that would have an effect beyond the internal operating procedures of the Department of Defense or that would have a cost or administrative impact on contractors may not take effect until 30 days after such regulation has been published in the Federal Register for public comment.".

EFFECTIVE DATE

SEC. 812. (a) Except as provided in subsection (b), this title and the amendments made by this title shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act and shall apply with respect to contracts for which bids or proposals are solicited after the end of such period.

(b)(1) Sections 802 and 808(d) and the amendments made by sections 810 and 811 shall take effect on the date of the enactment of this Act.

(2) The amendments made by sections 803 and 809 shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

Mr. NICHOLS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN pro tempore (Mr. DURBIN). Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from California.

(Mr. FAZIO asked and was given permission to revise and extend his remarks.)

Mr. FAZIO. I thank the gentleman for yielding to me.

Mr. Chairman, I wish to commend my distinguished colleague from Wisconsin, Mr. ASPIN, and Mr. HILLIS, the ranking Republican member, on the action that they and the members of the Armed Services Committee have taken to remedy the problems created by artifically imposed civilian manpower ceilings within the Department of Defense.

As you know, the Appropriations Committee in the fiscal year 1983 Defense appropriations bill lifted this ceiling for industrially funded activities. At that time, it was recommended that the authorizing committee review this experiment after 1 year to determine if such a policy should be continued and possibly expanded to cover all civilian employees.

After 1 year it was shown that managers did not engage in unwarranted hiring—the fear of which had led to the initial imposition of the ceilings a number of years ago. In fact, the results of the 1-year test were so positive that the Armed Services Committee has now approved an across-the-board waiver on personnel ceilings for fiscal year 1985.

Thus, managers can now hire according to need as long as they are within their budgetary limits. This will eliminate the wasteful practice of dropping temporary workers from the rolls for a short period of time in order to meet end-of-year ceilings. An estimated $7 million will be saved this way. Greater management flexibility and a more efficient accomplishment of workload will undoubtedly result.

As the Representative of California's Fourth Congressional District, home of the Sacramento Air Logistics Center at McClellan Air Force Base, I

am very aware of the adverse effects that result from artificially imposed ceilings. I have over the past 2 years worked with the members of the Defense Subcommittee of Appropriations and the Personnel Subcommittee of the Armed Services Committee to implement this waiver.

I, along with my colleague Mr. GONZALEZ of Texas whose district is equally sensitive to this issue, again commend our good friend for his efforts to eliminate the outdated policy of manpower ceilings.

Mr. NICHOLS. Mr. Chairman, the amendment that I offer contains the text of H.R. 5064, the spare parts procurement reform bill. Let me say that a little over a year ago, the Investigations Subcommittee began an examination on the whole issue of spare parts procurement by the Department of Defense. We held eight hearings during the course of the year, and I want to thank my colleagues who were so diligent to attend these hearings which turned out to be a very complex issue.

We found that the principal reason the Department of Defense was paying excessive prices was the lack of competition in spare parts procurement. Thus, the thrust of my amendment is to expand competition. The amendment encourages competition first, by requiring Government procurement personnel be evaluated on their efforts to increase competition to achieve cost savings.

We found that in the past the Government buyers were graded primarily on the number of their procurements, and on the speed with which they were executed, rather than on their efficiency and exercise of initiative. As a result, buyers tended to take the easy route of sole-source procurement. Of going back to the earlier supplier without any effort to determine whether a better price might be obtained from another supplier.

The amendment will encourage procurement personnel to seek suppliers who will provide the Government with better values and will insure that they are recognized for such efficiency in their personnel evaluation and, of course, ultimately, in their pay.

Mr. Chairman, the amendment also broadens competition by prohibing prime contractors from unreasonably restricting their subcontractors in direct sales of their products to the Government. It would require the identification of the actual manufacturer of the item by name and by address supplied to the Government. It would require the national stock number to be on this item, and any technical data related to it. This identifying information would, of course, make it easier to procure the item competitively.

Agency heads would be required, before contracting, to purchase an item to identify every other possible source of supply. Such as the supply system of the Department of Defense and General Services Administration, and to review the procurement history of the item. When the Government wishes to have the ability to reprocure an item then it can require the supplier to state whether technical data will be furnished.

The amendment identifies some nine categories in which the United States shall have unlimited rights in technical data. It requires contractors to maintain a data management system approved by the Department of Defense. It also provides a framework for the Government to challenge a contractor's restriction on the release of technical data.

The amendment would also direct the Secretary of Defense to prescribe, by regulation, standards for determining whether a contract shall include a time limit not to exceed 7 years on the duration of any restriction on the Government's use of technical data. This provision is considered necessary to insure that the Government's data rights are not abused, and to insure that the Government will be able to buy replenishment parts at fair and reasonable prices during the lifetime of its major systems.

In addition, the Government should not be locked into using only one source for its procurement or repair or replenishment items where the technology is not the state of the art. Mr. Chairman, the amendment recognizes that commercial licensing practice often serve to increase the number of available suppliers and enhances the quality of products available. It is not the intent of this amendment that license agreements should be discouraged or rendered unenforceable or otherwise affected by any regulations or contract provision imposing a time limit on restriction of the Government's ability to disclose data.

By allowing the Secretary of Defense certain latitudes to determine by regulation which contracts should include the time limit, and what that time limit might be, as long as it does not exceed 7 years, the provision allows considerable flexibility.

The CHAIRMAN pro tempore. The time of the gentleman from Alabama (Mr. NICHOLS) has expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 3 additional minutes.)

Mr. NICHOLS. The Secretary may provide for procedures to waive the time limit if a contractor can show that he has a valid trade secret which should not be disclosed to his competitors, or if the cost to the Government to acquire technical data is inordinate. With the flexibility inherent in this provision, I believe the Secretary of Defense will be able to strike the appropriate balance between a contractor's right to maintain his competitive position of his trade secrets and the Government's need to be able to buy spare parts competitively.

□ 1710

Mr. PRICE. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I would be glad to yield to my distinguished chairman, the gentleman from Illinois.

Mr. PRICE. I thank the gentleman for yielding.

Mr. Chairman, this language appears to be very similar to the language we have previously considered in the committee and which met with the approval of most members of the committee. The committee will accept the amendment.

Mr. NICHOLS. I thank the gentleman.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to my distinguished colleague, the gentleman from Alabama.

Mr. DICKINSON. I thank the gentleman for yielding.

Mr. Chairman, let me say that during the course of the consideration of this bill, I can think of no subject that has created more heat and perhaps generated less light than the subject of the procurement of spare parts.

I want to commend the gentleman for his diligence in pursuing this in subcommittee. This is an area that absolutely must be addressed. The American public demands it. I think that the House feels very strongly that this should be addressed, and the amendment offered by the gentleman from Alabama is the best solution that the committee has come up with. Certainly we would support it on this side.

Mr. NICHOLS. I thank the gentleman from Alabama.

Mr. HOPKINS. I yield to my ranking minority member, the gentleman from Kentucky (Mr. HOPKINS).

(Mr. HOPKINS asked and was given permission to revise and extend his remarks.)

Mr. HOPKINS. I thank the gentleman for yielding.

Mr. Chairman, I want to recognize the efforts of the leadership of our chairman of the Subcommittee on Investigations, the gentleman from Alabama, who started these hearings in April of last year who has certainly shown great tenacity and patience with all of the different organizations and companies that have come before our subcommittee. It was because of his leadership, and the assistance of the gentleman from Ohio (Mr. KASICH), who has thrown his capable intelligence and thoughtfulness behind this legislation that has brought us this far.

Mr. Chairman, I rise in support of the amendment offered by Mr. NICHOLS.

The Investigations Subcommittee of the Armed Services Committee began a series of hearings on April 19 and 20, 1983, and continuing through this past month. During this time we heard testimony from numerous Air Force, Navy, DLA, and DOD representatives

responsible for contracting and acquisition policy, and several auditors, as well as a competition advocate and breakout procurement center representative.

In each case we heard testimony about extraordinary prices charged by a contractor or enormous price increases from 1 year to the next. For example, in a recent audit by the Department of Defense Inspector General, of 15,000 aircraft engine parts reviewed, 4,000 had increased in price more than 500 percent and some by more than 1,000 percent. We heard from Navy and DOD auditors that the Government paid $100 to $110 for parts which were in the DOD supply system for $0.04 and $0.05.

Why did these increases or extraordinary payments occur? Were they isolated incidents? We heard numerous reasons from the DOD including lack of personnel to fill out the forms to requisition parts through the supply system; lack of technical data to compete acquisitions; inability to compete because the item was proprietary; and quality control problems if the Government buys a part from other than the known supplier. Ordering of parts and negotiating prices after the order is placed is justified because they do not have time to negotiate prices and still submit the order in time to account for the usual 18- to 24-month leadtime. But the problems uncovered and responses I just read are only the tip of the iceberg. The problem of spare part price increases, inventory management, and long leadtimes is a 20-year-old problem that resurfaces every few years. However, in that time there has never been an adequate solution proposed. I believe that has not occurred in part because this is a management problem which cannot be resolved by simply issuing new regulations or enacting legislation. The statutes and regulations which would prohibit many of the practices which led to these abuses are already in existence—they were simply not followed. The only way we will resolve these issues and insure that the taxpayers' money is not wasted is to focus attention to the problem. I think that has occurred as a result of the various hearings in both the House and the Senate, as well as the abundance of publicity which has been generated. However, the Armed Services Committee wants to insure that the attention and resources dedicated to resolving these issues in the Department of Defense do not wane once the publicity stops.

This amendment will accomplish that objective by imposing a management discipline on the system and by making it clear that Congress will not tolerate excessive spare parts prices. The committee worked long and hard to insure that this bill would attack the root causes and not just the symptoms of the problem. For these reasons I commend this amendment to my fellow colleagues and urge your support.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has expired.

(On request of Mr. KASICH and by unanimous consent, Mr. NICHOLS was allowed to proceed for 4 additional minutes.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to my colleague on the committee, the gentleman from Ohio.

Mr. KASICH. I appreciate the gentleman yielding.

Mr. Chairman, let me say to the House that I could not agree more with the statements of the gentleman from Kentucky (Mr. HOPKINS). The House of Representatives, and I do not think it would be an overstatement to say that also the taxapayers of this country, owe a great debt of service to the chairman of the Subcommittee on Investigations. The chairman, under what was at many times intense pressure, called hearings time and time again to bring forward those people who, at the Government level, are in charge of procurement, a very complicated issue that took great deal of time to understand.

The chairman also saw fit to bring contractors before the subcommittee in an attempt to receive their side of the story and then put together a piece of spare parts legislation that was balanced.

Let us get to basics. The basics are that there were spare parts that were being sold by contractors to the Government for prices that were 200, 300, 400, even 500 percent in excess of what the Government should have paid for them. The public is frustrated. In fact, I even think that the majority party in this House has a commercial on television right now where we see a man hold up a wrench and say, "That is what we should be paying for this."

Everyone knows what we are talking about when we talk about the problems of inflated prices on spare parts. This legislation, the Nichols bill, which has been intensely studied and put together over a period in excess of 1 year, is going to go farther than any legislation in this Congress toward solving this problem.

I will give my colleagues a couple examples. The chairman has in his legislation the establishment of competition advocates. Those are people who will work in the services, and whose sole job will be to spur an increase in competition. We have already seen competition advocates successfully increase competition within the Navy. We are going to see it happen in other areas of the Armed Forces because of the language in this bill.

Another important item requires contractors to identify the manufacturers of items. What had been happening is that contractors were stamping their names on parts that had been manufactured by subcontractors, and dramatically increasing the price that was being charged to the Government. The Nichols bill requires manufacturers to identify who actually made the part, and to eliminate all interference in the selling of those spare parts by the firm that manufactured it. If we go directly to the manufacturers, and bypass the prime contractor, we are going to get it for a much cheaper price.

The bill requires the Department of Defense to check its own system supply inventory when ordering spare parts. In our investigation, the chairman found examples of the Government buying parts at excessive rates, even though those same parts were available through the Government's own inventory. We literally threw money away on parts that were sitting on our own shelves.

It also goes far in the data rights section. Let me say this: The data rights section is a vital part of this bill.

The chairman was good enough to accept an amendment from a freshman Republican that would provide a 7-year limit on proprietary rights. Under the current law, if a company receives proprietary rights on a product, that means for the next 200 years that company has the exclusive or monopoly right to sell that part to the Government. As the Air Force itself says, when you do not have competition in the procurement of spare parts, the cost of those items will increase dramatically.

This bill provides for significant reform in the data rights area. It states that the Government will receive all data needed to procure the part. It states that when Government funds are used to research and develop an item, it will not be proprietary. And it provides a 7-year cutoff period, stating that after a period of 7 years or less, a company shall not have exclusive or monopoly rights to sell the part to the Government.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 3 additional minutes.)

Mr. KASICH. If the gentleman will yield further, what it essentially will do is to permit the Government to bring more contractors into the process of bidding on spare parts. As we get more contractors, and as we have more competition, we are going to see a solution to this problem.

I want to compliment the gentleman from Alabama (Mr. NICHOLS) for standing up in what were very difficult times, coming forward with a bill that I think will go a long way toward solving the spare parts problem. It is not going to be totally solved under this, but we go a long way toward, that end, and I want to compliment the chairman for his leadership in the subcommittee.

Mr. NICHOLS. I thank the gentleman from Ohio.

Mr COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Texas, a member of the committee.

(Mr. COLEMAN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Texas. I thank the gentleman for yielding.

Mr. Chairman, I rise to express my strong support for the amendment offered today by Mr. NICHOLS, chairman of the House Armed Services Subcommittee on Investigations, to the Department of Defense authorization bill in the area of spare parts. I commend him and the members of his subcommittee for their hard work and leadership in this reform movement.

