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.