CHAPTER 63—TECHNOLOGY INNOVATION

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§ 3701. Findings

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impacts upon industrial innovation and development of technology, but there is insufficient knowledge of their effects in particular sectors of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(Pub.L. 96–480, § 2, Oct. 21, 1980, 94 Stat. 2311.)

Historical Note

Short Title. Section 1 of Pub.L. 96–480 provided: "That this Act [enacting this chapter] may be cited as the 'Stevenson-Wydler Technology Innovation Act of 1980'."

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code and Adm.News, p. 4892.

Library References

Health and Environment ⇐25.5(3).
C.J.S. Health and Environment §§ 91 et seq., 106 et seq., 129 et seq.

§ 3702. Purpose

It is the purpose of this chapter to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of centers for industrial technology;

(3) stimulating improved utilization of federally funded technology developments by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

(Pub.L. 96–480, § 3, Oct. 21, 1980, 94 Stat. 2312.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

Library References

Health and Environment ⇐25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

§ 3703. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(1) "Office" means the Office of Industrial Technology established under section 3704 of this title.

(2) "Secretary" means the Secretary of Commerce.

(3) "Director" means the Director of the Office of Industrial Technology, appointed pursuant to section 3704 of this title.

(4) "Centers" means the Centers for Industrial Technology established under section 3705 or section 3707 of this title.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Board" means the National Industrial Technology Board established pursuant to section 3709 of this title.

(7) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 3705 or section 3707 of this title that is owned and funded by the Federal Government, whether operated by the Government or by a contractor.

(8) "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate.

(Pub.L. 96–480, § 4, Oct. 21, 1980, 94 Stat. 2312.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

§ 3704. Commerce and technological innovation

(a) In general.—The Secretary shall establish and maintain an Office of Industrial Technology in accordance with the provisions, findings, and purposes of this chapter.

(b) Director.—The President shall appoint, by and with the advice and consent of the Senate, a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of Title 5.

(c) Duties.—The Secretary, through the Director, on a continuing basis, shall—

(1) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

(2) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments in particular industrial sectors worldwide;

(3) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

(4) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;

(5) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

(6) provide that cooperative efforts to stimulate industrial innovation be undertaken between the Director and other officials in the Department of Commerce responsible for such areas as trade and economic assistance;

(7) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(8) publish the results of studies and policy experiments.

(d) **Report.**—The Secretary shall prepare and submit to the President and Congress, within 3 years after October 21, 1980, a report on the progress, findings, and conclusions of activities conducted pursuant to this section and sections 3705, 3707, 3710, 3711, and 3712 of this title and recommendations for possible modifications thereof.

(Pub.L. 96–480, § 5, Oct. 21, 1980, 94 Stat. 2312.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

Library References

Health and Environment ⇐25.5(9).
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 3705. Centers for Industrial Technology

(a) **Establishment.**—The Secretary shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) **Activities.**—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;

(2) assistance to individuals and small businesses in the generation, evaluation, and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, enterpreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) **Requirements.**—Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) **Planning grants.**—The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3) of this section.

(e) **Research and development utilization.**—(1) To promote technological innovation and commercialization of research and development efforts, each Center has the option of acquiring title to any invention conceived or made under the auspices of the Center that was supported at least in part by Federal funds: *Provided,* That—

(A) the Center reports the invention to the supporting agency together with a list of each country in which the Center elects to file a patent application on the invention;

(B) said option shall be exercised at the time of disclosure of invention or within such time thereafter as may be provided in the grant or cooperative agreement;

(C) the Center intends to promote the commercialization of the invention and file a United States patent application;

(D) royalties be used for compensation of the inventor or for educational or research activities of the Center;

(E) the Center make periodic reports to the supporting agency, and the supporting agency may treat information contained in such reports as privileged and confidential technical, commercial, and financial information and not subject to disclosures under the Freedom of Information Act; and

(F) any Federal department or agency shall have the royalty-free right to practice, or have practiced on its behalf, the invention for governmental purposes.

The supporting agency shall have the right to acquire title to any patent on an invention in any country in which the Center elects not to file a patent application or fails to file within a reasonable time.

(2) Where a Center has retained title to an invention under paragraph (1) of this subsection the supporting agency shall have the right to require the Center or its licensee to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, if the supporting agency determines, after public notice and opportunity for hearing, that such action is necessary—

(A) because the Center or licensee has not taken and is not expected to take timely and effective action to achieve practical application of the invention;

(B) to meet health, safety, environmental, or national security needs which are not reasonably satisfied by the contractor or licensee; or

(C) because the granting of exclusive rights in the invention has tended substantially to lessen competition or to result in undue market concentration in the United States in any line of commerce to which the technology relates.

(3) Any individual, partnership, corporation, association, institution, or other entity adversely affected by a supporting agency determination made under paragraph (2) of this subsection may, at any time within 60 days after the determination is issued, file a petition to the United States Court of Claims which shall have jurisdiction to determine that matter de novo and to affirm, reverse, or modify as appropriate, the determination of the supporting agency.

(f) **Additional consideration.**—The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request.

(Pub.L. 96–480, § 6, Oct. 21, 1980, 94 Stat. 2313.)

Historical Note

References in Text. The Freedom of Information Act, referred to in subsec. (e), is classified to section 552 of Title 5, Government Organization and Employees.

The antitrust laws, referred to in subsec. (f), are classified generally to chapter 1 (section 1 et seq.) of this title.

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

Library References

Health and Environment ⇐25.5(9).
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 3706. Grants and cooperative agreements

(a) **In general.**—The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this chapter, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

(b) **Eligibility and procedure.**—Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Director shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) **Terms and conditions.**—

(1) Any grant made, or cooperative agreement entered into, under this section shall be subject to the limitations and provisions set forth in

paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

(Pub.L. 96–480, § 7, Oct. 21, 1980, 94 Stat. 2315.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

Library References

Health and Environment ⇐25.5(9).
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 3707. National Science Foundation Centers for Industrial Technology

(a) **Establishment and provisions.**—The National Science Foundation shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 3705(a) of this title through the conduct of activities as provided in section 3705(b) of this title. The provisions of sections 3705(e) and 3705(f) of this title shall apply to Centers established under this section.