I am proud to be a cosponsor of the legislation, H.R. 5064, which is the basis of this amendment, as reported by the House Armed Services Committee. It represents a year of careful examination by the Investigations Subcommittee in response to the much publicized spare parts procurement process by the Defense Department. The amendment provides for more cost effective and efficient purchases of spare parts.

A great number of my constituents have contacted me to express their deep concern over the matter of excessive prices for spare parts by the military. This amendment helps alleviate some of those concerns. It directs that the Department of Defense should refuse to pay prices that are not fair and reasonable, should make purchases in quantities that offer the best price for the number of units needed, and use standard or commercial parts whenever technically acceptable or cost effective.

In addition, the amendment encourages competition by requiring that Government personnel evaluation systems recognize efforts to increase competition and other cost savings and mandates review of noncompetitive acquisitions. It requires contractors to identify manufacturers and producers of items so as to avoid the "middleman", where practical. The amendment also requires planning in the Department of Defense acquisitions to insure that the Department check its inventory and records before ordering from a contractor.

With respect to concerns about technical data, the amendment defines categories in which the Government shall have unlimited rights in technical data and requires contractors to warrant that data they provide be in conformance with the contract. It also mandates the Department to develop a plan for improving its data management system to allow for easier access to technical data which the Government possesses, and restricts certain limitations on the Government's use of technical data.

I think the amendment includes well-reasoned moves in the direction of much needed reform. I urge my colleagues to support it.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from California.

Mr. HUNTER. I appreciate the gentleman yieding.

Mr. Chairman, I simply want to say in the area of proprietary rights, data rights, in my experience with the Navy and with contractors that is one of the biggest problems we have and the biggest generator of cost overruns, where you have a company which makes an original part and thereafter for the next several hundred years has the right to repair that part, and there are other companies who could repair the part if they had the proprietary rights, if they had the data or the blueprints essentially that were available. They could it for maybe half the price but they cannot because the company that originally manufactured the part has the rights to that data.

I commend the committee for putting that very important clement into this package. I think that this bill, in fact, will operate to greatly reduce the cost of defense to the American taxpayers.

Mr. NICHOLS. I thank the gentleman from California.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Maryland, the distinguished chairman of the Small Business Committee.

□ 1720

Mr. MITCHELL. I thank the gentleman for yielding. I want to commend him for his effort.

But I have a series of serious concerns about the nature of this amendment. I am appreciative of the fact that we are going to encourage agency personnel to do things through an evaluation system, the identification of items and so forth, encourage the establishment of data management systems. But you have to lay that against the background of what this Congress has been trying to do since 1969.

Since 1969, various committees of the Congress have looked at this issue and have suggested certain things that ought to be done. But they were never really done.

Essentially it got to be a jawboning process with DOD, and which was blithely ignored. The record will show that when the dialog first got started 50 percent of the spare parts were sole source, noncompetitive in DOD. Despite 1969 and the ensuing years, that figure has risen to 77 percent.

I guess what I am saying, though, is I commend the gentleman for all of the work he has done, and particularly my colleague for his very good amendment. It comes almost down to, except in the case of your amendment, it comes down to jawboning again.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent Mr. NICHOLS was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. That is my only concern. I would like to see an amendment that was a little bit tougher. Yours is all right, no question about that.

But the rest of it, it certainly seems to me to encourage, to encourage to identify, to encourage the agency to identify every other source, that is what we have been telling them since 1969, and that is what they have ignored.

Mr. NICHOLS. Let me respond to the gentleman, my friend from Maryland, and tell him he is exactly correct. This has been an ongoing problem ever since I have been in Congress, ever since you have been in Congress.

But let me remind the gentleman we have never put this into the law. We have always done it by regulations, and the Secretary of Defense, and admirals and generals, they come and they go. For that reason, that is why we are putting it into the law. We feel like it has sufficient teeth in it to do the job.

Mr. MITCHELL. I thank the gentleman for his explanation.

I am not yet satisfied, but I do commend you for these first forward steps you have taken.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the distinguished gentleman from Alabama for yielding. I endorse his amendment.

I support the very careful work which the gentleman has done. I commend him for the leadership which he has brought to the House, and I urge my colleagues to adopt his amendment.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Illinois.

(Mr. DURBIN asked and was given permission to extend remarks.)

Mr. DURBIN. Mr. Chairman, I would like to commend Mr. NICHOLS for preparing this legislation which shows that Members of Congress are truly concerned about eliminating waste, correcting system failures, and improving management deficiencies in the Government.

The Democratic freshmen have been concentrating their efforts on identifying ways to control the high Federal deficits. When the President's Private Sector Survey on Cost Control, the Grace Commission, published its findings earlier this year, we were naturally interested in applying those recom-

Brooks opposes tech. data CR provisions of Nichols

mendations that had been adequately investigated and reviewed.

Nearly 2,500 recommendations were submitted, with claims that substantial savings could be achieved over a 3-year period. The logistics of fully evaluating each recommendation, and each cost estimate necessarily takes more effort than a few months would allow. However, CBO and GAO pulled through with a joint analysis of the Grace Commission's recommendations in February, and identified areas where $99 billion could be saved over 3 years.

Many Members of Congress have expressed their concern about the use of appropriated funds by the Department of Defense. Often times, DOD seems to function like a black hole: Its gravitational force pulls in funds which disappear in a fashion which is nearly impossible to trace. So, it does not seem at all surprising that the primary recommendations made by the Grace Commission for the DOD and each branch of our military services are to improve the weapons systems acquisition process and update inventory control. The trick is to translate these proposals into actions which are workable and effective.

On this account, I would like to thank Mr. NICHOLS and the efforts of his subcommittee in fully investigating the procurement of spare parts, and, in cooperation with our military services, pulling together measures which would be most cost effective The Grace Commission did its job of comparing and evaluating general alternatives for improving the acquisition process, and the Armed Services Committee turned some of these suggestions into workable solutions. This measure not only incorporates the objectives of the Grace Commission, it goes beyond the generalized recommendations of that report to identify specific and applicable forms.

The armed services measure takes several direct steps to increase competition in the procurement of spare parts. It reflects the committee's findings that one of the major causes of absurdly high prices charged for spare parts is the lack of effective competition in the procurement process.

Some of the steps incorporated in this amendment to increase competition seem almost like commonsense to someone not familiar with the procurement process. For example, in the area of acquisition planning, the amendment requires that the Department of Defense check its own supply system inventory to see if the part it seeks is available, and at what price, before ordering it from a contractor. It also requires buyers to look at the record to see what prices were paid previously for the same item and to look at a picture and description of the part so they know what they are buying. While it does seem that DOD buyers would already be taking these steps, I think it is also easy to understand how they could be left aside, especially in the rush to get things done, or after many years of doing the same thing. Mr. NICHOLS' amendment recognizes this in incorporating these steps into law and in establishing competition advocates at each step in the procurement process to make sure they are enforced.

Mr. NICHOLS' amendment makes several other effective changes in the procurement process, reflecting his subcommittee's careful review of the problems involved with DOD's procurement of space parts. I have heard countless expressions of outrage from my constituents about their tax dollars paying $1,118.26 for a plastic stool cap that they could have brought in their local hardware store for pennies. I share their outrage, and I believe that Mr. NICHOLS' amendment changes that process so that many abuses will be eliminated.

Once again, I commend Mr. NICHOLS and his subcommittee for preparing this amendment, and I urge my colleagues to support it as an effective step toward eliminating waste in the procurement practices of the Department of Defense.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. I wish to join in support of this very, very important amendment. You have done your Nation a great service.

People, the taxpaying public, are very concerned about this issue. I think you are on track.

I think not just this year but in years to come this will pay dividends for the American taxpayer, and I compliment you and wish you well on it.

Mr. BROOKS. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the amendment offered by the gentleman from Alabama (Mr. NICHOLS). The Government Operations Committee, in hearings held over a year ago, uncovered widespread abuses in DOD's spare parts procurement program. While numerous factors contributed to this problem, we found that the primary causes were a failure to use competition and the absence of incentives to reduce costs. Unless these basic management problems are resolved, we can expect to see DOD buy more claw hammers and other items at exorbitant prices.

In my view, the amendment addresses the primary factors that are found plaguing DOD's spare parts procurements. While critics may say that it goes too far or that it does not go far enough, I believe it strikes a fair balance between competing interests. Granted, this amendment does not solve all of DOD's procurement problems, but it is a good first step toward resolving the spare parts abuses.

Notwithstanding, I want to take this opportunity to express my concerns regarding the inclusion of computer software and related items in this amendment. The question of technical data rights, particularly in the high technology area, is a complex issue and I am not convinced that it should be included in legislation dealing primarily with spare parts. Another major concern is whether enough protection is provided in this amendment to avoid the Government's infringement on the proprietary data rights developed solely at private expense. While I support the overall amendment, I also want to make it clear that the Government Operations Committee will be looking very closely at DOD's implementation of this provision.

Finally, while this amendment is specifically directed at the procurement of spare parts, other broader reform measures are now pending before Congress. In this regard, H.R. 5184, the Competition in Contracting Act of 1984, recently passed out of our committee, requires the use of competition on a government-wide basis. I firmly believe that H.R. 5184, coupled with this amendment, will go a long way in cleaning up the Government's procurement process—once and for all.

I urge all Members to support this amendment.

AMENDMENT OFFERED BY MR. BEDELL TO THE AMENDMENT OFFERED BY MR. NICHOLS

Mr. BEDELL. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BEDELL to the amendment offered by Mr. NICHOLS: After section 811 of the title proposed to be inserted by the amendment, insert the following new section:

COMPETITION AND COST SAVINGS FOR SPARE PARTS

SEC. 812. (a) Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new sections:

"§ 2319. Competition for spare parts

"(a) A person may not be denied the opportunity to submit and have considered an offer for a contract to be made by the Department of Defense solely because the person—

"(1) is not on a list of qualified bidders prescribed or maintained by the Department of Defense; or

"(2) in the case of a contract for the purchase of a product, does not have its product or products on a list of qualified products prescribed or maintained by the Department of Defense.

"(b)(1) The head of an agency may not solicit an offer from only one source, or negotiate with only one source, for the purchase of spare or replacement parts unless the head of the activity of that agency that made the contract certifies, for each such purchase, that—

"(A) the parts are available from only one source and no other source is capable of producing the same or like parts which are consistent with the legitimate needs of the agency;

"(B) the agency's need for the parts is of such urgency that the mission of the agency would be seriously injured if it did not solicit from or negotiate with only one source;

"(C) the disclosure of the agency's needs to more than one source would compromise the national security;

"(D) the source to be used has a legitimate proprietary interest (as specified in regulations prescribed under subsection (c)(1)) in the parts or their manufacture and the agency would be legally liable to such source if it purchased the same or like parts from another source; or

"(E) a statute requires or authorizes that the parts be purchased through another agency or from a specific source.

"(2) Paragraph (1) does not apply to a contract for less than $25,000.

"(3) For the purposes of paragraph (1), the head of an activity is the senior commissioned officer or civilian official of the Department of Defense who is assigned to, or employed by, that activity, whose duty station is at or near the same site as the duty station of the officer or official who has authority to enter into the contract on behalf of the United States, and who is a supervisor of that officer or official with respect to the performance of procurement functions.

"(c)(1) Within 180 days after the date of the enactment of this section, the Secretary of Defense shall prescribe by regulations what constitutes a legitimate proprietary interest of contractors in technical or other data. Such regulations shall be prescribed as a part of the single system of Government-wide procurement regulations prescribed under subsections (a) and (b) of section 6 of the Office of Federal Procurement Policy Act (commonly referred to as the 'Federal Acquisition Regulations') (41 U.S.C. 405). In prescribing such regulations, the Secretary of Defense shall give consideration to the following:

"(A) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the statement of the policy of Business Act (15 U.S.C. 637).

"(B) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(C) The rights of the United States to any technical or other data which is developed in whole or in part with Federal funds.

"(D) The placement of a time limit on rights of a business concern to technical or other data developed substantially with Federal funds if such data is needed to ensure the use of competitive procurement methods for the future acquisition of parts to which such data pertains.

"(2) Regulations prescribed under paragraph (1) shall—

"(A) direct appropriate agencies of the Department of Defense to establish reverse engineering programs which provide domestic business concerns an opportunity to purchase or borrow spare or replacement parts from the United States for the purpose of design replication or modification to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States, but nothing in this clause shall limit the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restrictions otherwise required by law;

"(B) require that the procuring agency, with respect to each major system acquisition, negotiate with the contractor, and include in the initial development contract and each subsequent production contract, provisions pertaining to technical or other data developed in whole or in part with Federal funds that specify the right of the United States to own, license, use, or otherwise have access to the data and the extent, if any, of the proprietary interest maintained by the contractor in the data; and

"(C) provide for the imposition of appropriate remedial measures against contractors which improperly designate technical or other data as proprietary.

"(3) The Secretary of Defense shall—

"(A) consult with representatives of associations representing small business concerns before prescribing regulations under paragraph (1); and

"(B) after such regulations are prescribed, submit to Congress a report detailing how such regulations give consideration to the factors described in clauses (A) through (D) of paragraph (1) and implement the requirements of paragraph (2).

"(d) The Secretary of Defense shall provide that manufacturing data, technical data, or other data that is the property of the United States and under the jurisdiction of the Department of Defense shall be catalogued, stored, and inventoried in a manner allowing for its ready and timely access by any domestic business concern upon the request of the business concern.

"(e) This section does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

"§ 2320. Commercial pricing for spare parts

"(a) Except as provided in subsection (b), a contract made by the Department of Defense for the purchase of spare or replacement parts having commercial application that is made by negotiation may not result in a cost to the United States that exceeds the lowest price at which such parts are made available by the contractor to commercial buyers.

