"(C) The right of the Federal agency to require the contractor to grant a nonexclusive, partially exclusive or exclusive license to a responsible applicant or applicants in any field of use of the Subject Invention upon terms reasonable under the circumstances, or to grant such licenses itself, or to require an assignment of the Subject Invention to the Federal Government, if the Federal agency determines, after notice to the contractor of the proposed determination, such action is necessary because the contractor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use. Upon receipt of such notice the contractor has 30 days or such additional time as may be authorized by the agency to provide relevant and material information as to why the proposed determination should not be made.

"(D) The right of the Federal agency to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the agency itself should grant such a license, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing, if the Federal agency determines, upon review

of such material as the Federal agency deems relevant, and after the contractor or any other interested person or Federal agency has had the opportunity to provide such relevant and material information as the Federal agency may require or allow, that such action is necessary:

"(i) to alleviate health, safety, or welfare needs, provided the contractor and/or its licensees are not satisfying such needs consistent with conditions reasonable under the circumstances; or

"(ii) to the extent that the Subject Invention is required for public use by Federal regulation, provided the contractor and/or its licensees are not satisfying market needs created by the Federal regulations consistent with conditions reasonable under the circumstances.

"(D) The right of the Federal agency to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the Federal agency should grant such a license itself, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing, if the Federal agency determines, upon review of such material as the Federal

agency deems relevant, and after the contractor or other interested person or Federal agency has had the opportunity to provide such relevant and material information as the Federal agency may require or allow, that the exclusive rights to such Subject Invention in the contractor has tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates, or to create or maintain other situations inconsistent with the antitrust laws.

"(F) The right of the Federal agency, commencing ten years from the date the Subject Invention was made or five years after first public use or on sale in the United States, whichever occurs first, (excepting that time before Federal regulatory agencies necessary to obtain premarket clearance) to require the contractor to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, or to determine that the Federal agency should grant such a license itself, following a hearing upon notice thereof to the public, upon a petition by a prospective licensee who has attempted unsuccessfully to obtain such a license

from the contractor and justifying such a hearing, if the Federal agency determines, after the contractor or any other interested person or Federal agency has had the opportunity to provide such relevant and material information as the Federal agency may require, in view of the factors set forth in Section 312.(b), that such licensing would best support the overall purposes of this Act.

"(3) Any person or agency who participates in the agency hearing under subsections 311.(b)(2)(D), (E), (F), and 312(a) and who will be adversely affected by any agency determination may at any time within sixty days after such determination is made file a petition to the United States Court of Claims which upon the timely filing of such petition shall have jurisdiction to determine the matter de novo and to affirm, reverse, or modify as appropriate, such determination of the agency.

"(c) Contractor's rights.--The contractor shall retain a defeasible title to only those Subject Inventions (including the right to license or assign all or part of its interests therein) on which the contractor files a United States patent application and declares its intent to achieve practical application of the Subject Invention. Such title in the contractor shall permit the contractor to retain exclusive commercial rights to the invention subject to

all the rights granted to the Federal Government in subsection (b)(2) above. The contractor's employee inventor may also retain the contractor's rights under this subsection with permission of the contractor at the discretion of the sponsoring Federal agency.

"§ 312. Other provisions.

"(a) Extension of contractor's exclusive commercial rights.-- Each sponsoring Federal agency, for good cause shown by the contractor, may extend the period of the contractor's exclusive commercial rights provided for in Section 311.(b)(2)(F) following notice to the public and an opportunity for filing written objections. The grant of such an extension shall be based upon a determination by the Federal agency, upon review of such material as it deems relevant, and after the contractor and any other interested persons or Federal agency has had an opportunity to provide such relevant and material information as the Federal agency may require, that such extension would best support the overall purposes of this Act.

"(b) Federal Agency considerations. In determining the right of the Federal agency to license set forth in Section

311.(b)(2)(F) should be exercised, the Federal agency may consider, among others, the following type of factors, as appropriate:

"(1) The relative contributions of the Federal Government and the contractor or its assignees or licensees, if any, to the making and commercialization of the Subject Invention;

"(2) The relative contributions of the Federal Government and the contractor or its assignees or licensees, if any, to the field of technology to which the Subject Invention relates;

"(3) The degree to which utilization of the Subject Invention has satisfied the purposes of the program under which the Subject Invention was made;

"(4) The type and scope of the Subject Invention and the magnitude of the problem it solves;

"(5) The effect of such licensing on competition and widespread utilization of the Subject Invention;

"(6) The effect of such licensing on incentives to commercialize this and other Subject Inventions;

"(7) The extent to which the Subject Invention is concerned with thepublic health, safety or welfare; and

"(8) The effect of such licensing in assisting small businesses and minority business enterprises, as well as economically depressed, low-income, and labor surplus areas.

"When it is determined that the right of the Federal agency to license should be exercised, it may specify terms and conditions, including royalties to be charged, if any, and the duration and field of use of the license.