(b) **Planning grants.**—The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing the plan, as described under section 3705(c)(3) of this title.

(c) **Terms and conditions.**—Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this chapter shall be governed by the National Science Foundation Act of 1950 and other pertinent Acts.

(Pub.L. 96–480, § 8, Oct. 21, 1980, 94 Stat. 2316.)

Historical Note

References in Text. The National Science Foundation Act of 1950, referred to in subsec. (c), is Act May 10, 1950, c. 171, 64 Stat. 149, as amended, which is classified generally to chapter 16 (section 1861 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1861 of Title 42 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

§ 3708. Administrative arrangements

(a) **Coordination.**—The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this chapter, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council of Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) **Cooperation.**—It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by, or could contribute to, the programs established under this chapter, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this chapter.

(c) **Administrative authorization.**—

(1) Departments and agencies described in subsection (b) of this section are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this chapter.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this chapter.

(d) **Cooperative efforts.**—The Secretary and the National Science Foundation shall, on a continuing basis, provide each other the opportunity to comment on any proposed program of activity under section 3705, 3707, or 3712 of this title before funds are committed to such program in order to mount complementary efforts and avoid duplication.

(Pub.L. 96–480, § 9, Oct. 21, 1980, 94 Stat. 2316.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

Library References

Health and Environment ⇐25.5(9).
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 3709. National Industrial Technology Board

(a) **Establishment.**—There shall be established a committee to be known as the National Industrial Technology Board.

(b) **Duties.**—The Board shall take such steps as may be necessary to review annually the activities of the Office and advise the Secretary and the Director with respect to—

(1) the formulation and conduct of activities under section 3704 of this title;

(2) the designation and operation of Centers and their programs under section 3705 of this title including assistance in establishing priorities;

(3) the preparation of the report required under section 3704(d) of this title; and

(4) such other matters as the Secretary or Director refers to the Board, including the establishment of Centers under section 3707 of this title, for review and advice.

The Director shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties. The National Science Foundation shall make available to the Board such information and assistance as it may reasonably require to carry out its duties.

(c) **Membership, terms, and powers.**—

(1) The Board shall consist of 15 voting members who shall be appointed by the Secretary. The Director shall serve as a nonvoting member of the Board. The members of the Board shall be individuals who, by reason of knowledge, experience, or training are especially qualified in one or more of the disciplines and fields dealing with technology, labor, and industrial innovation or who are affected by technological innovation. The majority of the members of the Board shall be individuals from industry and business.

(2) The term of office of a voting member of the Board shall be 3 years, except that of the original appointees, five shall be appointed for a term of 1 year, five shall be appointed for a term of 2 years, and five shall be appointed for a term of 3 years.

(3) Any individual appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. No individual may be appointed as a voting member after serving more than two full terms as such a member.

(4) The Board shall select a voting member to serve as the Chairperson and another voting member to serve as the Vice Chairperson. The Vice Chairperson shall perform the functions of the Chairperson in the absence or incapacity of the Chairperson.

(5) Voting members of the Board may receive compensation at a daily rate for GS–18 of the General Schedule under section 5332 of Title

5, when actually engaged in the performance of duties for such Board, and may be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

(Pub.L. 96–480, § 10, Oct. 21, 1980, 94 Stat. 2317.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 3709.

Library References

United States ⇐29. C.J.S. United States §§ 34, 62.

§ 3710. Utilization of Federal technology

(a) **Policy.**—It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.

(b) **Establishment of Research and Technology Applications Offices.**—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. The agency head may waive the requirements set forth in (1) and/or (2) of this subsection. If the agency head waives either requirement (1) or (2), the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) **Functions of Research and Technology Applications Offices.**—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the Center for the Utilization of Federal Technology and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry; and

(4) to provide technical assistance in response to requests from State and local government officials.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) **Center for the Utilization of Federal Technology.**—There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories;

(3) utilize the expertise and services of the National Science Foundation and the existing Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

(4) receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories;

(5) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(4) of this section; and

(6) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(e) **Agency reporting.**—Each Federal agency which operates or directs one or more Federal laboratories shall prepare biennially a report summarizing the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.

(Pub.L. 96–480, § 11, Oct. 21, 1980, 94 Stat. 2318.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

§ 3711. National Technology Medal

(a) **Establishment.**—There is hereby established a National Technology Medal, which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) **Award.**—The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) **Presentation.**—The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

(Pub.L. 96–480, § 12, Oct. 21, 1980, 94 Stat. 2319.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

§ 3712. Personnel exchanges

The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

(Pub.L. 96–480, § 13, Oct. 21, 1980, 94 Stat. 2320.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

§ 3713. Authorization of appropriations

(a) There is authorized to be appropriated to the Secretary for purposes of carrying out section 3705 of this title, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985.

(b) In addition to authorizations of appropriations under subsection (a) of this section, there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this chapter, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985.

(c) Such sums as may be appropriated under subsections (a) and (b) of this section shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this chapter only such sums may be appropriated as the Congress may authorize by law.

(Pub.L. 96–480, § 14, Oct. 21, 1980, 94 Stat. 2320.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

§ 3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to this chapter except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub.L. 96–480, § 15, Oct. 21, 1980, 94 Stat. 2320.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96–480, see 1980 U.S. Code Cong. and Adm.News, p. 4892.

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

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§ 3801. Congressional statement of findings and declaration of policy

(a) The Congress finds and declares that—

(1) gasoline and diesel fuel for vehicular use are in short supply and constitute a sizable portion of domestic petroleum consumption;

(2) methane use in fleet-operated vehicles would result in substantial reduction in oil imports;

(3) methane is in more abundant domestic supply than petroleum products, is the primary component of natural gas and can be derived in increased quantities from coal, biomass, waste products, and other renewable resources;

(4) recoverable methane presently available in the United States is not fully utilized;

(5) test results to date indicate that methane use as a substitute for gasoline as a motor fuel can result in emission reductions;

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[DISCUSSION DRAFT]

OCTOBER 4, 1994

PROPOSED CHANGES TO H.R. 3590

SECTION 1. SHORT TITLE.

This Act may be cited as the "Technology Transfer Improvements Act of 1994".