"(b) Subsection (a) does not apply to a contract if the head of the activity within the Department of Defense that administers payments under the contract certifies that the use of the price otherwise required by subsection (a) is not appropriate because of—

"(1) National security considerations; or

"(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.

"(c) A person who submits an offer to the Department of Defense for the supply of spare or replacement parts having commercial application shall certify in its offer that the price offered is its lowest commercial price for the parts or shall submit with the offer a written statement specifying the amount of the excess above the lowest commercial price of the offeror for the products, providing a justification for that excess, and requesting a waiver under subsection (b)(2).

"(d) For the purposes of subsection (b), the head of an activity is the senior commissioned officer or civilian official of the Department of Defense who is assigned to, or employed by, that activity, whose duty station is at or near the same site as the duty station of the officer or official who has authority to administer the contract on behalf of the United States, and who is a supervisor of that officer or official with respect to the performance of contract administration functions.

"§ 2321. Fair distribution of overhead charges for spare parts

"(a) A contract made by the Department of Defense for the purchase of spare or replacement parts may not result in a cost to the United States that exceeds the sum of—

"(1) the direct costs incurred by the contractor for such parts,

"(2) a share of the contractor's overhead that is directly attributable to such parts, and

"(3) a reasonable profit.

"(b) Overhead that may be allowed under subsection (a) shall be limited to those amounts that are actually incurred by the contractor and that are properly attributable to—

"(1) the manufacture of the parts covered by the contract;

"(2) changes or modifications made to such parts;

"(3) the testing and evaluation of such parts;

"(4) any value otherwise by the contractor to such parts; or

"(5) any other activity required as an element of performance under the contract.

"(c) Nothing in this section shall require the submission of cost or pricing data.

"(d) This section does not apply to a contract for the purchase of spare of replacement parts from a contractor who is a regular dealer in such parts within the meaning of the Act of June 30, 1936 (commonly referred to as the 'Walsh Healey Act') (41 U.S.C. 35-45).".

(b) The table of such chapter is amended by adding at the end thereof the following new items:

"2319. Competition for spare parts.
"2320. Commercial pricing for spare parts.
"2321. Fair distribution of overhead changes for spare parts.".

Redesignate section 812 of the title proposed to be inserted by the amendment as section 813 and in subsection (b)(10) of that section strike out "sections 810 and 811" and insert in lieu thereof "sections 810, 811, and 812".

Mr. BEDELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

(By unanimous consent Mr. BEDELL was allowed to proceed for 10 additional minutes.)

Mr. BEDELL. Mr. Chairman, this amendment does not delete any part of the Nichols amendment. It simply strengthens the amendment and addresses some areas not addressed in the Nichols amendment.

Let me explain the major parts of what my amendment would do.

It provides that anyone can bid on a Government contract for spare parts without having to be on a qualified bidders or products list. Under Government regulations the Government does not have to accept the low bid unless the low bidder has been found to meet adequate criteria and the product has been tested and proven satisfactory.

Nor is it required that the contract go to the low bidder if time requirements preclude adequate testing of parts to be supplied.

Two, my amendment limits sole source contracting of spare parts except for five specific exceptions.

Three, it strengthens the Nichols bill on proprietary rights by requiring the Secretary of Defense to issue regulations that require up front negotiations on proprietary rights to enable potential suppliers to obtain sample parts for purposes of reverse engineer-

ing and to set forth penalties for violating regulations on proprietary rights. It does not remove any part of the Nichols bill in regard to proprietary rights, and those parts of the Nichols bill that are in the amendment, will continue to be in the amendment and will continue to be part of this legislation if my amendment is added.

Four, it requires contractors to supply parts at their lowest commercial price or justify reasons for any higher charge.

Five, it requires that only overhead applicable to the part can be charged to the Government. This will eliminate the ways the contractor justified $435 for a $7 hammer.

I had planned to include in this amendment a provision that costs would be a secondary consideration in the selection of architects and engineers with qualifications of the firm and the quality of the proposal receiving primary consideration.

Since this is different from the spare parts issue I have not included it in the amendment. But I will offer such an amendment later in this bill.

Mr. Chairman, the problem of Government procurement came to my attention when the Small Business Subcommittee which I chair held hearings on legislation that was referred to my subcommittee.

As a former businessman, I was shocked to find some of the problems that exist in Government procurement practices. My subcommittee held two full days of hearings on this matter in Washington. We also had a field hearing in North Carolina. My subcommittee investigation included a visit to a Government purchasing department in New York State, and I visited a procurement office in the Washington area.

□ 1730

In addition to this, my committee visited a Navy base in Florida to further investigate this matter. Time is limited. But as an example, I would like to tell the committee about one of my experiences. When the Army, Navy, and Air Force were testifying before us, I asked them "who is responsible for paying $430-some for a hammer."

The admiral from the Navy said, "I am responsible for that. It was the Navy that did that."

"How did that happen?" I asked him.

"We needed a repair kit for flight simulators," he said, "and when the quote came in from this supplier since it came within our guidelines and seemed reasonable to the buyer, he did not check the prices on the individual items."

"How much did the repair kit cost?" I asked him.

"I don't know, but I can find out for you," he replied.

"I wish you would get for us the cost of the kit and also the cost of the individual items in the kit" I requested.

Well, we finally received the information from the Navy. The repair kit cost the taxpayers $847,000. The hammer was one of the better buys; it cost only 62 times the normal retail price.

I purchased this tool kit from a local retail store for $92.44 for some 21 items. Those are common items that include such items as pliers, thickness gages, hammers, socket drive. This ¾-inch socket was $1.49; the Government paid $456 for it, for example.

On and on with the various items. This is the list of the 21 items I bought for a total of $92.44.

The Government paid over $10,000 for those identical items, over 100 times the retail price in total for those items. I also have a list of how the supplier justified charging $436 for a hammer. Here are the figures that he gave us.

The hammer cost $7, the material packaging $1, material handling, $2; spares-repair department, 1 hour; program support administration, 0.4 of an hour; program management; 1 hour; secretarial, 0.2 of an hour; 2.6 hours of engineering support, $37; overhead, 110 percent, $41; mechanical subassembly on a hammer, 0.3 of an hour; quality control, 0.9 of an hour; operation program management, 1.5 hours, program planning to buy a hammer, 4 hours; management projection, 1 hour; quality control, 1 hour; total 7.8 hours, $93; manufacturing overhead, 110 percent, $102; G&A, $90; fee, $56; total of $436 for a $7 hammer.

Mr. Chairman, we must bring some sense to this waste of taxpayers money. The Nichols amendment goes part way in addressing this problem.

My amendment does not dilute the Nichols amendment, it strengthens the Nichols amendment and legislates some further considerations in military spending.

Mr. Chairman, we cannot sit idly by and let this waste of taxpayers money continue. We must let our constituents know we mean business.

I urge support of my amendment and the support of the Nichols amendment including my strengthening amendment.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentlewoman from Maryland.

Mrs. HOLT. I thank the gentleman. I commend him for supporting the Nichols amendment. I think it should be said here that the testimony we received in the Armed Services Committee was to the effect that this administration, through Mr. Carlucci's efforts, had brought all of this to light; that these are things that were written into contracts in the past and that now we are trying to change that.

I think it brought it to the press's attention, to the public's attention, and certainly should be commended and we are trying to change those contracts.

Many vendors have been willing to rewrite the contracts so that these spare parts and these tools are not included in the total overhead. I think it is really time that we all set about trying to correct that. But the administration does deserve credit for bringing this to light; bringing it out in the open and making the press and the public aware of it.

I thank the gentleman.

Mr. BEDELL. If I may reclaim my time, I think it is correct the administration is making some efforts. But I would tell the gentlewoman from Maryland that the only way we found this out was by the pursuit of our subcommittee of demanding that we get the information.

I would tell the gentlewoman first that I have had the Navy in my office and the Navy seems to think this method of procurement is still perfectly satisfactory. So that I would hope that the gentlewoman would understand that in this particular case we had to demand from the Navy the information as to what they had paid and it took a large number of phone calls to get it.

Mrs. HOLT. If the gentleman would yield further, certainly in the Armed Services Committee it was brought to the attention of the subcommittee. We were making every effort to try to correct legislation or prepare legislation that would force the Defense Department to look at it further.

But the initial bringing this to light was done by Mr. Carlucci and the people in the Defense Department. When the press began to talk about it then all the committees became concerned and the people became concerned.

But I do think they deserve credit for pointing out the way that these contracts had been written in the past and that it should be corrected.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank my colleague for yielding. Let me make sure I understand the purpose of your presentation. No. 1, do you support the Nichols amendment?

Mr. BEDELL. I support the Nichols amendment and my amendment does not delete anything that is in the Nichols amendment.

If my amendment is passed and we then pass the Nichols amendment as amended by Bedell, it would include everything that is already in the Nichols amendment.

Mr. ROEMER. I see. So your amendment would be in addition to?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. Is it true your amendment would be directed toward competition and adding to the number of firms that might bid on these parts

or individual assemblies thereof, is that true?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. I have a feeling and it is unofficial; informal, that there is some objection to your amendment. Have you had that same feeling?

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BEDELL was allowed to proceed for 2 additional minutes.)

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank the gentleman from Iowa for yielding.

Does the gentleman have the same feeling that some object, and could you help us, those of us who have not been either on your subcommittee or theirs, as to why they might object to increasing competition or increasing the number of bidders on these spare parts?

Mr. BEDELL. I will do what I can. One of the provisions of my amendment says that anybody can bid on a Government contract. There are those who say that they do not want anybody to bid unless they are qualified bidders or qualified products list.

In my opinion this is a restriction of competition and this indeed is a way of keeping people from being able to bid. Some people object to that. But it should be clearly understood that if my amendment is passed and is added to the Nichols amendment, that anybody will be able to bid but the Government will not be required to take the low bidder until they have satisfied themselves that both the product and the bidder meet the adequate criteria to meet their requirements and if there is not time to do that they are not required to take the low bid.

Mr. ROEMER. I thank the gentleman.

Mr. OTTINGER. Mr. Chairman, will the gentleman from Iowa yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. OTTINGER. I just would like to congratulate the gentleman for the fine job he has done in his subcommittee in bringing out these horrendous situations to public scrutiny, and for his amendment which really adds to and puts teeth into the Nichols amendment which I join him in supporting.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

I sit on the subcommittee with the gentleman. I wish to commend him on this amendment. I think it is very important. I think we have proven in the past through our hearings with the Small Business Committee that where there is competition you not only get lower prices but you also get better quality; especially when there is small business involved.

I ask the House to support the gentleman's amendment.

Mr. Chairman, I rise in strong support of the Bedell amendments to H.R. 5167.

Recently a considerable amount of publicity has been given to DOD's purchasing procedures in the area of spare and replacement parts. For example, press reports revealed instances where DOD paid $1,118 for a plastic stool cap, $104 for an electric diode and $435 for an ordinary claw hammer. These outrageous procurement practices are by no means novel to the Congress. The Defense Appropriations Subcommittee has repeatedly directed DOD to improve its record with regard to spare part purchases.

I would like to point out what action has been taken by the Congress and why we are here now in 1984 to legislate some solutions.

In 1968 the Defense Appropriations Subcommittee found that "no procedures to coordinate procurement of this type had been established."

In 1969 the committee report stated that DOD "was not making sufficient and realistic attempts to obtain competition in the procurement of spare parts." The report found that 50 percent was negotiated without price competition.

In 1979 the committee report stated that procurement personnel were not really familiar with the items they were procuring and managing and that this made it easy to pass through the system items which were grossly overpriced. The committee directed DOD to establish remedial policies.

In 1980 the committee directed the establishment of component breakout programs to correct overpricing.

In 1981 the committee report highlighted the area of procurement of spares as needing additional manpower and encouraged DOD to find alternate sources.

In 1982 the committee report stated that "direct purchase of spares from subcontractors (rather than from the prime) should be pursued."

In spite of all these congressional directives dating back some 15 years, noncompetitive purchases of spare parts have actually increased from 50 percent in 1969 to 77 percent in 1982.

Finally in 1983, the fraud and abuse of the taxpayer's dollars was highlighted by the press. Only as a result of unfavorable publicity did DOD decide to make major changes in their procedures for purchasing spare parts.

Unfortunately, the 10-point memorandum issued by the Secretary of Defense in July, 1983 lacks specificity and fails to offer an adequate solution to the spare parts problem. For instance, there is clearly a need for DOD to specifically set forth what constitutes an adequate sole source justification. However, the memo merely states that DOD should "* * * accelerate reform of our basic contract procedures to encourage competition and preclude overpricing." I assure you that within DOD this will only be interpreted as a "best efforts" missive rather than a mandate to get the job done. This is not the proper approach. Instead, specific restrictions should be placed upon the use of noncompetitive sole source contracts for spare parts. The Bedell amendment to H.R. 5167 accomplishes this by enumerating only five specific instances where a noncompetitive sole source contract for spare parts may be awarded.

Other anticompetitive practices are eliminated by the Bedell amendments. The qualified products list and qualified bidders list have been used by DOD to screen out potential offerors. All business concerns should be afforded the opportunity to offer their product or service to the Government. This will effectively increase competition and cost savings without any reduction in the quality of products furnished to the Government.

I urge all my colleagues to support the Bedell amendments to H.R. 5167 as a logical approach to promote competition, reduce, acquisition costs and maintain the Nation's full productive capacity.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the Chairman.

Mr. MITCHELL. I, too, congratulate the gentleman. This is the issue I was speaking to earlier in my colloquy with the gentleman from Alabama.

This puts some teeth into the thing and that is what is needed.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. MITCHELL and by unanimous consent, Mr. BEDELL was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. If your amendment did nothing else than to limit the use of the present qualification criteria, such as qualified products and bidders lists, if it did nothing else than that, that would be a major blow against this kind of rooking of the American public in terms of the way the agencies procure.

