UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Economic Affairs
Washington, D.C. 20230

13 NOV 1987

MEMORANDUM FOR:

Under Secretary for Oceans and Atmosphere
Director, NBS
Assistant Secretary, NTIA
Assistant Administrator, National Ocean Service, NOAA
Assistant Administrator, National Weather Service, NOAA
Assistant Administrator, National Marine Fisheries Service, NOAA
Assistant Administrator, National Environmental Satellite, Data and Information Service, NOAA
Assistant Administrator, Office of Oceanic and Atmospheric Research, NOAA
Director, National Engineering Laboratory, NBS
Director, National Measurement Laboratory, NBS
Director, Institute for Computer Sciences and Technology
Director, Institute for Materials, Science and Engineering
Director, Institute for Telecommunication and Sciences
Director, NBS/Boulder Laboratories

FROM:

Robert Ortner
Under Secretary for Economic Affairs

Attached for your review is a proposed Memorandum redelegating to the addressees authority to enter into cooperative R&D and license agreements under the Federal Technology Transfer Act of 1986 (FTTA). This authority has been initially delegated by the Secretary to me.

The FTTA was drafted to allow a Federal agency to authorize each of its laboratories to enter into cooperative R&D and license agreements with firms in the private sector. The attached memorandum carries out the intent of the FTTA by decentralizing technology management to the level closest to our creative investigators consistent with general policy coordination. Since this had already been undertaken government-wide in regard to universities and other Federally-funded performers, there is an additional need to act expeditiously to preserve the Department's ability to compete for the country's best investigators.

The proposed delegations also create new oversight responsibilities in the Under Secretary for Oceans and Atmosphere, the Director, NBS, and the Assistant Secretary, NTIA over the

laboratories. This is done in part by requiring each delegatee to include in any cooperative R&D agreement or license a clause providing a 30 day period for its higher authority to approve or disapprove the agreement. In addition, the delegations permit the delegatees to utilize the services of higher level or outside organizations if unavailable from their own resources, subject to some review. This is consistent with the intent of E.O. 12591 to permit laboratories to manage their own technology as an incentive to commercialization.

Your comments should be forwarded to me by November 24, 1987.

Attachment

cc: Deputy Secretary Clarence J. Brown
Deputy General Counsel Robert H. Brumley

DRAFT

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Director, Institute for Materials, Science and Engineering
Director, Institute for Telecommunication Sciences
Director, NBS/Boulder Laboratories

FROM: Robert Ortner
Under Secretary for Economic Affairs

SUBJECT: Implementation of the Federal Technology Transfer Act of 1986

The Secretary has delegated to me all the Department of Commerce (DOC) authorities under the Federal Technology Transfer Act of 1986 (FTTA) (Attachment I). This memorandum responds to the President's April 10, 1987 Executive Order No. 12591 directing the heads of all Federal agencies to delegate the authorities of Section 2 of the FTTA to enter into cooperative research and development and licensing agreements to the heads of its laboratories (15 U.S.C. 3710a(a)(1) and (2)).

Implementation of this legislation opens new opportunities for DOC laboratories that call for you and your entire staff to understand the FTTA. The intent of the Congress, the President's Executive Order and the Department's mission require that we move quickly to decentralize technology management to the level closest to our creative investigators consistent with general policy coordination.

DRAFT

Accordingly, each addressee is hereby separately authorized, within existing resources, to enter into cooperative research and development or license agreements as described by Section 2 of the FTTA (15 U.S.C. 3710a(a)(1) and (2)) between laboratories under your direct authority and the private sector. In addition to having authority to enter directly into collaborations each of you will be responsible for coordinating and monitoring activities under the FTTA within your authority. In particular, while proceeding with cooperative or license agreements, each delegatee should develop an implementation plan, establish appropriate policy guidelines and procedures for carrying out the plan, and develop reporting, data collection, and other mechanisms necessary to assure that the FTTA is implemented in an appropriate manner.