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The commercialization of technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) The Government can help United States business to speed the development of new products and processes by entering into cooperative research and development agreements which make available the assistance of the Federal laboratories to the private sector, but the commercialization of technology and industrial innovation in the United States depends largely upon actions by business.

(3) Government action to claim a right of ownership to any invention or other intellectual property developed under a cooperative research and development agreement can inhibit the establishment of such agreements with business and can prevent the

commercialization of technology and industrial innovation by business.

(4) The commercialization of technology and industrial innovation in the United States will be enhanced if the ownership of any invention or other intellectual property developed under a cooperative research and development agreement belongs to a company or companies incorporated in the United States.

SEC. 3. TITLE TO INTELLECTUAL PROPERTY ARISING FROM COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

Subsection (b) of section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)) is amended to read as follows:

"(b) ENUMERATED AUTHORITY.—(1) Under an agreement entered into pursuant to subsection (a)(1), the laboratory may 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, except that the laboratory shall ensure that a collaborating party has, at a minimum, the option to choose either an exclusive license or a non-exclusive license for a field of use in any such invention under the agreement. In consideration for

commercialization of technology and industrial innovation by business.

(4) The commercialization of technology and industrial innovation in the United States will be enhanced if the ownership of any invention or other intellectual property developed under a cooperative research and development agreement belongs to a company or companies incorporated in the United States.

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the Government's contribution under the agreement, the rights of the collaborating party shall be subject to the following explicit conditions:

"(A) A nonexclusive, nontransferable, irrevocable, paid-up license from the collaborating party to the laboratory to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, except that in the exercise of such license, the Government shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of section 552(b) of title 5, United States Code, or which would be considered as such if it had been obtained from a non-Federal party, which is obtained in the conduct of research or as a result of activities under this Act from a non-Federal party participating in a cooperative research and development agreement or as a result of research and development activities conducted under this Act.

"(B) In the event that a laboratory assigns title or grants an exclusive license to such an invention, the right of the Government to require a collaborating party to grant to a responsible applicant or applicants a nonexclusive, partially exclusive, or exclu-

sive license to use the invention in their licensed field of use, on terms that are reasonable under the circumstances, or if the collaborating party fails to grant such a license, to grant the license itself if the Government finds that—

"(i) the action is necessary to meet health or safety needs that are not reasonably satisfied by the collaborating party;

"(ii) the action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the collaborating party; or

"(iii) the collaborating party has failed to comply with the agreement implementing subsection (c)(4)(B).

"(2) Under an agreement entered into pursuant to subsection (a)(1), a laboratory also may—

"(A) accept, retain, and use funds, personnel, services, and property from a collaborating party and provide personnel, services, and property to a collaborating party;

"(B) use funds received from a collaborating party under subparagraph (A) to hire personnel that will not be subject to full-time-equivalent restrictions of the agency;

"(C) to the extent consistent with any applicable agency requirement or standard of conduct, permit an employee or former employee of the laboratory to participate in an effort to commercialize an invention made by the employee or former employee while in the employment or service of the Federal Government; and

"(D) grant to a collaborating party in an exclusive license in any invention made under the agreement the right of enforcement under chapter 29 of title 35, United States Code, as determined appropriate and in the public interest.

"(3) Under an agreement entered into pursuant to subsection (a)(1), the collaborator shall have the option to retain title to any invention made solely by the collaborator's employee, except that the collaborator may agree to waive such option. The collaborator shall formally consider granting the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the collaborator's sole inventions or have the inventions practiced throughout the world for research purposes.

"(4) A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) may use or ob-

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ligate royalties or other income accruing to the laboratory under an agreement with respect to any invention only—

"(A) for payments to inventors;

"(B) for a purpose described in clauses (i), (ii), and (iv) of section 14(a)(1)(B); and

"(C) for scientific research and development consistent with the research and development mission and objective of the laboratory.".

SEC. 4. DISTRIBUTION OF INCOME FROM INTELLECTUAL PROPERTY RECEIVED BY FEDERAL LABORATORIES.

Section 14 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c) is amended to read as follows:

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

"(a) IN GENERAL.—(1) Except as provided in paragraphs (2) and (4), any royalties or other payments received by a Federal agency from the licensing and assignment of inventions under agreements entered into by Federal laboratories under section 12, and from the licensing of inventions of Government-operated laboratories 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 laboratory or such individual's designee shall pay the first $2,000, and thereafter at least 15 percent, of the royalties or other payments to the inventor or coinventors if the inventor or each coinventor has assigned such inventor's or coinventor's rights in the invention to the United States.

"(ii) An agency or laboratory may provide appropriate incentives from royalties to laboratory employees who contribute substantially to the technical development of licensed or assigned intellectual property between the time that the intellectual property rights are legally asserted and the time of the licensing or assigning of the intellectual property rights.

"(iii) The agency or laboratory shall retain the income received from intellectual property until the agency or laboratory makes payments to laboratory employees under clause (i) or (ii).

"(B) The balance of the royalties or other payments shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other payments from any invention going to the laboratory where the invention

occurred, and the royalties or other payments 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 intellectual property by the agency or laboratory with respect to intellectual property which originated at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services;

"(ii) to reward scientific, engineering, and technical employees of the laboratory, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

"(iii) to further scientific exchange among the laboratories of the agency;

"(iv) for education and training of employees consistent with the research and development mission and objectives of the agency or laboratory, and for other activities that increase

the potential for transfer of the technology of the laboratories of the agency; or

"(v) for scientific research and development consistent with the research and development mission and objective of the laboratory.

All income retained by the agency or laboratory after payments have been made pursuant to subparagraphs (A) and (B) that is unobligated and unexpended at the end of the fiscal year succeeding the fiscal year in which the income was received shall be paid into the United States Treasury.

"(2) If, after payments to employees under paragraph (1), the royalties or other payments received by an agency and its laboratories in any fiscal year exceeds 5 percent of the budget of the laboratories of the agency for that year, 75 percent of such excess shall be paid to the United States Treasury 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 income not so used or obligated shall be paid into the United States Treasury.