□ 1740

The argument will be raised that somehow or another this affects competition.

How in the name of God when you open up a bid to everybody can that affect competition adversely? Particularly when the gentleman insists that the military will have the final say so. The argument on competition is a specious argument. It does not belong here.

I would urge the House to support the gentleman's amendment.

Mr. SCHAEFER. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Colorado.

Mr. SCHAEFER. Mr. Chairman, I rise in support of this amendment, and I would like to thank the gentleman from Iowa for yielding a moment of his time to me to speak to this issue. This is an especially appropriate time for the House to consider solutions to the problems we have with our procurement system. The Department of Defense accounts for the vast majority of Federal purchase dollars and has faced heavy criticism for the inefficiencies in its procurement practices.

I am a member of the Small Business Subcommittee on oversight that held hearings on the procurement system. The findings were shocking—stories of waste and abuse are, tragically, numerous. Of course, there has been no lack of attention to these incredible stories, and I know that you are all well aware of the problems.

Since our oversight hearings we have made a concerted effort to find solutions. Earlier this week, the House approved a related measure, H.R. 4209, which will save the Federal Government millions of dollars—an important first step. The gentleman from Iowa's amendment offers us another opportunity to make significant progress. By increasing competition and amending current policies, this amendment may save billions of taxpayers' dollars and increase the ability of the Department of Defense to provide for the Nation's defenses.

As you read through this amendment you might be surprised that the remedy it recommends is not already practiced—frankly, the amendments just make commonsense.

For example, the Department of Defense would be prohibited from the arbitrary use of sole source noncompetitive contracts for the purchase of spare and replacement parts, which the General Accounting Office estimates could save 20–40 percent on these purchases; contractors would have to make their products available to the military at prices no higher than their lowest comparable commercial charge; though quality would remain the primary criterion. I think these initiatives make commonsense.

I encourage my colleagues to approve this amendment. It isn't the final solution, and we must continue our efforts to oversee and improve the procurement system, but we must begin today to put a halt to the terrible waste that is occurring. When deficit spending is threatening the Nation's well-being waste like this is both tragic and embarrassing. The Nation cannot afford it, and you and I, in keeping with our public trust, cannot allow it to continue.

The CHAIRMAN. The time of the gentleman from Iowa (Mr. BEDELL) has expired.

(At the request of Mr. MINETA and by unanimous consent, Mr. BEDELL was allowed to proceed for 3 additional minutes).

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, I rise for the purpose of engaging in a colloquy with our distinguished colleague from Iowa about his amendment.

In requiring the Secretary of Defense to promulgate regulations as the gentleman does in section 2317(C)(1)(d), would I be correct in stating that it is not the gentleman's intention to instruct or even permit the Secretary to require a transfer to the Government of proprietary technical data relating to products developed wholly at private expense and offered for sale to the general public such as the goods and services often developed by high tech industries?

Mr. BEDELL. Yes; the gentleman from California has correctly stated my position.

Mr. MINETA. And if the gentleman would yield further, are there procedures of note to assure us that the congressional intent in this very complex and important area be carried out by the Department of Defense?

Mr. BEDELL. Yes; as a matter of fact, I have included in my amendment a provision which requires that the Secretary shall after promulgating these regulations submit to the Congress a report detailing how such rules and regulations give due consideration to each of the objectives set forth in this section and discussed here tonight.

Mr. MINETA. I thank the gentleman for his answers. I congratulate him for his leadership in this very important issue and strongly support his amendment.

Mr. BILIRAKIS. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Florida.

(Mr. BILIRAKIS asked and was given permission to revise and extend his remarks.)

Mr. BILIRAKIS. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the Bedell amendment adding section 1010, and ask permission to revise and extend my remarks.

I will attempt to be brief here, but I wanted to make mention of the fact that when I first arrived in Congress, I was determined to oppose wasteful and excessive Federal spending.

This was part of the commitment I made to the residents who are greatly concerned of the Ninth Congressional District in Florida, and it was, and is, a commitment I take very seriously. At a time when we face large deficit spending, it is evident that we cannot tolerate waste in the Federal budget—from whatever the source.

In this regard, I have supported legislation in the past which would act to restore competition in DOD spare parts procurement. Within the normal committee process, I have backed legislation which would remove existing barriers to competition and open up the procurement process.

This support was part of my general commitment to efficiency in Government spending, but it was also a reaction to continuing, specific reports of contract overcharges in spare parts procurement.

By now, many of the examples of this flagrant waste in spare parts procurement are well known to the public. But I think at least a few examples are worth mentioning. It has, for example, been documented that over $1,100 was paid for a plastic stool cap worth barely a quarter, that $430 was paid for a claw hammer, and that $110 of taxpayer money was used to purchase a 4-cent diode.

In fact, I had first hand experience with these conditions. During an official visit to a defense procurement center in Florida, I borrowed a paper decal that was worth, at best, a few cents. It cost the Government and the American taxpayer approximately $50. I know. I lost the decal and was faced with the discouraging probability of having to reimburse the Government for this expense.

The amendment before us would produce at least four major reforms in the spare parts procurement system. The amendment would: First, end the discriminatory use of qualified bidder's lists, which can act to exclude potential bidders from certain contracts; second, prohibit the arbitrary use of sole source contracts by imposing new criteria for their use; third, require the Department of Defense issue new rules and regulations concerning the definition of legitimate proprietary rights for purposes of DOD contracting, and fourth the amendment will require the Government to catalog, store, and inventory the manufacturing data it already owns so that this information will be more accessible to potential offerors.

Each of these reforms will allow more effective competition for DOD spare and replacement parts. As Mr. BEDELL has noted, we have been "jawboning" this issue for 15 years and during this time the percentage of sole source awards in spare parts procurement has risen from 50 percent in 1969 to an incredible 77 percent in 1982.

It strains credulity to suggest that we can have anything approaching the best buy when 77 percent of spare part contracts are let to one predetermined contractor. It strains the credibility of this institution to let this practice go on, to let spare parts, a $13 billion a year expenditure, be purchased without effective competition.

I think it is time that we took some action and I believe the pending amendment will help to restore competition and result in lower end prices to the Government, and, of course, the American taxpayer. I urge my colleagues to join me in supporting this important alteration of DOD procurement law.

Brooks opposes Bedell Feb. date provision

The CHAIRMAN. The time of the gentleman from Iowa (Mr. BEDELL) has again expired.

(By unanimous consent, Mr. BEDELL was allowed to proceed for 1 additional minute.)

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Illinois.

Mr. DURBIN. I thank the gentleman for yielding.

Mr. Chairman, it is my understanding that the impact of the gentleman's amendment is to actually remove the list of qualified bidders and to allow a person or company to bid.

Mr. BEDELL. That is part of my amendment, yes.

Mr. DURBIN. Could I ask the gentleman to consider this worst case example and tell me how his amendment might apply.

What if a company was barred from bidding on Government work because that company had been found to have provided shoddy equipment or perhaps to have been guilty of criminal conduct, would this amendment now say that that company would have the right to bid, regardless of that moral turpitude?

Mr. BEDELL. But the Government would not accept the bid, nor be required to accept the bid. So it would be a useless procedure for him to go through.

Mr. DURBIN. So there is no requirement herein that the lowest bid be accepted?

Mr. BEDELL. No, there is no such requirement.

Mr. DURBIN. I thank the gentleman.

Mr. BROOKS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment to the Nichols amendment while I support the effort to correct the abuses that DOD has been experiencing in the procurement of spare parts.

Now the gentleman's amendment to the Nichols amendment goes considerably beyond the purpose of spare parts.

In doing so, it threatens to disrupt the legitimate procurement activities of the Department of Defense in a wide range of products and services.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentleman for yielding.

Did I understand the gentleman to say that he opposes the Nichols amendment?

Mr. BROOKS. No; the gentleman is not correct in that.

Mr. KAZEN. I wanted to get the record straight.

Mr. BROOKS. The amendment by Mr. BEDELL to the Nichols amendment is the one which I find particularly objectionable.

I say that that amendment goes beyond the purchase of spare parts. It threatens to disrupt the legitimate procurement procedures of the Department in a pretty wide range of products and services.

The language contained in that amendment is similar to the portions of H.R. 2133, a bill to amend the Small Business Act which was scheduled to be voted upon by the House on May 15. But Chairman MITCHELL removed this bill from the calendar in part, I guess, because of the strong opposition by many Members of Congress and a large segment of private industry.

□ 1750

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend, the gentleman from Maryland.

Mr. MITCHELL. That was not the reason for pulling the bill.

Mr. BROOKS. What was the reason?

Mr. MITCHELL. I am going to tell the gentleman, if he will continue to yield to me.

Mr. BROOKS. I yield to my friend.

Mr. MITCHELL. There were some members of a subcommittee who thought that they would come up with a substitute which would have eroded the intent of H.R. 2133. And rather than come up with a half bill substitute, I wanted the strongest possible bill.

We are going to meet and we are going to come back with a bill as soon as I can get my Small Business Committee together.

That is essentially what BEDELL is doing with his amendment, making it stronger, because there is no way in the world that you can say that this amendment would disrupt the whole procurement system. But even if it did, my own basic gut feeling is that the only way you are going to get a fair shot with DOD in particular is to restructure the entire procurement process. It is not going to work without a complete restructuring.

I thank the gentleman for yielding.

Mr. BROOKS. Let me just comment and say that, in short, the bill which the gentleman described and which I call H.R. 2133 is, in my judgment, seriously flawed and is no less deficient when presented in a piecemeal fashion such as this little bit that they want to tack on Mr. NICHOLS' amendment.

Clearly, this amendment, while seeking to cure the illness, may kill the patient. It contains a provision which will have the effect of eliminating qualified bidders or products lists. These lists are used to insure that the Department receives thoroughly tested and proven products such as those used in the military and the space systems. And I am certain that the DOD has abused its use of these lists by keeping some qualified firms and products out of the Federal marketplace. But I will say this: If we killed every program that experienced some abuse, some bad little horror story, we would not have a Department of Defense.

Another major area of deep concern is that the amendment seeks to empower the Secretary of Defense to define "legitimate proprietary interest" regarding technical and other data rights. Further, all Federal agencies, all of them, would have to adhere to the Secretary's determination in this matter. There are several serious problems related to this provision.

First, it is totally inappropriate for the Department of Defense to be issuing Government-wide regulations. Under current law, such regulations are issued by a council composed of DOD, NASA, and GSA under the leadership of the Office of Federal Procurement Policy. This procedure insures that the views of the major procuring agencies, as well as the public, are considered prior to the issuance of substantive changes in regulations. The amendment, however, requires only that associations representing small business concerns be consulted.

The CHAIRMAN. The time of the gentleman from Texas (Mr. BROOKS) has expired.

(By unanimous consent, Mr. BROOKS was allowed to proceed for 5 additional minutes.)

Mr. BROOKS. Second, this provision is not limited to spare parts and in fact affects a wide range of products and services such as computer software, scientific and medical devices, and other high technology items. Since there is no exemption for commercial products and other items developed at private expense, the provision will encourage the violation of proprietary data rights of small and large companies alike. Once again, just because there are data rights abuses in the spare parts area, there is no reason to apply a remedy which will adversely affect a wide range of Government suppliers.

Despite the concerns that I have outlined, many of my colleagues may find it a little bit difficult to vote against an amendment which purports to solve the problem of the $435 claw-hammer. But I would like to point out that we have been faced before with many so-called reform measures that cause much more harm than good.

I would urge all Members to look at this proposal for what it is and to vote against it and support the Nichols amendment without this decoration.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Wisconsin, and then I will yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. ROTH. I thank the gentleman from Texas for yielding. I know he has given this legislation a good deal of thought and much consideration. The gentleman said that this amendment, the Bedell amendment, would disrupt

the procurement procedures. Well, we certainly would not want to do anything like that, would we. After all, GAO said that if we make the connections called for in this area over a period of time, we could have saved $25 billion. The Grace Commission report said that within 1 year with competitive bidding, as the Bedell amendment calls for, we would save $9.3 billion.

Now, we realize that our deficit is close to $200 billion and this is not going to solve our deficit problems entirely. But certainly $9.3 billion, my friend, is not chickenfeed. If anything, the Nichols amendment, which I support, and the Bedell amendment, which I support, do not go far enough, and I am going to tell the gentleman why I feel that way. There is no onus, no burden put on anyone in DOD because of these unconscionable cost overruns.

Mr. BROOKS. May I say to my friend that I am going to have to regain my time, because I promised also to yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. I thank the gentleman for yielding.

Let me remind my colleagues that the gentleman in the well is the chairman of the Government Operations Committee and has spent many, many hours and has vast knowledge on this subject.

I would agree with my colleague from Maryland, perhaps this does not go far enough. But it is eons ahead of where we were.

And if I may ask the gentleman in the well, in his opinion, based on his knowledge and experience, if the amendment of the gentleman from Iowa were to pass, would it not open up bidding by all vendors and thereby open up the possibility that a vendor, well intended as he may be, might not be qualified to supply either the quality or the quantity that might be needed by the armed services?

Mr. BROOKS. I believe the gentleman states the situation accurately. I think it would endanger the procurement of properly tested equipment, services and facilities that many areas of our Defense establishment need in the worst way if we are going to have a good defense system.

Mr. HOPKINS. If the gentleman will yield further, would it not, then, if that were the case, based on the gentleman's experience, cost more, if that were the case, if that should happen?

Mr. BROOKS. I think that is correct. This will ultimately result in higher cost of spare parts. They are not facing the problem. They are trying to destroy the whole situation. They do not understand the entire procurement process. They are trying, with an aborting amendment, to set aside just what the Defense Department is supposed to do. What we need is general legislation. We need general legislation on competition. That is the heart of good pricing—competition.