The Under Secretary for Oceans and Atmosphere, Director, NBS and the Assistant Secretary, NTIA are delegated the general agency responsibilities assigned to "a Federal Agency" in Sections 2, 6, 7, and 8 of the FTTA (15 U.S.C. 3710a through 3710d), with respect to their laboratories, institutes or services subject to Appendix A and my general management and oversight responsibilities. In the same context, all addressees, when acting under 15 U.S.C. 3710a(a)(1) and (2), are delegated the responsibilities assigned to "a Government-operated Federal laboratory" in Sections 2, 6, 7 and 8 of the FTTA subject to Appendix A.

These delegations will be reviewed one year from this date. At the end of the year I intend to evaluate our progress, problems, procedures and implementation and the delegations made under the Secretary's memorandum. In the meantime, delegatees shall exercise the delegations made by this memo in accordance with Appendix A.

For the purpose of assisting me in fulfilling my coordination and monitoring responsibilities, I am creating a Commerce Laboratory Technology Advisory Board. The Board will consist of Associate Under Secretary Barry Beringer, as Chair, the Chief Counsel for Economic Affairs, and the respective addressees. Other Departmental officers will be invited to provide coordination within the Department and to assist in implementing the Act. Mr. Norman Latker, Director, Office of Federal Technology Management will serve as Executive Director of the Board. He can be reached for information and assistance at (202) 377-0659.

I look forward to working with you on this matter which I hope will open major new opportunities for research and collaboration.

APPENDIX A
CONDITIONS AND PROCEDURES TO BE FOLLOWED BY DELEGATEES
IN EXERCISING THEIR DELEGATIONS

1. Under cooperative research and development agreements entered into pursuant to the Federal Technology Transfer Act of 1986 (FTTA), delegatees may accept, retain and use funds, personnel, services and property from collaborating parties, and in exchange may provide personnel, services and property, but not funds to the collaborative effort. (See 15 U.S.C. 3710a(b)(1)).

2. The delegatees may also, in advance, grant licenses or assignments to collaborating parties for any invention made by a Federal employee under such agreements; and also in advance, may waive Federal Government ownership to any inventions made by employees of the collaborating organizations under such agreements. However, licenses must be retained for governmental use. (See 15 U.S.C. 3710a(b)(2) and (3)).

3. Where appropriate, delegatees should permit employees and former employees of laboratories to participate in the commercialization of inventions they made while in the service of the United States. (See 15 U.S.C. 3710a(b)(4)).

4. In order to comply with Section 2 of the FTTA (15 U.S.C. 3710a(c)(3)(A)), any potential conflict of interest arising during negotiation of a cooperative agreement should be immediately reported to the Office of Federal Technology Management.

5. Under Section 2 of the FTTA (15 U.S.C. 3710a(c)(4)(A)), when negotiating such agreements delegatees should give special consideration to small business firms and consortia involving small businesses, and should follow the requirements of Section 15 U.S.C. 3710a(c)(4)(B) pertaining to preference for business units located in the United States.

6. In accordance with Section 2 of the FTTA (15 U.S.C. 3710a(c)(5)(A)), any cooperative or license agreement entered into by a delegatee under 35 U.S.C. 3710a(a)(1) and (2) should include a clause providing a 30-day period for the official to whom the delegatee reports to disapprove or require the modification of the agreement. In any case in which such an official disapproves or requires the modification of a cooperative or license agreement, a written explanation of such disapproval or modification shall be transmitted to delegatee in accordance with 15 U.S.C. 3710a(c)(5)(B).

7. The heads of NBS, NOAA and NTIA shall receive all royalty or other income produced under cooperative and license agreements negotiated under 15 U.S.C. 3710a(a)(1) and (2) for distribution to their respective laboratories. After paying at least 15 percent (not to exceed $100,000 per year) of the royalties or other income received to the inventor in accordance with Section 7 of the FTTA (15 U.S.C. 3710c(a)(1)(B). Pursuant to 15 U.S.C. 3710c(a)(1), agencies may establish larger inventor percentages as deemed appropriate. Any remaining amount shall be used at the agency or the agency's other laboratories to carry out the essential purposes of the Act in accordance with 15 U.S.C. 3710c(a)(1)(B). Funds accepted under paragraph 1 above are not subject to this provision.