"(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 the employee is otherwise entitled or for which the employee is otherwise eligible, or limit the amount thereof. Any payment made under this section to any employee shall continue after the employee leaves the employment of the laboratory or agency.

"(4) A Federal agency receiving royalties or other payments as a result of intellectual property management services performed for another Federal agency or laboratory under section 207 of title 35, United States Code, may retain such royalties or other payments to the extent required to offset the payment to inventors of the royalties or other payments under paragraph (1)(A)(i), and costs and expenses incurred under paragraph (1)(B)(i), including the cost of foreign protection of the invention of the other agency. All royalties and other payments remaining after offsetting the payment of the royalties or other payments to the inventors, 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 assigned to the Federal agency—

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"(1) by a contractor, grantee, participant, or employee thereof, in an agreement or other arrangement with the agency; or

"(2) by an employee of the agency who was not required by any regulation to assign the invention to the agency at the time the invention 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 its annual submission to the Congress, each Federal agency shall submit, to the appropriate authorization and appropriations committee of both Houses of the Congress, a summary of the amount of income received from intellectual property and expenditures made (including employee awards) under this section.

"(2) Not later than October 1, 1996, the Comptroller General shall review the effectiveness of the various income-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, the Comptroller General's findings, conclusions, and recommendations for improvements in such programs.".

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SEC. 5. EMPLOYEE ACTIVITIES.

The text of section 15 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710d) is amended to read as follows:

"(a) IN GENERAL.—If a Federal agency which has the ownership or the right of ownership under this Act to an invention that is made by a Federal employee 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 obtain or retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferable, 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. 6. AMENDMENT TO BAYH-DOLE ACT.

Section 210(e) of title 35, United States Code, is amended by inserting "and the Technology Transfer Improvements Act of 1994" after "Federal Technology Transfer Act of 1986".

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S.1164

Technology Transfer Improvements Act of 1995 (Reported in the Senate)

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SEC. 3. USE OF FEDERAL TECHNOLOGY.

SEC. 4. TITLE TO INTELLECTUAL PROPERTY ARISING FROM COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

SEC. 5. DISTRIBUTION OF INCOME FROM INTELLECTUAL PROPERTY RECEIVED BY FEDERAL LABORATORIES.

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TECHNOLOGY TRANSFER IMPROVEMENTS ACT OF 1995 (Senate - February 07, 1996)

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Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Commerce be discharged from further consideration of H.R. 2196; further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2196) to amend the Stevenson-Wydler Technology Innovation Act of 1980 with respect to inventions made under cooperative research and development agreements, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3463

(PURPOSE: TO MAKE PERFECTING AMENDMENTS)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senators **Rockefeller** and **Burns.**

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. **Dole**], for Mr. **Rockefeller**, for himself and Mr. **Burns**, proposes an amendment numbered 3463.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 24, insert `pre-negotiated' before `field'.

On page 5, beginning on line 4, strike `if the Government finds' and insert `in exceptional circumstances and only if the Government determines'.

On page 5, between lines 15 and 16, insert the following:

This determination is subject to administrative appeal and judicial review under section 203(2) of title 35, United States Code.

On page 13, strike lines 10 through 17 and insert the following:

Section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S .C. 3710(i)) is amended by inserting `loan, lease, or' before `give'.

Beginning with line 23 on page 21, strike though line 3 on page 22 and insert the following:

`(13) to coordinate Federal, State, and local technical standards activities and conformity assessment activities, with private sector technical standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures.'.

On page 22, beginning on line 5, strike `by January 1, 1996,' and insert `within 90 days after the date of enactment of this Act,'.

Beginning with line 8 on page 22, strike through line 5 on page 23 and insert the following:

(d) **Utilization of Consensus Technical Standards by Federal Agencies; Reports:**

(1) **In general:** Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

(2) **Consultation; participation:** In carrying out paragraph (1) of this subsection, Federal agencies and departments shall consult with voluntary, private sector, consensus standards bodies and shall, when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources, participate with such bodies in the development of technical standards.

(3) **Exception:** If compliance with paragraph (1) of this subsection is inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of each such agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. Each year, beginning with fiscal year 1997, the Office of Management and Budget shall transmit to Congress and its committees a report summarizing all explanations received in the preceding year under this paragraph.

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TECHNOLOGY TRANSFER IMPROVEMENTS ACT OF 1995 (Senate - February 07, 1996)

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BACKGROUND ON THE TECHNOLOGY TRANSFER PROVISIONS

Mr. President, the heart of the legislation, in both the Senate and House versions, is section 4, which will improve the transfer of technology from Federal laboratories by giving both laboratories and industrial partners clearer guidelines on the distribution of intellectual property rights from inventions resulting from cooperative research projects.

Specifically, the bill amends the Stevenson-Wydler Technology Innovation Act, which since 1986 has allowed Federal laboratories to enter into cooperative research and development agreements [CRADA's] with industry and other collaborating parties. The laboratories can contribute people, facilities, equipment, and ideas, but not funding, and the companies contribute people and funding.

As I pointed out when I introduced **S . 1164** on August 10, even under the current law the CRADA provision has been a success. Hundreds of these agreements have been signed and carried out in recent years, making expertise and technology that the Federal Government has already paid for through its mission-related work available to the wider economy. But we also have seen a problem. Currently, the law provides little guidance on what intellectual property rights a collaborating partner should receive from a CRADA. The current law gives agencies very broad discretion on this matter, which provides flexibility but also means that both companies and laboratory executives must laboriously negotiate patent rights each time they discuss a new CRADA. Neither side has much guidance as to what constitutes an

appropriate agreement regarding intellectual property developed under the CRADA. Options range from assigning full patent title to the company all the way to providing the firm with only a nonexclusive license for a narrow field of use.

In conversations with company executives, we learned that this uncertainty--and the time and effort involved in negotiating intellectual property from scratch in each CRADA--was often a barrier to working with some laboratories. Companies are reluctant to enter into a CRADA, or, equally important, to commit additional resources to commercialize a CRADA invention, unless they have some assurance they will control important patent rights.