Mr. HOPKINS. So the Nichols amendment then is a step in the right direction?

Mr. BROOKS. That is what I said and that is what I believe. It is not perfect. We are not going to cure the world, not the whole world, this week. But we can make a step forward, and the Nichols amendment does that.

Mr. HOPKINS. I thank the gentleman.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from Texas (Mr. BROOKS) has again expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BROOKS was allowed to proceed for 1 additional minute.)

Mr. ROEMER. I thank my distinguished colleague for yielding.

Let me make sure I understand what the gentleman just said in answer to our colleague from Kentucky.

Is the gentleman making the case that if the Bedell amendment is adopted by this committee, the price of clawhammers is going to go up from $435?

Mr. BROOKS. It could.

Mr. ROEMER. Does the gentleman really believe that?

Mr. BROOKS. I am not going to buy any of that. I did not buy this Allen wrench they offered for $9,000. But the cost could go up. This Allen wrench was offered at $9,000 to the Air Force, and it cost more than that whole stack of television gismos that we had already on here.

Mr. ROEMER. The gentleman has made a serious charge about the amendment of the gentleman from Iowa, that the price of already inflated spare parts could go higher.

Mr. BROOKS. Yes; I think it could.

Mr. ROEMER. Could the gentleman explain his charge?

Mr. BROOKS. Sure, it could go higher, certainly.

Mr. ROEMER. How?

Mr. BROOKS. Would anybody in their right mind believe that you would sell an Allen wrench like this one for more than 45 cents? But they offered it to the Government for $9,000. I do not think you could go much higher than $9,000 on an Allen wrench.

Mr. NICHOLS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I must oppose the amendment offered by my friend from Iowa (Mr. BEDELL). In so doing, let me say that I commend my colleague for his persistence in bringing the problems associated with spare parts to the attention of the Members. We differ in the approach in solving these problems. After more than a year-long investigation and eight hearings on the subject, the Armed Services Committee has reported a rather comprehensive bill.

□ 1800

We believe that the provisions in the amendment just offered which have been accepted by my chairman and by my ranking minority Member, address the real issues in a much more comprehensive and effective manner.

Many of the provisions in my amendment encompass, and in fact are more stringent, are more demanding than those in the amendment offered by Mr. BEDELL. In addition, I am opposed to the substance of Mr. BEDELL's amendment and let me explain to the Members why.

The amendment would, in my judgment, preclude the Department of Defense's use of a qualified products list which are necessary to insure qualified products are offered to the Government. Let me explain the qualified products list, if I may.

It is much like getting the Underwriter's Laboratory seal of approval, which all consumers rely on as an indication that the products has met certain safety standards.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. OTTINGER. Why on Earth would you have to be on a qualified bidders list to supply a claw hammer or an allen wrench?

Mr. NICHOLS. Let me tell the gentleman that I am not talking about claw hammers. We have about 100,000 items a year that are bought out of the 4 million items that we buy on the qualified bidders list. Let me tell the gentleman why that is necessary that we not abandon the qualified bidders list, if I may.

We think it is necessary that DOD must test products ahead of time before we buy them. Because the Defense Department is obliged to buy from the lowest bidder, it does not have the option of going out and picking the best product and buying it. Those of you who read Jack Anderson's column, and I do not usually quote from Jack Anderson's column, but on the 17th of May, he gave a clear example why qualified bidder's lists are needed.

In that column he cited the loss of about 16,000 American servicemen in the last 21 years due to accidental death. And he stated, and I will quote:

> Often our soldiers paid with their lives for penny-pinching practices that led to accidents. One such instance has been the increase in drowning accidents due to faulty and inadequate life jackets.

It is obvious then why lifejackets are on a qualified bidders list.

The same thing would apply for brake components on our aircraft. If that brake system fails or wears out prematurely, we do not only lose a $25 or $30 million aircraft, but we lost a human life as well.

I think it would be a very bad mistake to do away with qualified bidders lists. Bids ought to be evaluated ahead of time to determine if the product he offers meets Defense Department specifications. We need to ascertain the qualities of the product he is offering ahead of schedule and not after his bid has been offered.

I strongly object to the amendment offered by Mr. BEDELL.

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. MAVROULES. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has hit the nail right on the head with talking about screws and everything else here this afternoon.

The qualitative edge is one thing that we take pride in, because we do have that qualitative edge when we start talking and comparing with other nations. I think both amendments are pretty good. I am in support of the Nichols amendment and against the Bedell amendment, as much as I do that reluctantly. Let me give you my reasons why.

Although I personally, from the Armed Services point of view, have many differences with the Pentagon and the Defense Department, let us give credit where it is due. As for the Secretary of Defense, who has put into use at the present time his new auditing procedures; internal auditing, which again is attacking some of the problems that were referred to here this afternoon.

We have to take one step at a time, Mr. Chairman, one step at a time, and I think we have taken that initial step. We have sanitized our bill; I think it is a bill that could be approved by the Members of Congress, and we have put people on notice by stating this in our committee hearings. That, if indeed it does not work; if indeed it does not work, we are going to take a second look at it down the road.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 2 additional minutes.)

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. MAVROULES. The other point that we must make crystal clear: All of those who testified before our committee, all of them, were asked one question when they were investigating the so-called fraudulence procedures, is that, "Do we have any proof of any fraud taking place among the contractors and the defense industry?"

Not once, not once did someone come forth, at least through our internal auditing group, stating that there was no fraud committed. That is a very, very important point. So the point that we have to make here this afternoon is this: We have a good piece of legislation; we have had days and days of testimony on it. I think after listening to the Chairman here this afternoon, I think we have an obligation to go with those who took the testimony and came out with a decision.

Therefore, Mr. Chairman, I support your bill, and I am against the other amendment.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Ohio.

Mr. KASICH. You know, there are different ways of looking at things sometimes. In this instance, I must disagree with the argument of the distinguished chairman of the Government Operations Committee.

I would make the argument that if people in this Chamber are concerned about the spare parts problem, then they ought to read the amendment. Because in this amendment, as a colloquy between the sponsor of this amendment and another gentleman on the floor showed we have language that says that the Secretary of Defense ought to consider whether there should be a limit on proprietary rights if the data was developed substantially with Federal funds.

Under the current law, if Federal funds, if just one dime of Federal funds is used to develop a part, the data reverts to the Government. This amendment weakens the law that is now in effect.

Now, the gentleman has a toolbox up there, and he wants to solve the toolbox problem.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 1 additional minute.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Ohio.

Mr. KASICH. I happen to have some spare parts of my own. I have got a spring here that should cost 60 cents, but the Government paid $15.27 for it. Under this amendment if that part was developed by a private company, that part could remain proprietary forever. The abuse would continue.

If the gentleman from Maryland is sincere in his efforts to try to solve this problem, then he cannot support any amendment that goes in the direction of watering down the 7-year limit on proprietary rights, which he complimented me for just 10 minutes ago.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. KASICH. If the gentleman would let me finish my statement, I would be more than happy to yield.

Mr. MITCHELL. I would ask that the gentleman not question my sincerity under any occasion.

Mr. KASICH. That is not what I am attempting to do.

Mr. MITCHELL. That is the way it came out.

Mr. KASICH. I want to apologize.

The CHAIRMAN. The Chair would insist on regular order. The gentleman from Alabama (Mr. NICHOLS) has the time.

Mr. KASICH. I want to say to the gentleman from Maryland that I do not in any way, shape, or form question his sincerity. What I am suggesting to the gentleman is that if he is serious about the 7-year limit that is placed on proprietary rights, which he argued is the most serious provision in the Nichols bill, then he cannot support this amendment.

Mr. NICHOLS. Mr. Chairman, I must ask that the amendment be defeated.

Mr. KASICH. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise to oppose the amendment for one basic reason: The gentleman who offers this amendment says it is designed to strengthen the Nichols bill. But the gentleman's amendment weakens the 7-year provision that is contained in the present Nichols bill, which now puts a limit on proprietary rights for those firms that develop parts with the use of Government funds, as well as those that develop parts at their own expense. I am paticularly concerned about proprietary rights for items like a washer that the Government is paying 76 cents for, but could buy for 12 cents, or again, the spring, which the Government is paying $15.27 for, but ought to be buying for 60 cents.

□ 1810

In a colloquy, the question was asked that if somebody should develop an item at their own expense, does that mean that their rights should be protected forever? The answer given to that question was yes, but I do not agree with that. If such practices are allowed to continue, companies that produce those simple parts will be allowed to be the sole supplier for these parts for as long as they wish, which means that company would operate forever in a monopoly situation with the Government.

That is a very, very important point, and I want the gentleman from Maryland, who complimented me on my provision, to understand my argument here. I certainly would never question the integrity or the sincerity of the gentleman from Maryland on this. In fact, I commend him for his work, but I want him to understand this very crucial argument.

The other point I tried to make is that language in this amendment weakens the present Federal law as it applies to proprietary rights. Under current Federal law, if the Government puts one dime into the development of that part, the data on that part reverts back to the Government. But the Bedell amendment states that if data is developed partially at Gov-

ernment expense, proprietary rights may be granted to the contractor. That is without question a weakening of current Federal law.

So if this House is sincere, if this House wants to make a strong effort to try to take a major step forward, Members will oppose this amendment.

Let me state one more thing that was not pointed out in the Nichols bill. There are two provisions in the Nichols bill, one that says a contractor cannot prevent a small contractor from selling to the Government. That has been one of the major problems that we have had, because major contractors have gone to their subcontractors and said, "You do not tell the Government you are making this part for us." The teeth in the Nichols bill says that that shall not occur.

And there is another significant feature in the Nichols bill, requiring contractors to identify the subcontractors who produce the part. That would allow the Government to go directly to the manufacturer of this spring or of this washer and buy that part directly from the subcontractors. There are, without question, teeth in the bill, in the provision I just mentioned and the limitation on proprietary rights. Ladies and gentlemen, we do not want to water down the 7-year provision that says that the Government ought to be able to collect data and allow other companies to use it to compete for parts, because it is competition that brings down the prices.

So when an argument is made on one side that we have expensive items, but then on the other side we weaken or suggest that we weaken current Federal law that is designed to get us the cheapest possible prices, I say that is not correct. I say we ought to review this amendment and we ought not to weaken the 7-year limit on proprietary rights, and we ought to continue to support the Nichols bill as now written.

Mr. PRICE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the Bedell amendment. We all agree that the overcharges for spare parts is inexcusable. What we disagree on is how to meet the problem.

The approach proposed by the gentleman from Alabama, (Mr. NICHOLS) is more comprehensive than that proposed by the gentleman from Iowa (Mr. BEDELL) and provides the best solution, in my opinion, to this unfortunate problem that has damaged the credibility of the defense procurement process.

Mr. Chairman, I oppose the amendment offered by the gentleman from Iowa (Mr. BEDELL).

Mr. FUQUA. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FUQUA asked and was given permission to revise and extend his remarks.)

Mr. FUQUA. Mr. Chairman, I rise in opposition to the Bedell amendment and in support of the Nichols amendment, and I do it with great reluctance for my friend, the gentleman from Iowa, who I know, and my good friend, the gentleman from Maryland, who I know worked very hard in trying to perfect this amendment, but it does raise some very serious problems about some of the policy changes in the Federal procurement process which I think would be brought about if the amendment were adopted.

The Bedell amendment would provide that no small business could be denied the opportunity to have its offer considered by a Federal agency if it is not on a qualified bidders list or its products are not on a qualified products list. However, prequalification techniques are a standard and accepted practice in the Federal Procurement process.

These techniques, as used today, are neither designed to, nor do, to my knowledge, discriminate against small business or anybody else who desires to do business with the Federal Government. Rather, these procedures promote efficiency and economy to the Government, and are particularly important safeguards in areas requiring special skill, for instance in new technologies developed in the space program and a lot of the programs that come under the jurisdiction of the Committee on Science and Technology. My concern is that these goals would be impeded, rather than promoted, by such a provision of this kind.

If you were trying to buy a microscope, it is a lot different than someone building a clawhammer or an Allen wrench. Some of the sophisticated equipment that you need you must make sure that the people are qualified to produce not only quality but also that they can produce the product. If you get into a program and suddenly they default, as they may do, then the Government is back in the pickle again of trying to get out.

In addition, the amendment directs the Secretary of Defense to promulgate rules and regulations defining "legitimate proprietary interest," as has already been mentioned, in an attempt to restrict a perceived abuse of such designations to impede competition.

Although the amendment states that the Secretary shall give due consideration to the statements of policy contained in the uniform patent bill for universities, small business, and not-for-profits—the thrust of the amendment is to look at the rights to technical data developed with Federal funds, a time limit on rights to technical data and requiring a contract clause specifying the Government's rights to own or use.

This part of the amendment runs contrary to the whole effort to encourage high technology expansion and innovation from these companies that work with the Federal Government.

For those reasons, I urge rejection of the amendment offered by the gentleman from Iowa.

Mr. AUCOIN. Mr. Chairman, will the gentleman yield?

Mr. FUQUA. I would be happy to yield to my friend, the gentleman from Oregon.

Mr. AUCOIN. I appreciate the gentleman yielding.

Mr. Chairman, the gentleman in the well knows the respect that this gentleman has for him. I do disagree with the statement that he has made and the position he has taken on the Bedell amendment, however, because in my judgment, Mr. BEDELL has laid out for us an alternative that has real teeth in it and offers a real chance for taxpayers to get the best deal they possibly can.

I think really that is what our job ought to be. One of the strengths of the Bedell amendment, it seems to me, is the reforms it offers in terms of sole-source procurement. I have not heard anything that the gentleman has said, and I am not picking on him because I have not heard anything in the whole discussion this afternoon about the reforms in sole-source procurement that the Bedell amendment offers.