8. Notwithstanding paragraph 8. above, any agreement intended to cover services of other agencies, persons, or organizations for invention management and licensing services as permitted by 15 U.S.C. 3710c(a)(1)(B)(i) and 15 U.S.C. 3710c(a)(4) shall be sent to the Under Secretary for Economic Affairs for review and approval prior to their execution and implementation. However, as intended by 15 U.S.C. 3710c(a)(1)(B)(i), invention identification and evaluation and the filing of patent applications are the responsibility of the delegatees or other persons designated by the delegatees without further review or approval. Such invention identification and evaluation and the filing of patent applications may be undertaken through the use of distributed royalties or other income, as part of a cooperative or license agreement or from other available resources.

9. Delegatees who have the right of ownership to an invention to which it does not intend to file a patent application or otherwise promote commercialization shall allow the inventor to retain title in accordance with Section 8 of the FTTA (15 U.S.C. 3710d).

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. 3. 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 F. O'Neill

Speaker of the House of Representatives.

Strom Thurmond

~~*Vice President of the United States and*~~
President of the Senate pro Tempore

1. State action

A state may restrict operation of indefinite price escalation clauses in gas purchase agreements if it chooses to do so notwithstanding a finding that such a clause was not contrary to federal public policy under this chapter. Superior Oil Co. v. Western Slope Gas Co., D.C.Colo.1982, 549 F.Supp. 463, affirmed 758 F.2d 500.

Natural Gas Policy Act of 1978 does not empower Public Utility Commission to mandate use of surcharge to fund residential conservation programs; funds created from surcharge are to be used to reduce rates of eligible customers. Process Gas Consumers Group v. Pennsylvania Public Utility Com'n, Pa.1986, 511 A.2d 1315.

Regulation of intrastate prices for natural gas by legislatively created Public Service Commission, rather than by legislature itself, was regulation by the "state" for purposes of section of the Natural Gas Policy Act authorizing state regulation for first sale of natural gas produced in that state. Pennzoil Co. v. Public Service Com'n, W.Va.1985, 327 S.E.2d 444, certiorari denied 106 S.Ct. 74.

Federal jurisdiction and regulation, both expressed and implicit, did not govern wellhead sales of deregulated natural gas, so as to supersede State Oil and Gas Board rule requiring pipeline companies to ratably take gas from wells producing from a common pool, where comparison of such rule with federal law revealed no point of actual conflict, and where there was nothing in federal law as modified by this chapter which left in place a scheme of federal regulations so pervasive as to make reasonable an inference that Congress left no room for the states to supplement it. Transcontinental Gas Pipeline Corp. v. State Oil and Gas Bd. of Mississippi, Miss.1984, 457 So.2d 1298, probable jurisdiction noted 105 S.Ct. 1840, 85 L.Ed.2d 140.

2. Indian reservation

New Mexico Natural Gas Pricing Act NMSA 1978, § 62-7-1 et seq., was applicable to gas produced on Indian reservation and sold to non-Indians on the reservation. Jicarilla Apache Tribe v. Supron Energy Corp., C.A.N.M.1984, 728 F.2d 1555, on rehearing 782 F.2d 855, modified 793 F.2d 1171.

3. State public policy

Favored nations provision in long-term contract for purchase of intrastate gas was not contrary to public policy of Colorado. Superior Oil Co. v. Western Slope Gas Co., C.A.10 (Colo.) 1985, 758 F.2d 500.

CHAPTER 62—CONDOMINIUM AND COOPERATIVE CONVERSION PROTECTION AND ABUSE RELIEF

§ 3601. Congressional findings and purpose

Notes of Decisions

Application of chapter 1
Construction ½

½. Construction

Cooperative conversion plan and amendment adequately described existence and relevant provisions of Federal Condominium and Cooperative Abuse Relief Act and gave tenants additional 30 days within which to exercise exclusive rights to purchase and, thus, satisfied informational purpose of statute [McKinney's General Business Law § 352-e, subd. 1(b)] which requires cooperative conversion plans to disclose material information to purchasers. 2 Fifth Ave. Tenants Ass'n v. May-Carlton Associates, 1986, 500 N.Y.S.2d 664, 119 A.D.2d 436.