In 1993, I began working with Congresswoman Morella on possible ways to reduce the uncertainty and negotiating burden facing companies, while still ensuring that the Government interest remains protected. To begin legislative discussion on this matter, I introduced **S** . 1537 on October 7, 1993, for myself and Senator DeConcini, then chairman of the Senate Patent Subcommittee. That bill would have directed Federal laboratories to assign to the collaborating party--the company--title to any intellectual property arising from a CRADA, in exchange for reasonable compensation to the laboratory and certain patent safeguards.

S . 1537 also contained a second provision--an additional incentive for Federal scientists to report and develop inventions that might have commercial as well as government value. The General Accounting Office [GAO] had recommended that Federal inventors receive more of the royalties received by laboratories as government compensation under CRADA's . My bill incorporated that recommendation.

Soon after Senator DeConcini and I introduced our bill, Congresswoman **Morella** introduced the companion House bill, H.R. 3590. In subsequent House and Senate hearings, the bill received strong support from industry, professional societies, trade associations, and the administration. At that point, we also began working closely with Commerce Department Under Secretary for Technology Mary Good and her staff, who helped us obtain detailed technical suggestions from executive branch agencies and other patent experts. We made major progress during the 103d Congress, but in 1994 ran out of time to complete action on the legislation.

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FASTENER QUALITY ACT AMENDMENTS

Mr. President, the second major provision of the bill now before us is a set of amendments to the Fastener Quality Act of 1990. That act regulates the manufacture and distribution of certain high-strength bolts and other fasteners used in safety-related applications, such as building, aircraft, and motor vehicles.

The Fastener Advisory Committee created under the 1990 law has recommended a series of changes which will continue to ensure the safety of these high-strength fasteners while reducing the regulatory burden on business. The Senate first passed these amendments in March 1994 as part of a larger technology bill. That 1994 bill did not become law, however, so this year in the Commerce Committee, Senator **Burns**, who is the Senate leader on this matter, offered these changes as an amendment to **S . 1164** . The same amendments were included in H.R. 2196. These changes have been worked out with a very broad set of interested parties, including major users of fasteners, and I know of no controversy in the Senate regarding them.

OTHER PROVISIONS IN H.R. 2196

Finally, the House version of the legislation also contains a set of nonspending amendments regarding NIST operations and voluntary industry standards. While these amendments are not currently in **S . 1164** , they did not lead to any controversy on the House floor.

One such provision, section 9, is intended to make it easier for Federal laboratories to loan, lease, or donate excess research equipment to educational institutions and nonprofit organizations. As I will explain shortly, I will shortly propose a perfecting amendment and colloquy pertaining to section 9.

Another provision, section 12(d), would codify an existing Office of Management and Budget circular, OMB Circular A-119. Following the OMB circular, the amendment directs Federal agencies to use, to the extent not inconsistent with applicable law or otherwise impractical, technical standards that are developed or adopted by voluntary consensus standards organizations. We believe this step will reduce costs for both government and the private sector. For example, if off-the-shelf products meeting a voluntary consensus standards can, in the judgment of an Agency, meet its procurement requirements, then the Agency saves money over buying products built to special government specifications and commercial industry benefits from increased sales to the Government.

I will shortly discuss the several perfecting amendments that we are now offering to this bill, but here I want to mention that one of these amendments clarifies the intent and scope of section 12(d). We have worked closely with Senators **Baucus** and **Johnston**, and their staffs, on this rewrite. And here, based on our discussions with these offices, I want to emphasize five key points about the intent and effect of this provision, as amended, in order to deal with concerns that have been raised.

First, we are talking here about technical standards pertaining to products and processes, such as the size, strength, or technical performance of a product, process, or material. The amended version of section 12(d) explicitly defines the term `technical standards' as meaning performance-based or design-specific technical specifications and related management systems practices. An example of a management system practice standard is the ISO 9000 series of standards specifying procedures for maintaining quality assurance in manufacturing.

In this subsection, we are emphatically not talking about requiring or encouraging any agency to follow private sector attempts to set regulatory standards or requirements. For example, we do not intend for the Government to have to

follow any attempts by private standards bodies to set specific

environmental regulations. Regular consensus standards bodies do not do that, in any case. But no one should presume that a new private group could use section 12(d) to dictate regulations to Federal agencies. The amended version of this subsection makes clear that agencies and departments use `such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'

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ADDITIONAL PERFECTING AMENDMENTS

Mr. President, conversations with interested Senators have led me, after consultation with Chairman **Burns,** to offer six other small perfecting amendments that clarify key provisions of the bill. I want to mention them briefly, as well as thank the relevant Senators for working with us on these issues.

First, as discussed earlier, we propose to clarify that the field of use for which a collaborating party may get an exclusive license is a pre-negotiated field of use. That is, the company alone does not pick the field of use. Like other provisions of CRADA, the field or fields of use for which a license applies is the result of negotiations between the company

and the laboratory. This has been the intent all along of both the Senate and House sponsors of this legislation, as reflected in both House and Senate report language. However, Senator **Domenici** has asked that we make this point explicit in the bill language itself, and I am happy to do so.

Second, as also discussed earlier, we want to make clear that an Agency will exercise its rights under the bill to require the holder of an exclusive technology to share that technology only in exceptional circumstances. Senators **Bingaman** and **Domenici** have requested this clarification, and I am pleased to do so because this has been our intent all along. We know that there may be some exceptional, and very rare, circumstances under which the holder of an exclusive license is not willing or able to use an important technology or use it as provided in the original CRADA agreement. We feel strongly that the Government must maintain some rights to deal with such a situation, but agree with our distinguished colleagues that these rights should be exercised only under the most exceptional circumstances. We do not want prospective CRADA participants to feel that the Government will exercise these rights on a routine or arbitrary basis.

Third, Senator **Johnston** has asked that a provision from other Federal patent law--the Bayh-Dole Act--be added to our bill's section regarding the exceptional circumstances under which the Government may exercise its right to require a collaborating party, holding an exclusive license to an invention made in whole or in part by a laboratory employee, to grant a license to a responsible applicant. That provision from the Bayh-Dole is section 203(2) of title 35, United States Code, and as added here it would provide a collaborating party under these exceptional circumstances a right to an administrative appeal, as described under 37 CFR part 401, and to judicial review. In short, if the Government determines that it has grounds to force a collaborating party to grant a license to additional party, according to the criteria set forth in the bill, then that collaborating party will have a right of due process and appeal.

