

AMENDMENT TO H.R. 8800
OFFERED BY MS. GOODLANDER OF NEW
HAMPSHIRE

At the appropriate place in title VIII, insert the following new section:

1 **SEC. 8___ . REFORM OF TECHNICAL DATA AND SOFTWARE**
2 **RIGHTS TO SUPPORT COMPETITION,**
3 **SUSTAINMENT, AND READINESS.**

4 (a) DEFAULT GOVERNMENT PURPOSE RIGHTS FOR
5 DELIVERABLES.—Chapter 239 of title 10, United States
6 Code, is amended by inserting after section 3775 the following new section:

8 **“§ 3776. Default government purpose rights for**
9 **deliverables under Department of De-**
10 **fense contracts**

11 “(a) DEFAULT RIGHTS.—Except as provided in sub-
12 section (b), any technical data, computer software, or com-
13 puter software documentation delivered under a contract,
14 subcontract, or other agreement entered into by the De-
15 partment of Defense shall be provided with government
16 purpose rights unless the contractor establishes, through
17 clear and convincing evidence, entitlement to more restric-
18 tive rights.

1 “(b) CONTRACTOR BURDEN.—A contractor asserting
2 less-than-government purpose rights shall provide—

3 “(1) a compliant assertions table identifying
4 each specific item of data or software claimed;

5 “(2) factual documentation of private develop-
6 ment funding;

7 “(3) clause-specific unlimited-rights exclusions
8 applied at the lowest practicable segregable level;
9 and

10 “(4) corresponding portion markings on the
11 deliverables.

12 “(c) FAILURE TO SUBSTANTIATE.—Any failure by a
13 contractor to comply with subsection (b) shall result in
14 the deliverable being treated as provided with government
15 purpose rights.”.

16 (b) IMPROPER MARKINGS OF CRITICAL ITEMS.—For
17 any critical readiness items of supply (as that term is de-
18 fined in section 4324(d)(4) of title 10, United States
19 Code) that are noncommercial items, if the Secretary of
20 Defense determines that a contractor—

21 (1) applied an incorrect restrictive marking;

22 (2) failed to exclude unlimited- or unrestricted-
23 rights categories;

24 (3) failed to portion-mark at the required seg-
25 regable level; or

1 (4) submitted an incomplete or invalid asser-
2 tions table;
3 then all affected technical data, computer software,
4 and documentation shall be deemed as government
5 purpose rights.

6 (c) REPORT ON CLAWBACK AUTHORITIES FOR IM-
7 PROPER RESTRICTIVE MARKINGS.—Not later than 180
8 days after the date of the enactment of this Act, the Sec-
9 retary of Defense shall submit to the congressional defense
10 committees a report assessing the feasibility and advis-
11 ability of establishing a mechanism to recover excess pay-
12 ments made by the Department of Defense in cases where
13 improper restrictive markings, invalid assertions tables, or
14 other unjustified restrictions on technical data, computer
15 software, or computer software documentation contributed
16 to reduced competition or sole-source procurement condi-
17 tions. The report shall include—

18 (1) an assessment of the extent to which im-
19 proper restrictions on technical data or software
20 rights may have resulted in excess costs to the De-
21 partment;

22 (2) an evaluation of existing authorities avail-
23 able to recover such excess payments;

1 (3) an assessment of the legal, contractual, and
2 evidentiary challenges associated with establishing a
3 clawback mechanism;

4 (4) options for calculating excess payments at-
5 tributable to improper restrictions on technical data
6 or software rights; and

7 (5) recommendations regarding whether Con-
8 gress should authorize a clawback mechanism and, if
9 so, the structure of such authority.

10 (d) MODIFICATIONS TO RIGHTS IN TECHNICAL
11 DATA.—Section 3771(b) of title 10, United States Code,
12 is amended—

13 (1) in paragraph (3)(C), by inserting “, and for
14 which the United States shall have government pur-
15 pose rights, unless the Government and the con-
16 tractor negotiate different license rights” after
17 “component”); and

18 (2) in paragraph (4)(A)—

19 (A) in clause (ii), by striking “; or” and in-
20 serting a semicolon;

21 (B) by redesignating clause (iii) as clause
22 (iv); and

23 (C) by inserting after clause (ii) the fol-
24 lowing new clause:

1 “(iii) is a release, disclosure, or use of
2 detailed manufacturing or process data—

3 “(I) that is necessary for oper-
4 ation, maintenance, installation, or
5 training and shall be used only for op-
6 eration, maintenance, installation, or
7 training purposes supporting wartime
8 operations or contingency operations;
9 and

10 “(II) for which the head of an
11 agency determines that the original
12 supplier of such data will be unable to
13 satisfy military readiness or oper-
14 ational requirements for such oper-
15 ations; or”.

16 (e) APPLICABILITY.—This section and the amend-
17 ments made by this section shall apply—

18 (1) in competitive procurements, to solicitations
19 issued after the date of the enactment of this Act
20 and awards made in connection with such solicita-
21 tions; and

22 (2) in non-competitive procurements, to awards
23 made after the date of the enactment of this Act.