Condominium and Cooperative Abuse Relief Act [Housing and Community Development Act of 1980, § 602 et seq., as amended, 15 U.S.C.A. § 3601 et seq.], is remedial statute, which should be interpreted broadly to give it effectiveness. 233 East 86th Street Corp. v. Park East Apartments, Inc., 1986, 499 N.Y.S.2d 853, 131 Misc.2d 242.

1. Application of chapter

Condominium and Cooperative Abuse Relief Act [15 U.S.C.A. § 3601 et seq.] was applicable to conversion of apartment building from rental to cooperative status, even though conversion did not involve eviction and no aged or disabled tenants were deprived of shelter. West 14th Street Commercial Corp. v. 5 West 14th Street Owners Corp., S.D.N.Y.1986, 625 F.Supp. 934.

§ 3605. Notice of conversion and opportunity to purchase; responsibility of State and local governments

Notes of Decisions

1. Disclosure

Cooperative conversion plan and amendment adequately disclosed existence of Federal Condominium and Cooperative Relief Act of 1980 and its provisions and gave tenants additional 30 days within which to exercise exclusive rights to purchase and, thus, satisfied informational purpose of statute [McKinney's General Business Law § 352-e, subd. 1(b)] which requires cooperative conversion plans to disclose material information to purchasers. Phoenix Tenants Ass'n v. 6465 Realty Co., 1986, 500 N.Y.S.2d 657, 119 A.D.2d 427.

§ 3607. Termination of self-dealing contracts

Notes of Decisions

Constitutionality ½
Contracts within section 1
Injunction 2

½. Constitutionality

Termination provisions of Condominium and Cooperative Abuse Relief Act [Housing and Community Development Act of 1980, §§ 602, 608, 608(b, c), as amended, 15 U.S.C.A. §§ 3601, 3607, 3607(b, c)], providing that supermajority of tenants may terminate long-term lease between sponsor and cooperative corporation obtained by self-dealing, was reasonably related to legitimate congressional goal, so that sponsor, who challenged constitutionality of act in suit for injunctive relief, failed to establish likelihood of success on merits. 233 East 86th Street Corp. v. Park East Apartments, Inc., 1986, 499 N.Y.S.2d 853, 131 Misc.2d 242.

1. Contracts within section

Contracts between cooperative association which owned apartment building and three corporations created by original owner and developer of building for purpose of effectuating conversion of building from rental to cooperative status were not "self-dealing contracts" within meaning of section of Condominium and Cooperative Abuse Relief Act; contracts were not in any realistic sense between developer and cooperative association as such or its unit owners; moreover, even assuming contracts were deemed to be "between" developer and cooperative association, developer never held a "majority of the votes" in association or exercised "special developer control" as required for applicability of statute. West 14th Street Commercial Corp. v. 5 West 14th Street Owners Corp., S.D.N.Y.1986, 625 F.Supp. 934.

2. Injunction

Sponsor failed to demonstrate favorable balance of equities, for purposes of its suit to enjoin tenants from terminating lease under Condominium and Cooperative Abuse Relief Act [Housing and Community Development Act of 1980, § 602 et seq., as amended, 15 U.S.C.A. § 3601 et seq.], where sponsor had previously obtained lease of up to 95 years for unusually low rental figure from cooperative corporation it controlled. 233 East 86th Street Corp. v. Park East Apartments, Inc., 1986, 499 N.Y.S.2d 853, 131 Misc.2d 242.