Fourth, Senator **Glenn,** in his capacity as ranking member of the Committee on Governmental Affairs, has raised a point concerning section 9's provisions on the disposal of excess laboratory research equipment. We delete one part of section 9 and plan to enter into a colloquy with the distinguished Senator from Ohio regarding the procedures under which Federal laboratories may loan or lease research equipment.

Fifth, the date on which a report required under section 12(c) is due is changed from January 1, 1996, to within 90 days of the date of enactment of this act.

A final amendment clarifies section 12(b), a provision which

deals with the role of the National Institute of Standards and Technology [NIST] in coordinating government

standards activities. The amendment corrects a small drafting error. The original text, in part, implies that NIST is to coordinate private sector standards and conformity assessment activities. Of course, we in no way intend that NIST or any other part of the Federal Government is to coordinate, direct, or supervise private sector activities. The amendment makes clear that NIST is to coordinate with private sector activities.

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TECHNOLOGY TRANSFER IMPROVEMENTS ACT OF 1995 (Senate - February 07, 1996)

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CONCLUSION

Mr. President, this bill is a concrete step toward making our Government's huge investment in science and technology more useful to commercial companies and our economy. Companies in West Virginia and other States will not find it easier to partner with Federal laboratories across the country. The winner will be the American economy, which will get more economic benefit out of the billions of dollars we invest each year in our Government laboratories. The result will be new technologies, new products, and new jobs for Americans.

In closing, I want to thank and compliment my good friends, Representative **Morella** and Senator **Burns,** for their great leadership on this legislation. I also want to thank their staffs, the staffs for Congressmen **Brown** and **Tanner,** and Chairman **Pressler's** staff for their hard work. Special thanks also goes to Under Secretary of Commerce Mary Lowe Good and her staff, particularly Chief Counsel Mark Bohannon, for their work in reviewing the legislation and working with other Federal agencies. Numerous technical experts helped us with the legislation, and I thank them. I also want to thank Dr. Thomas Forbord, who as a congressional fellow on my staff several years ago drafted the first version of this valuable legislation.

Mr. President, this is a good bill that will benefit companies in West Virginia, Montana, Maryland, and all other States. It will help speed the creation of new technologies, will help make American companies more competitive, and will help create and retain good American jobs.

I urge our colleagues to accept the House-passed version, H.R. 2196, with these minor perfecting amendments, and return the bill to the House so that they may concur in these minor changes and send the legislation on the President for his signature.

Mr. BURNS. Mr. President, I rise in support of H.R. 2196, as amended, which is a bill to amend the Stevenson-Wylder Technology Innovation Act of 1980. The Senate version of this bill, **S . 1164** , was reported out of the Commerce Committee in November of last year. Our system of more than 700 Federal laboratories is one of our most precious national assets. These labs conduct important research and development programs to keep the United States on the cutting edge of science and technology.

As chairman of the Science Subcommittee, I cosponsored **S . 1164** to help accelerate the transfer of technology from our 700 Federal labs to the private industry, where it can be converted into commercial goods and services for the American people. Our cooperative research and development agreements [CRADA's] have proven a very effective way of accomplishing technology transfer without increasing Federal spending. These CRADA's enable Government and industry to conduct research together which hopefully will generate inventions and technological breakthroughs that can be later commercialized. It is the national interest to encourage more of this kind of joint research.

With that in mind, this bill seeks to encourage more joint research by clarifying the intellectual property rights that the industry partner may receive in inventions generated by the joint research. In this way, the company knows going into the arrangement that it will have the right to commercialize the results of its joint research. The bill also makes clear that, in exchange for the rights given to the company, the Government is entitled to reasonable compensation, which would typically involve a share of the royalties from any successful commercialization efforts. So, both the Federal labs and their private sector partners in these agreements stand to benefit from this legislation.

Equally important, the bill provides greater incentives for the Federal lab scientists to commercialize their inventions by increasing their share of any royalties received from the sale of products arising from the joint research.

code of federal regulations

Commerce and Foreign Trade

15

PARTS 0 TO 299

Revised as of January 1, 1990

DEPARTMENT OF COMMERCE

APR 17 1990

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manufactured prior to the effective date of the amendment or revision.

§ 16.12 Consumer education.

The Secretary, in close cooperation and coordination with interested Government agencies, appropriate trade associations and industry members, consumer organizations, and other interested persons shall carry out a program to educate consumers relative to the significance of the labeling program. Some elements of this program shall also be directed toward informing retailers and other interested groups about the program.

§ 16.13 Coordination with State and local programs.

The Secretary will establish and maintain an active program of communication with appropriate State and local government offices and agencies and will furnish and make available information and assistance that will promote uniformity in State and local programs for the labeling of performance characteristics of consumer products.

§ 16.14 Annual report.

The Secretary will prepare an annual report of activities under the program, including an evaluation of the program and a list of participants, designated agents, and types of consumer products covered.

PART 17—LICENSING OF GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF COMMERCE

Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

Sec.
17.1 Licensing rules.

Subpart B—Licensing of Rights in Foreign Patents and Patent Applications—[Reserved]

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

17.21 Purpose.
17.22 Definitions.
17.23 Authority to grant licenses.
17.24 Persons who may appeal.
17.25 Procedures.
17.26 Adjudicatory.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

EDITORIAL NOTE: 41 CFR Part 101-4 referred to in this part was removed at 50 FR 28402, July 12, 1985.

Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

§ 17.1 Licensing rules.

(a) The Government-wide rules for the licensing of rights in domestic patents and patent applications vested in the United States of America, found at 41 CFR 101-4.1, are applicable to all such licensing activities of the Department of Commerce, subject to the following minor clarifications:

(1) The term "Government agency" as defined at 41 CFR 101-4.102(c) means the United States Department of Commerce or a designated operating unit within the Department.

(2) The term "The head of the Government agency", as defined at 41 CFR 101-4.102(d), means the Secretary of Commerce or a designee.

[42 FR 54415, Oct. 6, 1977]

Subpart B—Licensing of Rights in Foreign Patents and Patent Applications—[Reserved]

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

SOURCE: 49 FR 7986, Mar. 5, 1984, unless otherwise noted.