I found out, to my astonishment, that in fiscal year 1982 the military spent $13 billion on spares and replacement parts, and 77 percent of those purchases were on a sole-source, noncompetitive basis. The GAO report estimates that 30 to 40 percent savings could be found if we simply reformed that. Bedell does it. I cannot understand why the gentleman is opposed to that.

Mr. FUQUA. Let me say to my friend from Oregon that I am not condoning some of the previous practices that have gone on. I think the gentleman from Alabama is attempting to correct that, but in the process of doing this, let us not destroy the whole concept of competitive bidding by opening to unqualified bidders. Certainly everybody can do it and the present procedure of qualified bidders does not discriminate against anyone.

Mr. AUCOIN. I ask the gentleman, what is competition if it is not opening the doors and letting people in to bid?

Mr. FUQUA. We have open competition today. We need more.

Mr. LEVIN of Michigan. Mr. Chairman, as a cosponsor of H.R. 5064, the Defense Spare Parts Procurement Reform Act, I rise in support of the Nichols amendment on spare parts procurement.

The last 3 years have been marked by the most rapid and expensive military buildup in U.S. peacetime history. For many of us in Congress, the administration's sharp increases in the level of defense spending beyond levels necessary for an effective defense, especially during a time of serious economic stress, have been a source of major concern. This is why it is par-

FUQUA opposes Rich data VS Bedell

ticularly distressing to many of us in Congress and the public to read every day of million-dollar cost overruns in weapons programs, and the unfathomable prices our Government has paid for simple spare parts that can be purchased at hardware stores for a mere fraction of the cost we pay to contractors.

Last year, Congress took several important steps to promote accountability in military procurement by the creation of an independent Office of Operational Test and Evaluation to manage the weapons testing process; requiring weapons manufacturers to provide warranties on the weapons they sell to the government; and requiring the DOD to report to Congress on its efforts to solve the spare parts problem.

Mr. Chairman, this amendment takes direct steps to make necessary reforms in the defense acquisition process by getting at the heart of the spare parts problem: accountability and management incentive. This amendment is the culmination of almost a year of study by Chairman Nichols and his Investigations Subcommittee. The amendment will provide better planning in the procurement of spare parts by requiring DOD buyers to check existing inventories before ordering, in addition to checking the prior procurement history of the same item. It will allow the DOD to purchase directly from subcontractors, thereby eliminating the added expense of the contractor-as-middleman relationship. Additionally, it clears the uncertainty about technical rights by requiring contractors to stand behind any data they provide to the Government. The amendment also will allow for recognition of individual efforts to increase competition and achieve cost savings during personnel evaluations, and requires the assignment of a competition advocate to each contracting activity.

Mr. Chairman, as we embark on consideration of a spending measure to commit $98 billion for military procurement, it is imperative that we act now to curb the waste and abuse in defense purchasing practices. I urge adoption of the Nichols amendment.

● Mr. HARKIN. Mr. Chairman, it is time that American taxpayers stopped being played for suckers. We are all scandalized at the thought of the taxpayers shelling out $436 for a $7 hammer or $938 for a $5 plastic stool leg cap, and so forth.

The question is whether we are going to do anything about it. Congressman BEDELL's amendment will really have an effect. We should all support it.

The amendment increases the ability of small businesses to bid on these spare parts contracts. It opens up the system to competition. It is a scandal that the Department of Defense overpays by dozens and hundreds of times on some spare parts. A large part of the reason is that the Department buys 77 percent of their spare parts through sole-source contracts where there is only one supplier. Back in 1969, a congressional report took the Department to task over spare parts. And, then, 50 percent of the purchases were negotiated without price competition. Now, 15 years later, things have gotten a lot worse.

Mr. Chairman, we need to do more than simply codify the Defense Department's regulations. The Bedell amendment has real teeth. It would prohibit arbitrary sole source bidding.

It also requires contractors to supply parts at the lowest commercial price. Any deviation would have to be specificly explained. If there is some reason for a very high price, if the national security or some very special circumstance exists, it should be explained. This provision is completely logical.

You hear all kinds of screams of anguish from the defense contractors. You hear about all kinds of technicalities. But, the question is: Are we here to serve the contractors or the taxpayers.

I urge a "yes" vote on the Bedell amendment.●

□ 1820

Mr. DICKINSON. Mr. Chairman, we have been on this amendment now for an hour and 20 minutes. I ask unanimous consent that all debate on this amendment terminate at 6:30, 10 minutes from now.

The CHAIRMAN. On this amendment and all amendments thereto?

Mr. DICKINSON. On this amendment and all amendments thereto, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The CHAIRMAN. Members standing at the time the time for limitation of debate was set will be recognized for 45 seconds each.

(By unanimous consent, Mr. MITCHELL yielded his time to Mr. BEDELL.)

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Chairman, I rise in strong support of the Bedell amendment.

I think some of the arguments that have been made here are spurious. There has clearly been a cozy relationship over the years among the Defense Department, the contractors, and the committee, and this qualified bidders' list is a key part of that, keeping people from being able to bid on particular products. The gentleman from Iowa made clear that the Defense Department, in selecting the bidder, has a right to look at the qualifications of that bidder. So the idea of having to purchase from people who cannot produce adequate brakes or lifejackets is just spurious.

Mr. Chairman, I urge adoption of the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. ZSCHAU).

Mr. ZSCHAU. Mr. Chairman, I would like to address a quick question to the author of the amendment, the gentleman from Iowa (Mr. BEDELL).

In his amendment it indicates that the Department of Defense should establish reverse engineering programs. Does that mean that if a company, for example, develops a printed circuit board like the one I have here, the Department of Defense would then be authorized at taxpayer expense to pay for reverse engineering of this in order to enable other people to develop it or to offer it for sale to the Government?

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ZSCHAU. I yield to the gentleman from Iowa.

Mr. BEDELL. No; the Department of Defense does not go to any expense in this regard. It simply opens it up so that other firms, if they wish to do so, would be able to obtain parts in order to be in a position to bid on those products.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. Mr. Chairman, the point I would like to make is that no one, to my knowledge, who has worked on this legislation now for over a year on the subcommittee is on the side of the contractors. Nobody is trying to shelter them. The fact is that anybody can bid who wants to and who is qualified.

The point is, if they are not qualified to produce, then it could end up costing the taxpayers more money, and I know of no member of this committee, I say to the gentleman from Iowa (Mr. BEDELL), who is well intentioned in his amendment, that wants that. I think this is a right step in the right direction.

The CHAIRMAN. The Chair recognizes the gentlewoman from California (Mrs. BOXER).

Mrs. BOXER. Mr. Chairman, I would like to say that I think the Bedell amendment strengthens the Nichols amendment, and I think both amendments are really good for the taxpayers, so I support both amendments.

I think the gentleman from Florida said in opposition to the Bedell amendment: "Don't destroy competitive bidding by opening it up to everybody."

I simply cannot agree with that statement. We should open it up to everybody to lower prices on these military spare parts. That is what competitive bidding is all about, and I hope we will support both of these amendments before us.

(By unanimous consent, Mr. STRATTON and Mr. DICKINSON yielded their time to Mr. NICHOLS).

The CHAIRMAN. The Chair recognizes the gentleman from Virginia (Mr. DANIEL).

Mr. DANIEL. Mr. Chairman, I ask the gentleman from Iowa (Mr. BEDELL) if he would respond to a question.

Is it my understanding that the gentleman's amendment in no way affects the procurement policy, practices, or regulations of the military commissaries?

Mr. BEDELL. Mr. Chairman, if the gentleman will yield, that is correct.

Mr. DANIEL. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana (Mr. ROEMER).

Mr. ROEMER. Mr. Chairman, I rise in support of the Nichols amendment and of the Bedell amendment. They fit together. They make stronger a process which is inherently weak.

I hear the objections from the other side that the dividing line is the qualified bid list. What the Bedell amendment does is open it up. In a strange free-enterprise system, he lets more companies bid on these products.

What is wrong with that?

He allows the military the right, having chosen the low bidder, to select the quality that meets their standards.

Mr. Chairman, the Bedell amendment is right here, and we as the Congress ought to follow it.

The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. CONTE).

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Chairman, I support the Bedell amendment.

This amendment which is being considered will be, I think, another major step in bringing the word "competition" into the vocabulary of Government procurement. Once we limit the reasons that the Department of Defense can purchase spare parts under a sole-source process, we will create price competition and bring these prices down. Members of Congress will be very, very proud if we pass this amendment.

As a corollary benefit, this competition will involve more businesses in the defense procurement process, and this will strengthen and broaden the industrial base.

Mr. Chairman, in answer to the questions of the gentleman from Louisiana (Mr. ROEMER) to the——

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. CONTE) has expired.

The Chair recognizes the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Chairman, may I be permitted to close debate? It is my amendment. May I be permitid the opportunity to close debate?

Mr. CHAIRMAN. The Chair will state that that may be done only by unanimous consent.

Mr. BEDELL. Mr. Chairman, I ask unanimous consent that I be permitted to close debate.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Alabama (Mr. NICHOLS).

Mr. NICHOLS. Mr. Chairman, I rise to respond to the suggestion of the gentleman from Oregon that he had heard no discussion related to sole-source procurement. Let me say to the gentleman from Oregon that the figures he quoted are well known to our committee. They are of much concern to our committee, and we intend to do something about them.

For that reason, we have established competition advocates by law for every contracting office in the military in this country. These people are there with engineering and technical backgrounds and are able to challenge any claims that just one company can provide sole-source procurement for a part.

In addition, Mr. Chairman, there are presently pending three separate bills to establish by statute the exceptions for sole source on all contracts. The issue is better addressed in those bills, H.R. 2545, H.R. 5184, and S. 338.

Mr. Chairman, I appreciate the attention which the gentleman from Iowa has given this subject. I hate to have to oppose him, but I hope we will not do away with the qualified bidders list that is very, very important, and for that reason I urge the Members to vote down the Bedell amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. BEDELL).

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I rise in support of the gentleman's excellent amendment.

It has been said during the debate that this will disrupt the whole procurement process, particularly the procurement of items the defense establishment needs in the worst way.

The problem is that in too many instances the defense establishment is procuring those items in the worst way.

Mr. Chairman, I commend the gentleman from Alabama (Mr. NICHOLS) for his excellent amendment, and I support the amendment offered by the gentleman from Iowa (Mr. BEDELL) to that amendment. Something good and needed has been made better and is most definitely needed.

Mr. BEDELL. Mr. Chairman, I thank the gentleman from New York (Mr. BOEHLERT).

Mr. Chairman, the reason I requested to be last is that I wanted to find out if there were any other arguments against this amendment. As nearly as I can tell, the argument against the amendment is that it will open up competition and permit anyone to bid.

If Members are against anyone having an opportunity to bid, then they ought to vote against my amendment. But I hope we are concerned enough about taxpayers' dollars that we are going to say right now that we are going to stop some of these practices.

Mr. Chairman, I want it understood clearly that my amendment does not delete any part of the Nichols amendment, and I urge a vote for this amendment.

The CHAIRMAN. All the time has expired.

The question is on the amendment offered by the gentleman from Iowa (Mr. BEDELL) to the amendment offered by the gentleman from Alabama (Mr. NICHOLS).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. NICHOLS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 324, noes 75, not voting 34, as follows:

[Roll No. 189]

AYES—324

Ackerman	Dannemeyer	Harrison
Addabbo	Daschle	Hayes
Akaka	Daub	Hefner
Albosta	Davis	Heftel
Anderson	de la Garza	Hertel
Andrews (NC)	Dellums	Hightower
Andrews (TX)	Derrick	Hiler
Applegate	Dicks	Howard
Archer	Donnelly	Hoyer
AuCoin	Dorgan	Hubbard
Barnes	Dowdy	Huckaby
Bartlett	Downey	Hughes
Bates	Dreier	Hyde
Bedell	Durbin	Ireland
Bellenson	Dwyer	Jacobs
Bereuter	Early	Jenkins
Berman	Eckart	Jones (NC)
Bethune	Edgar	Jones (OK)
Biaggi	Edwards (CA)	Jones (TN)
Billrakis	Emerson	Kaptur
Bliley	Erdreich	Kastenmeier
Bochlert	Erlenborn	Kemp
Boggs	Evans (IA)	Kildee
Boland	Evans (IL)	Kindness
Boner	Fascell	Kleczka
Bonior	Fazio	Kogovsek
Bonker	Feighan	Kolter
Borski	Ferraro	Kostmayer
Bosco	Fiedler	Kramer
Boucher	Fields	LaFalce
Boxer	Fish	Lagomarsino
Britt	Florio	Lantos
Broomfield	Foglietta	Latta
Brown (CA)	Foley	Leach
Brown (CO)	Ford (TN)	Leland
Broyhill	Fowler	Levin
Burton (CA)	Frank	Levine
Burton (IN)	Frenzel	Levitas
Campbell	Frost	Lewis (FL)
Carney	Garcia	Lipinski
Carper	Gekas	Livingston
Carr	Gephardt	Loeffler
Chappie	Gilman	Long (MD)
Clarke	Gingrich	Lowery (CA)
Clay	Glickman	Lowry (WA)
Coats	Gonzalez	Lujan
Coelho	Goodling	Luken
Coleman (TX)	Gradison	Lundine
Collins	Gramm	Lungren
Conable	Gray	Mack
Conte	Green	MacKay
Conyers	Gregg	Madigan
Cooper	Guarini	Markey
Corcoran	Gunderson	Marlenee
Coughlin	Hall (IN)	Martin (IL)
Courter	Hall, Ralph	Martin (NC)
Coyne	Hall, Sam	Martinez
Craig	Hamilton	Matsui
Crane, Daniel	Hammerschmidt	Mazzoli
Crane, Philip	Harkin	McCandless