§ 3608. Judicial determinations respecting unconscionable leases

Notes of Decisions

1. Due process

This chapter does not deprive party to a condominium recreational facilities lease of contractual rights without due process of law, even when applied to provide judicial review of leases entered into before this chapter was passed, as the remedies of this chapter are directed solely to unconscionable lease provisions, so that there is no interference with any valid contract rights, and this chapter provides ample opportunity to show that lease is not unconscionable. Bay Colony Condominium Owners Ass'n v. Origer, D.C.Ill.1984, 586 F.Supp. 30.

CHAPTER 63—TECHNOLOGY INNOVATION

Sec.
3704. Commerce and technological innovation.
(a) In general.
(b) Assistant Secretary.
(c), (d) [See main volume for text].
3705. Cooperative Research Centers.
(a) Establishment.
(b) Activities.
(c), (d) [See main volume for text].
(e) Research and development utilization.
(f) Repealed.
3707. National Science Foundation Cooperative Research Centers.
3710. Utilization of Federal technology.
(a) to (c) [See main volume for text.]
(d) Dissemination of technical information.
(e) Establishment of Federal Laboratory Consortium for Technology Transfer
(f) Agency reporting.
(g) Functions of Secretary.

Sec.
3710a. Cooperative research and development agreements.
(a) General authority.
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(c) Contract considerations.
(d) Definitions.
(e) Determination of laboratory missions.
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3710b. Rewards for scientific, engineering, and technical personnel of Federal agencies.
3710c. Distribution of royalties received by Federal agencies.
(a) In general.
(b) Certain assignments.
(c) Reports.
3710d. Employee activities.
(a) In general.
(b) Definition.
(c) Relationship to other laws.

§ 3701. Findings

The Congress finds and declares that:

[See main volume for text of (1) to (9)]

(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, including inventions, software, and training technologies, 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.

(As amended Pub.L. 99-502, § 9(f)(1), Oct. 20, 1986, 100 Stat. 1797.)

Short Title of 1986 Amendments. Section 1 of Pub.L. 99-502 provided that: "This Act [enacting sections 3710a to 3710d of this title, amending this section and sections 3702, 3703, 3704, 3705, 3707, 3708, 3710 and 3714 of this title and section 210 of Title 35, Patents and repealing former section 3709 of this title] may be cited as the 'Federal Technology Transfer Act of 1986'."

Pub.L. 99-382, § 1, Aug. 14, 1986, 100 Stat. 811, provided: "That this Act [amending section 3704 of this title] may be cited as the 'Japanese Technical Literature Act of 1986'."

1986 Amendment. Par. (10). Pub.L. 99-502, § 9(f)(1), inserted ", which include inventions, computer software, and training technologies," after "These developments".

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 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 cooperative research centers;

(3) stimulating improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector;

[See main volume for text of (4) and (5)]

(As amended Pub.L. 99-502, § 9(b)(1), (f)(2), Oct. 20, 1986, 100 Stat. 1795, 1797.)

1986 Amendment. Par. (2). Pub.L. 99-502, § 9(b)(1), substituted "cooperative research centers" for "centers for industrial technology".

Par. (3). Pub.L. 99-502, § 9(f)(2), inserted ", including inventions, software, and training technologies," after "developments".

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3703. Definitions

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

(1) "Office" means the Office of Productivity, Technology, and Innovation established under section 3704 of this title.

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

(3) "Assistant Secretary" means the Assistant Secretary for Productivity, Technology and Innovation, appointed pursuant to section 3704 of this title.

(4) "Centers" means the Cooperative Research Centers 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) "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, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

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

(8) "Federal agency" means any executive agency as defined in section 105 of Title 5 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 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 632 of this title 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.

(As amended Pub.L. 99-502, § 9(b)(2), (d), Oct. 20, 1986, 100 Stat. 1795, 1796.)

References in Text. The Plant Variety Protection Act, referred to in par. (9), is Pub.L. 91-577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (section 2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables volume.

1986 Amendment. Par. (1). Pub.L. 99-502, § 9(b)(2)(A), substituted definition of "Office" as the Office of Productivity, Technology, and Innovation for former definition of that term as the Office of Industrial Technology.