§ 17.21 Purpose.

This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce.

§ 17.22 Definitions.

(a) 41 CFR Part 101-4 shall mean the General Services Administration

Final Rule concerning "Patents: Licensing of Federally Owned Inventions" which was originally published in the FEDERAL REGISTER, volume 47, number 152, Friday, August 6, 1982 at pages 34148 through 34151.

(b) Director shall mean the Director of the National Technical Information Service, and operating agency within the U.S. Department of Commerce.

(c) Assistant Secretary means the Assistant Secretary for Productivity, Technology and Innovation who is an officer appointed by the President and confirmed by the Senate and is an official to whom the Director reports within the Department of Commerce.

§ 17.23 Authority to grant licenses.

The Director has been duly delegated authority to make any decision or determination concerning the granting, denial, interpretation, modification or termination of any license of any patent in the custody and control of the U.S. Department of Commerce. The decision and determination of the Director is final and conclusive on behalf of this Department unless the procedures for appeal set forth below are initiated.

§ 17.24 Persons who may appeal.

The following person(s) may appeal to the Assistant Secretary any decision or determination concerning the grant, denial, interpretation, modification or termination of a license:

(a) A person whose application for a license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice published in the FEDERAL REGISTER as required by 41 CFR 101-4.104-3(a)(1)(c)(i) or 101-4.104-3(b)(1)(i) and who can demonstrate to the satisfaction of the Assistant Secretary that such person may be damaged by the Director's determination.

§ 17.25 Procedures.

(a) Any appellant party(ies) who was denied a license by the Director under § 17.24(a) shall not be entitled to an adversary hearing. Such party(ies) shall file appropriate documents no later than 30 days from the receipt of the Director's decision unless the Assistant Secretary grants for good cause an extension of time. The notice, in concise and brief terms, should state the grounds for appeal and include copies of all pertinent documents. Accompanying the notice should be concise arguments as to why the Director's decision should be rejected or modified.

(b) The Assistant Secretary shall render a written opinion within 30 days of receiving all required documentation in a non-adversary appeal.

(c) Judicial review is available as the law permits.

§ 17.26 Adjudicatory.

(a) Any appellant party who seeks review of the Director's decision based upon a modification or termination of a license by the Director under § 17.24(b), or who has filed a timely objection and can demonstrate damages as provided in § 17.24(c), shall be entitled to an adversary hearing in accord with the provisions of the Administrative Procedures Act (5 U.S.C. 554-557). A party may waive an adversary hearing by filing a written walver with the Assistant Secretary.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Assistant Secretary shall appoint as promptly as possible an Administrative Law Judge who shall hold hearings no later than 45 days from the date of the appointment. The hearings will be conducted in conformity with the objectives of the Administrative Procedure Act. The Administrative Law Judge shall submit a written recommendation to the Assistant Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

(c) The Assistant Secretary shall render a final written decision on behalf of the Department based upon the appeal file which shall include the hearing record, exhibits, written submissions of the party(ies), and the recommendation of the Administrative Law Judge. The Assistant Secretary's decision shall include the reasons which form the basis of the determi-

nation. The final decision may uphold, overrule, or modify the Director's decision or take any action deemed appropriate.

(d) Judicial review is available as the law permits.

PART 18—ATTORNEY'S FEES AND OTHER EXPENSES

GENERAL PROVISIONS

Sec.
18.1 Purpose of these rules.
18.2 Definitions.
18.3 When the Act applies.
18.4 Proceedings covered.
18.5 Eligibility of applicants.
18.6 Standards for awards.
18.7 Allowable fees and expenses.
18.8 Rulemaking on maximum rates for attorney fees.
18.9 Awards against other agencies.
18.10 Delegations of authority.

INFORMATION REQUIRED FROM APPLICANTS

18.11 Contents of application.
18.12 Net worth exhibit.
18.13 Documentation of fees and expenses.
18.14 When an application may be filed.

PROCEDURES FOR CONSIDERING APPLICATIONS

18.15 Filing and service of documents.
18.16 Answer to application.
18.17 Reply.
18.18 Comments by other parties.
18.19 Settlement.
18.20 Further proceedings.
18.21 Decision.
18.22 Agency review.
18.23 Judical review.
18.24 Payment of award.

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 47 FR 13510, Mar. 31, 1982, unless otherwise noted.

GENERAL PROVISIONS

§ 18.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department of Commerce (the word Department includes its component agencies). An eligible party may receive an award when it prevails over the Department, unless the Department's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties that are eligible for awards and the Department's proceedings that are covered by the Act. They also explain how to apply for awards, and the procedures and standards that the Department will use to make them.

§ 18.2 Definitions.

As used in this part:

(a) "Adversary adjudication" means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(b) "Adjudicative officer" means the official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

§ 18.3 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in §§ 18.11 through 18.14 of this part, has been filed with the Department within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

[53 FR 6798, Mar. 3, 1988]

§ 18.4 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department and to appeals of decisions of contracting officers of the Department made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section

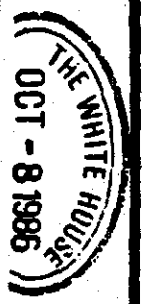
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H. R. 3773

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. 2. 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 P. O'Neill

Speaker of the House of Representatives.

Strom Thurmond

Vice President of the United States and President of the Senate pro tempore

or in Institutional Patent Agreements now in effect that were entered into before that law was enacted on November 8, 1984, unless, in the case of an invention that has not been marketed, the funding agency determines, based on information in its files, that the contractor or grantee has not taken adequate steps to market the inventions, in accordance with applicable law or an Institutional Patent Agreement."

Ronald Reagan

The White House,
December 22, 1987.

[*Filed with the Office of the Federal Register, 10:32 a.m., December 23, 1987*]

Half-Day Closing of the Federal Government

Executive Order 12619.
December 22, 1987

HALF-DAY CLOSING OF GOVERNMENT DEPARTMENTS AND AGENCIES ON THURSDAY, DECEMBER 24, 1987

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered:

Section 1. All Executive departments and agencies of the Federal Government shall be closed and their employees excused from duty for the last half of the scheduled workday on Christmas Eve, December 24, 1987, except as provided in Section 2 below.