McCollum
McDade
McGrath
McHugh
McKernan
McKinney
McNulty
Michel
Miller (CA)
Miller (OH)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Moody
Moore
Moorhead
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nielson
Nowak
O'Brien
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Panetta
Parris
Pashayan
Patman
Patterson
Paul
Pease
Penny
Perkins
Petri
Pickle
Porter
Pritchard
Pursell
Rahall
Rangel
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Roybal
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Shannon
Sharp
Shaw
Shelby
Shumway
Sikorski
Siljander
Sisisky
Skeen
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spratt
St Germain
Staggers
Stangeland
Stenholm
Stokes
Studds
Sundquist
Swift
Synar
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NOES—75

Alexander
Annunzio
Aspin
Badham
Bateman
Bennett
Bevill
Brooks
Byron
Chandler
Chappell
Cheney
Clinger
Daniel
Darden
DeWine
Dickinson
Dingell
Duncan
Dyson
Edwards (AL)
English
Fiippo
Ford (MI)
Fuqua
Gejdenson
Hansen (UT)
Hartnett
Hatcher
Hillis
Hopkins
Horton
Hunter
Hutto
Johnson
Kasich
Kazen
Kennelly
Lehman (FL)
Lewis (GA)
Lloyd
Long (LA)
Lott
Mavroules
McCain
McCloskey
McCurdy
McEwen
Mica
Mikulski
Montgomery
Morrison (CT)
Morrison (WA)
Myers
Nichols
Oakar
Oxley
Price
Quillen
Ratchford
Ray
Robinson
Rowland
Rudd
Shuster
Skelton
Smith, Denny
Spence
Stratton
Stump
Thomas (CA)
Whitehurst
Wright
Young (MO)
Zschau

NOT VOTING—34

Anthony
Barnard
Breaux
Bryant
Coleman (MO)
Crockett
D'Amours
Dixon
Dymally
Edwards (OK)
Franklin
Gaydos
Gibbons
Gore
Hall (OH)
Hance
Hansen (ID)
Hawkins
Holt
Jeffords
Leath
Lehman (CA)
Lent
Marriott
Martin (NY)
Minish
Packard
Pepper
Sensenbrenner
Simon
Stark
Tallon
Wilson
Wirth

□ 1850

The Clerk announced the following pairs:

On this vote:

Mr. Lehman of California for, with Mr. Franklin against.

Mr. Crockett for, with Mrs. Holt against.

Messrs. SAWYER, BURTON of Indiana, COLEMAN of Texas, LIVINGSTON, ORTIZ, BLILEY, DOWDY of Mississippi, LUJAN, HEFNER, NELSON of Florida, KRAMER, PASHAYAN, and ROSE and Mrs. BOGGS changed their votes from "no" to "aye."

So the amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama (Mr. NICHOLS), as amended.

RECORDED VOTE

Mr. NICHOLS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 396, noes 0, not voting 37, as follows:

[Roll No. 190]

AYES—396

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Applegate
Archer
Aspin
AuCoin
Badham
Barnes
Bartlett
Bateman
Bates
Bedell
Bellenson
Bennett
Bereuter
Berman
Bethune
Bevill
Biaggi
Biliirakis
Billey
Boehlert
Boggs
Boland
Boner
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Britt
Brooks
Broomfield
Brown (CA)
Brown (CO)
Broyhill
Burton (CA)
Burton (IN)
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chappie
Cheney
Clarke
Clay
Clinger
Coats
Coelho
Coleman (TX)
Collins
Conable
Conte
Cooper
Corcoran
Coughlin
Courter
Coyne
Craig
Crane, Daniel
Crane, Philip
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Donnelly
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frenzel
Frost
Fuqua
Garcia
Gejdenson
Gekas
Gephardt
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gradison
Gramm
Gray
Green
Gregg
Guarini
Gunderson
Hall (IN)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hansen (UT)
Harkin
Harrison
Hartnett
Hatcher
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kogovsek
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Lehman (FL)
Leland
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Lloyd
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Markey
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Panetta
Parris
Pashayan
Patman
Patterson
Paul
Pease
Penny
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Shannon
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Swift
Synar
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NOES—0

NOT VOTING—37

Anthony
Barnard
Breaux
Bryant
Byron
Coleman (MO)
Conyers
Crockett
D'Amours
Dixon
Dymally
Edwards (OK)
Franklin
Gaydos
Gibbons
Gore
Hall (OH)
Hance
Hansen (ID)
Hawkins
Holt
Jeffords
Leath
Lehman (CA)
Lent
Marriott
Minish
Packard
Pepper
Pritchard
Rodino
Sensenbrenner
Simon
Stark
Tallon
Wilson
Wirth

□ 1900

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. STRATTON

Mr. STRATTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STRATTON: Page 131, after line 2, insert the following

"(C) waive, in whole or in part, any right of ownership which the Government may have under any other statute to any inventions made by a collaborating party or employee of a collaborating party under the arrangement; and

"(D) to the extent consistent with any applicable agency requirements, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

"(3) Each agency shall maintain a record of all agreements entered into under this section.

"(b) DEFINITION.-- As used in this section, the term--

"(1) 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government provides personnel, services, facilities, equipment, or other resources (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the agency, except that such term does not include a procurement contract or cooperative agreement as those terms are used in

17 U.S.C. 105 is not applicable to the results of such arrangements an

"(A) to enter into cooperative research and development arrangements (subject to such regulations or review procedures as the agency considers appropriate) with other Federal agencies, units of State or local government, industrial organizations (including corporations, partnerships and limited partnerships), public and private foundations, non-profit organizations (including universities), or other persons (including licensees of inventions owned by the Federal agency); and

"(B) to negotiate licensing agreements under section 207 of title 35, United States Code, or other authorities for Government-owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the Government.

"(2) Under arrangements entered into pursuant to paragraph (1), a laboratory may--

"(A) accept funds, services, and property from collaborating parties and provide services and property to collaborating parties;

"(B) grant or agree to grant in advance to a collaborating party patent licenses, assignments, or options thereto, in any invention made by a Federal employee under the arrangement, retaining such rights as the Federal agency considers appropriate;

OR Copyright

OR accounting

are competitive and often less expensive than products manufactured in the United States;

(5) whereas we have as a Nation been highly successful in the conduct of basic research in a variety of scientific areas, including superconductivity, other nations have been highly successful in the commercial and military application of the results of such fundamental research;

(6) if the United States is to regain its competitive advantage, it must commit sufficient, long-term resources toward solving processing and manufacturing problems in parallel with basic research and development;

(7) Federal agencies have responded aggressively to this exciting challenge by reprogramming funds into basic superconductivity science and research while informally coordinating their efforts to avoid unnecessary duplication and further commitment of Federal research moneys and efforts directed to manufacturing, materials processing, and fabrication technologies is essential so that their activities may be conducted in parallel with the basic science research;

(8) successful development and application of the new superconducting materials will require close collaboration among the Federal Government and the industrial and academic components of the private sector, as well as coherent coordination among the departments

TITLE IV --TECHNOLOGY MANAGEMENT AT THE DEPARTMENT OF ENERGY

NATIONAL LABORATORIES

Sec. 400. Duties and authorities of the Secretary of Energy.

The Secretary of Energy shall:

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

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

(B) undetake "work-for others"; and

(C) operate user facilities.

(D) review standards of conduct for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely

to arise through the use of the authorities granted in this Act, included, but not limited to cases where present or former National Laboratory employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies including the Department of Energy or the contractor-operator with which the employee involved is or was formerly employed.

(2) review all Freedom of Information Act policies and procedures to ensure that they are not inconsistent with the purposes of the this Act.

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

(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.

~~Sec. 4(a). Findings.~~

~~The Congress finds that--~~

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

(2) management authority for intellectual property must be ~~[granted]~~ delegated from the Secretary of Energy to the Director of the Department of Energy National Laboratories to ensure that they can negotiate with industry to set up cooperative research and development agreements; This authority shall be subject to periodic audit and oversight by the Secretary of Energy, the Inspector General and the Comptroller General as well as Congress.

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

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

(5) the National Laboratories must aggressively seek contact with private industries to ensure that they recognize the technical and scientific expertise resident in these laboratories, in addition to publicizing the availability of user facilities and technological projects in ~~[process]~~ progress; and

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

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

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

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

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

Sec. 401. FINDINGS.

DOE comments: Objectionable--Finding (2) should be deleted. It states that management authority must be granted to the Lab Directors so they can negotiate cooperative R & D agreements. We object to giving all authority to the Lab Directors.

7/8/88 Domenici staff comment:

Modify Finding (2) to make clear that the management authority is delegated from the Secretary to the Lab Directors and that oversight is explicitly retained.

Updated response from DOE.

SEC. 402. PURPOSE.

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

Sec. 402. PURPOSE.

DOE comments:None.

SEC. 403. POLICY.

It is the policy of Congress that

(1) intellectual property rights in technology [~~or devices~~] developed at the National Laboratories be [~~controlled in a manner that promotes~~] managed so as to promote [~~the use of such technology and devices to improve~~] the competitiveness [~~advantage~~] of [~~the~~] United States industries [~~.~~] ;

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

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

Sec. 403. POLICY.

DOE comments on original text: None.

7/8/88 Domenici staff comment: (2) and (3) were added to clarify the overall direction of the legislation.

Sec. 404. DEFINITIONS.

For purposes of this title--

(1) 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.).

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

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

(4) 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.

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

[~~(5)~~] (6) 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.

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

[~~(7)~~] (8) The term "collaborative party" means a party to a cocperative research and development agreement as defined in paragraph (4).

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

Sec. 404. DEFINITIONS.

DOE Comments: Requires Clarification - The definition of "intellectual property" improperly equates all forms of intellectual property. The inclusion of "trade secrets" and "intellectual property enacted by . . . the states", in conjunction with secs. 401 and 408 creates (1) potential new and substantial liabilities for the Government and/or its contractors; (2) a new "closed" approach to operation of the Labs and handling Lab-produced technical data; (3) a new requirement that such data be exchanged only with nondisclosure agreements; and (4) limits the ability of contractors to build on research and data produced by another lab.

The definition of "laboratory owned" should be modified by inserting "expressly" before "conveyed" and striking everything after "National Laboratory" because the Lab can only own rights they expressly are given by the Government.

Domenici staff response:

The definition of intellectual property does not equate all forms of intellectual property, but merely lists types that are covered by the definition. This does not require that all types of intellectual property be handled in the same way.

7/8/88 Domenici staff update:

In order to limit the "closed approach" and to limit the scope of this provisions relating to technical data, the language has been limited to include only applied research of near term commercial value. Elsewhere in the bill, the time frame is limited to two years.

Protection of technical data is imperative if industry is going to be willing to use the labs. Clearly some accommodation has to be made in this area to meet the needs of industry in the tech data area.

SEC. 405. *COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

(a) General Authority.--The Secretary of Energy shall [~~permit~~] develop policy guidelines under which he shall delegate the authority to the Director of any of its National Laboratories:

(1) to enter into cooperative research and development agreements and to negotiate the terms and conditions of such agreements on behalf of the Department of Energy with--

(A) other federal agencies;

(B) units of state or local government;

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

(D) public and private foundations;

(E) nonprofit organizations including universities; or

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

(2) to negotiate intellectual property licensing agreements for National Laboratory owned inventions, technical data or computer software, assigned or licensed to

the National Laboratory by third parties including voluntary assignment by employees.

(b) Specific Authority.--Under cooperative research and development agreements entered into pursuant to subsection (a)(1), the Director of a National Laboratory may--

(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 National Laboratory employee under the cooperative research and development agreement; and

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

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

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

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

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

(4) the proposed cooperative research and development agreement is consistent with other guidelines that the Secretary of Energy may prescribe consistent with the policies set forth in this Act.

~~[(c)]~~ (d) Approval of Agreement by Secretary.--~~[(1) If the value of an agreement entered into under this section does~~

~~not exceed $1,000,000, the agreement shall not be subject to the approval of the Secretary of Energy.~~

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

The Secretary of Energy or his designee may disapprove or require the modification of the agreement. The agreement shall provide a 30-day period beginning on the date the agreement is presented to the Secretary of Energy or his designee by the [~~head~~] Laboratory Director of the National Laboratory concerned, within which such action shall be taken. In any case in which the Secretary of Energy or his designee disapproves or requires the modification of any cooperative agreement presented under this section, the Secretary or his designee shall transmit a written explanation of such disapproval or modification to the [~~head~~] Laboratory Director of the National Laboratory concerned. If such action is not taken within this thirty day period, the cooperative research and development agreement shall be deemed approved.

[~~(d)~~] (e) Limit on Percentage Of the Total Work Cooperative Reserach and Development Agreements Can Comprise atthe National Laboratories. The cumulative total of non-appropriated funds of all agreements entered into by each

National Laboratory Director under this section shall not exceed an amount equal to 10 percent of that laboratory's annual budget.

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

Sec. 405. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

DOE Comments:

Sec. 405. (a), (c), and (d) --Objectionable -- Allows Lab Directors to enter into cooperative R&D Agreements and to waive DOE intellectual property rights. This provisions applicable to all areas of research is objectionable for the same reasons as sections 109 and 110 and also because it purposes to allow one private party to convey ownership rights of the Government to another private party. It is unclear whether the limitation in section 405(d) refers to nonappropriated or DOE funds.

Section 405(b) and (e). Objectionable -- Allows Lab Director to negotiate intellectual property licensing agreements, exchange personnel and services, license or assign the rights to lab developments, and permit Lab employees to participate in commercialization efforts for lab developments. These activities already are taking place at some DOE Labs, but they require some degree of DOLE oversight. As written, the legislation does not even assure DOE will be notified of the agreements.

