RWC1031

June 25, 1986

Revise section 1031 (as contained in the report of the Procurement Subcommittee) to read as follows:

SEC. 1031. PROTECTION OF SENSITIVE TECHNICAL INFORMATION.

(a) Whenever any invention or discovery is made or conceived in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program, the Nuclear Weapons programs, or other Atomic Energy Defense Activities of the Department of Energy, the Secretary of Energy shall decide within a reasonable time period (in each such case) whether to assert, or not to assert, a claim that such invention or discovery is the property of the Government.

(b) In making a determination under this section, the Secretary shall consider the recommendation and written determination of the Military Liaison Committee (established by section 27 of Public Law 83-703; 42 U.S.C. 2037) as to whether or not, if such a claim is not asserted--

(1) national security will be compromised;

(2) sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program, the Nuclear Weapons programs, or other Atomic Energy Defense activities of the Department

of Energy for which dissemination is controlled pursuant to Federal statutes and regulations will be released to unauthorized recipients;

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

(4) failure to assert such a claim will adversely affect the operation of any program of the Department of Energy under the Naval Nuclear Propulsion Program, the Nuclear Weapons programs, or other Atomic Energy Defense activities.

(c)(1) In making a recommendation and determination under subsection (b) for matters pertaining to naval nuclear propulsion, the Committee shall consult the Director, Naval Nuclear Propulsion Program, established pursuant to Executive Order 12344 (42 U.S.C. 7158 note).

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

(d) The Secretary, in cooperation with the Secretary of Defense, shall implement the policy expressed in this section.

part c -- special program provisions

Section 1031--Protection of sensitive technical information

Section 1031 would require the Secretary of Energy to decide within a reasonable time whether to assert, or not assert, a claim that an invention or discovery made or conceived under government contracts and subcontracts related to the Naval Nuclear Propulsion and Nuclear Weapons Programs, and other Atomic Energy Defense Activities of the Department of Energy (DOE) is the property of the Government. Further, the section would require the Secretary to consider the recommendations and determinations of the Military Liaison Committee as to whether: national security will be compromised; sensitive technical information will be released to unauthorized recipients; and organizational conflict of interest will result; or the failure to assert the Government's claim would adversely affect the operations of any Naval Nuclear Propulsion, Nuclear Weapons, or other Atomic Energy Defense Program of the DOE. In making its recommendations and determinations, the Military Liaison Committee would be required to consult with the Director of the Naval Nuclear Propulsion Program and the Assistant Secretary of Energy for Defense Programs on matters within their areas of expertise and purview. the Secretary of Energy, in cooperation with the Secretary of Defense, would be directed to implement the provisions of section 1031.

In recommending the provisions of section 1031, the committee is aware of the 40-year-long controversy that has existed about how the Federal Government should handle rights to patents and discoveries arising from Government-sponsored research so that they can be commercialized on the one hand the the Government's legitimate right and interests protected on the other. The principles involved in the controversy also apply with respect to

operating contracts of government-owned, contractor-operated facilities of the Department of Energy (DOE) and the Department of Defense (DOD) which are 100 percent funded by the Federal Government.

In the past, patents and discoveries have been commercialized through the "title policy" where the Government acquires the rights but allows anyone to exploit the invention, or through the "license policy" which leaves patents rights to the inventor-contractor and the contractor alone can exploit the invention. If the contractor chooses not to commercialize, the Government may require the owner to license others. The "title policy" approach has provided for exceptions whereby the Government may waive its rights, while the "license policy" has provided for exceptions whereby the Government can assert that a patent is "affected with the public interest."

The committee has carefully drafted section 1031 so that it does not change existing patent policies. The section fully recognizes the exceptions contained in current law in the case of Naval Nuclear Propulsion, Nuclear Weapons and related programs, and the statutory-waivers of Government rights permitted by existing law. Section 1031, however, also recognizes that the defense activities of the DOE involve high technology, are conducted by very few contractors at a few unique facilities and involve arcane technical information. The nature of certain design and process information and its potential application could have serious implications for national defense, nuclear weapons proliferation, intelligence gathering, terrorism, and the security of nuclear weapons if its dissemination is not controlled. Because only a few Government contractors are involved, information must be freely shared between them and situations where a contractor may be forced to choose between his corporate profit-making interests and service to the government

under a contract should be eliminated or minimized. Where Government and contractor patent and licensing rights become intertwined with the above concerns, decisions by the Secretary of Energy to assert or not to assert those rights should be based on the best advice available. Also, the complicity and seriousness of the information precludes the general use of "class waivers" or "installation waivers."

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

By recommending the advisory policy contained in section 1031, the committee makes no judgements concerning the correctness of current patent policy, nor does the committee intend this provision to be used to delay or stifle the commercialization of inventions where permitted by law or otherwise appropriate. The committee has included the requirement that the Secretary act within a "reasonable time period" following the procedural and decisional requirements of existing law and regulations. The committee found that the differing decision schedules contained in those laws and regulations do not permit establishment of a firm deadline for the Secretary's decision. The

committee expects, however, that in most cases the Secretary's decision will be made within six months after a question is presented to him for final action under existing procedures.

Section 1032--Restriction on use of funds to pay penalties under environmental laws

Section 1032 would prohibit the use of authorized funds to pay penalties, fines, forfeitures or settlements, or to perform work on services required by any other Federal, state, or local agency due to the failure of any defense activity or facility of the Department of Energy (DOE) to comply with environmental requirements where the Secretary of Energy finds: that it is impossible from a practical standpoint to comply within the time prescribed for compliance; or where the President has specifically requested funds for compliance and the Congress has not provided the funds, or the funds for compliance have been appropriated but sequestered under the Gramm-Rudman-Hollings legislation, or deferred or rescinded by law.