Sec. 2. The heads of Executive departments and agencies may determine that certain offices and installations of their or-

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H.R.6163

P.L. 98-620

Ninety-eighth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-third day of January, one thousand nine hundred and eighty-four

An Act

To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes.

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

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Trademark Clarification Act of 1984".

AMENDMENT TO THE TRADEMARK ACT

SEC. 102. Section 14(c) of the Trademark Act of 1946, commonly known as the Lanham Trademark Act (15 U.S.C. 1064(c)) is amended by adding before the semicolon at the end of such section a period and the following: "A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used".

DEFINITIONS

SEC. 103. Section 45 of such Act (15 U.S.C. 1127) is amended as follows:

(1) Strike out "The term 'trade-mark' includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others." and insert in lieu thereof the following: "The term 'trademark' includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.".

(2) Strike out "The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." and insert in lieu thereof the following: "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.".

sioner, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

(c) The amendments made by this section shall apply to proceedings pending in the Patent and Trademark Office on the date of the enactment of this Act and to appeals pending in the United States Court of Appeals for the Federal Circuit on such date.

SEC. 415. Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982, was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act, so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia.

SEC. 416. Title 28, United States Code, is amended in the following respects:

(a) There shall be inserted, after section 797 thereof, in chapter 51 thereof, the following new section 798, which shall read as follows:

"§ 798. Places of holding court; appointment of special masters

"(a) The United States Claims Court is hereby authorized to utilize facilities and hold court in Washington, District of Columbia, and in four locations outside of the Washington, District of Columbia metropolitan area, for the purpose of conducting trials and such other proceedings as may be appropriate to executing the court's functions. The Director of the Administrative Office of the United States Courts shall designate such locations and provide for such facilities.

"(b) The chief judge of the Claims Court may appoint special masters to assist the court in carrying out its functions. Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.".

(b) The caption of chapter 51, title 28, shall be amended to include the following item:

"798. Places of holding court; appointment of special masters.".

TITLE V—GOVERNMENT RESEARCH AND DEVELOPMENT PATENT POLICY

SEC. 501. Chapter 18 of title 35, United States Code, is amended—

(1) by adding "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.)" immediately after "title" in section 201(d);

(2) by adding ": *Provided,* That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d))) must also occur during the period of contract performance" immediately after "agreement" in section 201(e);

(3) in section 202(a), by amending clause (i) to read as follows: "(i) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government,"; by striking the word "or" before "ii", and by adding after the words "security of such activities" in the first sentence of such para-

graph, the following: "or, iv) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs of the Department of Energy."

(4) by amending paragraphs (1) and (2) of section 202(b) to read as follows:

"(b)(1) The rights of the Government under subsection (a) shall not be exercised by a Federal agency unless it first determines that at least one of the conditions identified in clauses (i) through (iii) of subsection (a) exists. Except in the case of subsection (a)(iii), the agency shall file with the Secretary of Commerce, within thirty days after the award of the applicable funding agreement, a copy of such determination. In the case of a determination under subsection (a)(ii), the statement shall include an analysis justifying the determination. In the case of determinations applicable to funding agreements with small business firms, copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions.

"(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that one or more Federal agencies are utilizing the authority of clause (i) or (ii) of subsection (a) of this section in a manner that is contrary to the policies and objectives of this chapter, the Administrator is authorized to issue regulations describing classes of situations in which agencies may not exercise the authorities of those clauses.";

(4A) By adding at the end of section 202(b) the following new paragraph:

"(4) If the contractor believes that a determination is contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency, the determination shall be subject to the last paragraph of section 203(2).".

(5) by amending paragraphs (1), (2), (3), and (4) of section 202(c) to read as follows:

"(1) That the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

"(2) That the contractor make a written election within two years after disclosure to the Federal agency (or such additional time as may be approved by the Federal agency) whether the contractor will retain title to a subject invention: *Provided,* That in any case where publication, on sale, or public use, has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Federal agency to a date that is not more than sixty days prior to the end of the statutory

period: *And provided further,* That the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times.

"(3) That a contractor electing rights in a subject invention agrees to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

"(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: *Provided,* That the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreement relating to weapons development and production.".

(6) by striking out "may" in section 202(c)(5) and inserting in lieu thereof "as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall";

(7) by striking out "and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sales of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention" in clause (A) of section 202(c)(7);

(8) by amending clauses (B)–(D) of section 202(c)(7) to read as follows: "(B) a requirement that the contractor share royalties with the inventor; (C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year up to an amount equal to 5 percent of the annual budget of the facility, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities

that increase the licensing potential of other inventions of the facility; provided that if said balance exceeds 5 percent of the annual budget of the facility, that 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D); and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility."

(9) by adding "(1. before the word "With" in the first line of section 203, and by adding at the end of section 203 the following:

"(2) A determination pursuant to this section or section 202(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. §601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, ", as appropriate, the determination of the Federal agency. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.";

(10) by amending section 206 to read as follows:

"§ 206. Uniform clauses and regulations

"The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter. The regulations and the standard funding agreement shall be subject to public comment before their issuance.";

(11) in section 207 by inserting "(a)" before "Each Federal" and by adding the following new subsection at the end thereof:

"(b) For the purpose of assuring the effective management of Government-owned inventions, the Secretary of Commerce is authorized to—

"(1) assist Federal agency efforts to promote the licensing and utilization of Government-owned inventions;

"(2) assist Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and

"(3) consult with and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization."; and

(12) in section 208 by striking out "Administrator of General Services" and inserting in lieu thereof "Secretary of Commerce".

(13) by deleting from the first sentence of section 210(c), "August 23, 1971 (36 Fed. Reg. 16887)" and inserting in lieu thereof "February 18, 1983", and by inserting the following before the period at the end of the first sentence of section 210(c) "except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall

include the requirements established in paragraph 202(c)(4) and section 203 of this title."

(14) by adding at the end thereof the following new section:

"§ 212. Disposition of rights in educational awards

"No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee."; and

(15) by adding at the end of the table of sections for the chapter the following new item:

"212. Disposition of rights in educational awards.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.