7/8/88 Domenici staff response:

The authority to enter into the cooperative agreements has been changed from a Congressional grant of authority to the Laboratory Directors to a Congressional mandate that the Secretary delegate that authority to the Laboratory Directors.

The Laboratory Directors are required to submit a record of all agreements to the Secretary annually.

The two tier system dealing with approval of research and development agreements is eliminated and the Secretary is given an 30-day approval process patterned after current law.

SEC. 406. CONTRACT CONSIDERATIONS.--(a) Regulations and Procedures.--(1) [~~The Office of Federal Procurement Policy,~~] The Secretary of Energy may issue regulations or set forth suitable procedures for implementing the provisions of Section 405 [~~(a)(1)~~] after public comment. Implementation of Section 405 [~~(a)(1)~~] shall not be delayed until issuance of such regulations.

(2) Any regulations covering National Laboratory cooperative research and development agreements under Section 405 [~~(a)(1)~~] shall be guided by the purpose of this Act.

(3) In the event the Department of Energy regulations referred to above are not promulgated within one year from date of enactment of this Act, the responsibility for issuing regulations shall be transferred to the Office of Federal Procurement Policy.

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

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

(2) 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 developed and manufactured substantially in the United States.

(3) 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; and

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

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

Sec. 406. CONTRACT CONSIDERATIONS.

DOE Comments: Objectionable--authorizes OFPP to issue implementing regulations. As this bill deals totally with the Department of Energy (DOE), any policies or regulations should be issued by DOE; the OFPP has neither the capability nor the regulatory mechanisms available to it within the Federal procurement system to accomplish the bills' requirements.

7/8/88 Domenici staff response:

Allow DOE one year to work with the other agencies to promulgate appropriate regulations. However, the bill would provide that in the event that the regulations are not promulgated the responsibility would be transferred to OFPP. This strict time frame is required since other sets of regulations in this area have taken years and years to promulgate. There are assertions that DOE has been unwilling to negotiate modifications to proposed regulations in the technology transfer and class waiver areas.

DOE Comments:

The requirement that DOE maintain records of all cooperative agreements is impossible if DOE is not required to be informed of all agreement.

7/8/88 Domenici Response:

The text of the bill has been changed to place the responsibility for maintaining the records on the Laboratory Director and to require that he submit the records annually to the Secretary of Energy.

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

(a) Disposal of Title to Inventions.--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 title to any subject invention made in the performance of a Department of Energy contract to operate any National Laboratory in the same manner as applied to small business and nonprofit organizations under Chapter 18 of title 35, United States Code.

(b) Retention of Title by United States.--(1) Whenever a National Laboratory makes an invention to which the Department of Energy has determined to retain title at the time of contracting--

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

(B) because the invention is made in the course of or under a funding agreement described in section 202(a)(iv) of title 35, United States Code,

the title to such invention shall be retained by the Government unless the National Laboratory at which the invention is made

requests title to such invention and the Secretary of Energy does not notify the National Laboratory within 90 days of such request that the invention is covered by an exceptional circumstances determination or has been designated sensitive technical information as authorized by Federal statutes other than those involving export control.

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

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

Sec. 407. PATENT OWNERSHIP AND CONDITIONS.

DOE Comments: Objectionable -- Allows Lab Directors to retain title to an invention upon request, unless the Secretary gives notification within 90 days that the invention is covered by an exceptional circumstances determination or is designated sensitive technical information. This removes the exception in Chapter 18 of title 35, U.S.C. for weapons and naval nuclear propulsion related inventions. The burden should not be on the Secretary to justify refusal of a title request, nor should he be precluded from using justifications such as non-proliferation export control status or any other national security determination where DOE believes national security could be compromised. Export control statues ordinarily would not prevent title transfer to a private individual. Labs may retain title indiscriminately on all work done at the lab and thus prevent transfer of title to a cost-sharing industrial party or a party fully reimbursing for cost of work. This could be detrimental to commercialization and to private sector access to the Labs.

Domenici staff response:

This section is modeled after current law in Title 35, section 200 et. al. and specifically references section 202(a)(iv), which relates to weapons and naval nuclear propulsion funds. The nuclear weapons exception is not repealed.

This provision does not do away with the contractors' obligation to abide by export control statutes, and, consequently, should not be used as a rationale for precluding title transfer.

Labs may not retain title indiscriminately because if technology is not being effectively commercialized, DOE may exercise "march-in rights" which means that DOE could retake title.

Proposed changes:

Replace, in section 407(b)(2), the phrase "regulations as a basis" with "regulations as the sole basis."

Delete, in section 407(b)(3), the phrase "other than those involving export control."

SEC. 408. TECHNICAL DATA OR COMPUTER SOFTWARE AND THE CONDITIONS OF OWNERSHIP--(a) Rights Retained by a National Laboratory.--Notwithstanding any other provision of law, the Secretary of Energy shall delegate the authority to permit a National Laboratory to elect ownership to any intellectual property rights that can be established to protect commercially valuable technical data or computer software obtained or generated under a Department contract for the operation of such National Laboratory subject to a royalty free license to use and reproduce such technical data or computer software for United States Governmental purposes.

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

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

(B) the technical data has been generated as a result of or under a cooperative reserach and development agreement; and

[~~(B)~~] (C) 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.

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

(A) by the Department of Energy or the National Laboratory pursuant to shcu cooperative research and development agreement; or

(B) under a National Laboratory cooperative research and development,

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

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

(c) Regulations.--[~~The Office of Federal Procurement Policy,~~] (1) The Department of Energy, in cooperation with

other interested federal agencies, shall issue within 180 days after the date of enactment of this title including 30 days for public comment, regulations establishing a standard contract clause to implement [this] sections 407 and 408 in the Department of Energy contract for the operation of any National Laboratory.

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

Sec. 408. TECHNICAL DATA.

DOE comments: Sec. 408(a) and (b). Objectionable. Allows Labs to elect ownership to intellectual property rights protecting technical data (including software) generated under a DOE operating contract. The data also would be exempt from FOIA disclosure if the Lab Director determines it has commercial value and that disclosure could cause harm. This section also would allow data developed under a cooperative agreement to be exempt from FOIA if the agreement so provides. Any FOIA exemption should apply only for a limited time period. Vesting labs with ownership of intellectual property rights would not necessarily speed the flow of underlying data to the private sector for commercialization and thus, would harm competitiveness. Also the needs of other researchers to share in data should be protected. The license right retained by the Government may not be adequate in some instances, such as trade secrets, to ensure that the Government or our contractors legally could enhance prior developed technology or create derivative works. A conflict-of-interest could arise in allowing labs to decide whether FOIA disclosures should be made. Labs would have no reason to disclose information they could otherwise sell or use in negotiating cooperative agreements. The provision in sec. 408(b)(2) is unclear.

Sec. 408(c). Objectionable --Charges OFPP with issuing implementing regulations. DOE should issue any needed regulations.

Sec. 408 Domenici staff proposed revisions:

Provisions related to FOIA need to be discussed with DOE and Senator Leahy's staff.

With the new definition of commercially valuable technical data many of the issues raised are addressed. First, only applied rather than basic research is covered. Second, a sunset is included to afford protection only for two years.

With regard to comments about section 408(b)(2) language has been added so that the the purpose is clearer. Information that can be protected is that which is commercially valuable or when disclosed could harm commercial application and has been generated as a result or under a cooperative research and development agreement.

408(c) Regulations. A compromise is offered that would allow DOE the first opportunity to promulgate the regulations. A provision is included that in the event DOE does not meet the deadline, the regulation promulgating responsibility will be moved to the OFPP. The need for this has been discussed elsewhere.

SEC. 409. SPECIAL RULE FOR WAIVER OF GOVERNMENT LICENSE RIGHTS.--

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

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

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

(3) if the invention will require substantial additional investment in development before a product is created and it is expected that the primary market for such product is the United States Government.

Sec. 409. SPECIAL RULE FOR WAIVER.

DOE Comments: Sec. 409. Suggested Clarification--Allows the Secretary to waive Government rights or lab obligations where in the best interest of the United States. DOE does not know of any situations where such a waiver would be in the best interests of the United States or where DOE programs have suffered because of Government licensing rights.

Domenici staff response.

Sec. 409. Similar provision is found in the Federal Non-nuclear Energy Act of 1974, Section 9(h)(2). This section would only be used in rare cases.

Purpose is to allow the government maximum flexibility in cases where the government was the only logical or probable customer for a product that would require considerable additional development costs. There would be little or no incentive for industry to further develop these products, if the government already had a paid-up license. This was designed to give added discretion to the government.

SEC. 410 . INTELLECTUAL PROPERTY CONTRACT PROVISIONS.

(a) Contract Provisions.--Any Department of Energy [~~contract~~] funding agreement to operate a National laboratory shall provide--

(1) that any royalties or income that is earned by the National 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 13(a)(1)(B)(i)-(iv) and section 13(a)(2)-(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B)(i)-(iv) and 3710c(a)(2)-(4);

(2) that the costs of obtaining and protecting intellectual property rights in any invention, technical data or computer software, owned by the National Laboratory shall be paid for by [~~the Department of Energy to the extent not offset by royalty income earned from the licensing of National Laboratory-owned intellectual property rights; ~~] the National Laboratories under standard operating funds or as a cost shared expense under a cooperative research and development agreement;

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

(b) Compensation.--(1) Subject to paragraph (2), in return for retaining title to any intellectual property rights in any invention or discovery made in performance of a Department of Energy cooperative research agreement, the National Laboratory contractor shall pay to the United States reasonable compensation based on the value of the technology transferred. The amount of the payment arising as a result of the transfer shall be set by an arbitration board consisting of one member selected by the contractor, one member selected by the Secretary of Energy, and one member jointly selected by the contractor and the Secretary. In determining the payment, the arbitration board shall set an amount that is proportionate with the research and development costs funded by the United States. The arbitration board shall have discretion to permit the payment to be made in installments according to the extent the contractor uses or employs the intellectual property.

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

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

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

SEC. 410. INTELLECTUAL PROPERTY.

DOE Comments:

Sec. 410(a). Objectionable - Would require any Lab operating contracts to include provisions that, inter alia , would require DOE to pay costs of obtaining and protecting intellectual property rights in Lab-owned inventions, to the extent not offset by royalty income. The Government has never, nor should it now, pay such costs for private parties. This could subject the Government to enormous expense in patent infringement suits concerning intellectual property over which DOE has no control or review authority

Domenici response:

It is understood that DOE is already subject to the risks mentioned and this bill does not change that. Since all benefits are returned to the Treasury and the beneficial interest goes to the laboratory it is unclear what DOE's objection really is.

The patents could be issued with no warranties in exchange for lower royalty rates. We are confident that DOE could develop suitable guidelines and regulations.

DOE comments:

Section 410(b). Suggest Clarification -- Would require contractors to pay reasonable compensation to the U.S. for intellectual property rights except if they are operating the lab for "no profit" and are offering the intellectual property at a fair market value and returning any royalties to the Lab or U.S. Treasury. This is a good concept, but it could be very difficult to ascertain when the exception would apply. A better approach would be simply to require a return to the Treasury of a certain percentage of the United States funds invested. This section proves that cooperative agreements would be presumed to include federal funds.

Domenici staff response:

410(a)(2) adopt a DOE suggestion that the costs of obtaining and patenting be treated as a standard operating funds expense or as a cost shared expense under a cooperative research and development agreement.

Regarding comments on section 410(b), this language was included to insure that the laboratories are not making any profit from the commercialization of a product based upon a lab development, that would end up benefiting the contractor-operator of the lab, and give this contractor a competitive advantage over other firms. Senator Metzenbaum was particularly concerned about this possibility.

SEC. 411. MARCH-IN RIGHTS.

(a) Rights.--Each funding agreement for the operation of a National Laboratory shall contain a provision allowing the Department of Energy to require the licensing of the intellectual property rights to third parties of inventions, technical data, or software owned by the contractor that are subject to the provisions of this title. Such provision will ensure that the technology is licensed and commercialized by affording similar Federal march-in rights provided for inventions under section 203, title 35, United States Code, but will be applicable to all intellectual property for which title was acquired by the National Laboratory Directors under this title.

(b) Definition of Third Parties.--For the purposes of this section, "third parties" and "third party applicants" are domestic entities located in the United States whose research, development and manufacturing activities occur substantially in the United States. Domestic entities include: industrial organizations, corporations, partnerships and limited partnerships and industrial development organizations; public and private foundations; nonprofit organizations such as universities and consortia.

(c) Regulations.-- [~~The Office of Federal Procurement Policy,~~] ( ) 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.

( ) 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.

Sec. 411. MARCH-IN RIGHTS.

DOE Comments:

Sec. 411(a) and (b). Suggested Clarification -- Would require march-in rights for DOE. This should be clarified to require licensing of the "intellectual property rights to" inventions, technical data or software.

Sec. 411(c) Objectionable. Would allow OFPP to issue regulations in cooperative with other Federal agencies. DOE should issue any needed regulations.

7/8/88 Domenici staff response:

The suggested clarifications are adopted.

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

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:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Energy National Laboratory Cooperative Research Initiatives 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 Naticnal Laboratory;

(J) Oak Ridge National Laboratory;

(K) Pacific Northwest Laboratory;

(L) Ames Laboratory;

(M) Stanford Linear Accelerator Center;

(N) Bates Linear Accelerator Facility;

(O) ~~Knolls 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). Guidelines for releasing technical findings set forth by the Council shall be consistent with guidelines set forth by the relevent agencies.

(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 coould 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 8, 1984 through September 30, 1984 and October 1, 1985 through September 30, 1988.

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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"(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

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"(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.

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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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(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.

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(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.

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(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.