Par. (3). Pub.L. 99-502, § 9(b)(2)(B), substituted provisions relating to the Assistant Secretary for Productivity, Technology and Innovation for provisions which related to the Director of the Office of Industrial Technology.

Par. (4). Pub.L. 99-502, § 9(b)(2)(C), substituted definition of "Centers" as Cooperative Research Centers for former definition of that term as the Centers for Industrial Technology.

Par. (6). Pub.L. 99-502, § 9(b)(2)(D), redesignated former par. (7) as (6), and struck out former par. (6), which defined the term "Board" as the National Industrial Technology Board established pursuant to section 3709 of this title.

Par. (7). Pub.L. 99-502, § 9(b)(2)(D), redesignated former par. (8) as (7). Former par. (7) redesignated (6).

Pub.L. 99-502, § 9(b)(2)(D), redesignated former par. (8) as (7).

Pub.L. 99-502, § 9(b)(2)(E), in par. (6) as so redesignated substituted "owned, leased, or otherwise used by a Federal agency and funded" for "owned and funded".

Par. (8). Pub.L. 99-502, § 9(d), added par. (8). Former par. (8) redesignated (7).

Pars. (9) to (12). Pub.L. 99-502, § 9(d), added pars. (9) to (12).

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3704. Commerce and technological innovation

(a) In general

The Secretary shall establish and maintain an Office of Productivity, Technology, and Innovation, in accordance with the provisions, findings, and purposes of this chapter.

(b) Assistant Secretary

The President shall appoint, by and with the advice and consent of the Senate, an Assistant Secretary for Productivity, Technology, and Innovation.

(c) Duties

The Secretary, through the Assistant Secretary on a continuing basis, shall—

[See main volume for text of (1) to (5)]

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

(7) encourage and assist the creation of centers and other joint initiatives by State or 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;

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

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

(d) Japanese technical literature

(1) In addition to the duties specified in subsection (c) of this section, the Secretary shall establish and, through the National Technical Information Service and such other offices within the Department of Commerce as the Secretary considers appropriate, maintain a program (including an office in Japan) which shall, on a continuing basis—

(A) monitor Japanese technical activities and developments;

(B) consult with businesses, professional societies, and libraries in the United States regarding their needs for information on Japanese developments in technology and engineering;

(C) acquire and translate selected Japanese technical reports and documents that may be of value to agencies and departments of the Federal Government, and to businesses and researchers in the United States; and

(D) coordinate with other agencies and departments of the Federal Government to identify significant gaps and avoid duplication in efforts by the Federal Government to acquire, translate, index, and disseminate Japanese technical information.

Activities undertaken pursuant to subparagraph (C) of this paragraph shall only be performed on a cost-reimbursable basis. Translations referred to in such subparagraph shall be performed only to the extent that they are not otherwise available from sources within the private sector in the United States.

(2) Beginning in 1986, the Secretary shall prepare annual reports regarding important Japanese scientific discoveries and technical innovations in such areas as computers, semiconductors, biotechnology, and robotics and manufacturing. In preparing such reports, the Secretary shall consult with professional societies and businesses in the United States. The Secretary may, to the extent provided in advance by appropriation Acts, contract with private organizations to acquire and translate Japanese scientific and technical information relevant to the preparation of such reports.

(3) The Secretary also shall encourage professional societies and private businesses in the United States to increase their efforts to acquire, screen, translate, and disseminate Japanese technical literature.

(4) In addition, the Secretary shall compile, publish, and disseminate an annual directory which lists—

(A) all programs and services in the United States that collect, abstract, translate, and distribute Japanese scientific and technical information; and

(B) all translations of Japanese technical documents performed by agencies and departments of the Federal Government in the preceding 12 months that are available to the public.

(5) The Secretary shall transmit to the Congress, within 1 year after August 14, 1986, a report on the activities of the Federal Government to collect, abstract, translate, and distribute declassified Japanese scientific and technical information.

(e) Report

The Secretary shall prepare and submit to the President and Congress, within 8 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 (as then in effect) and recommendations for possible modifications thereof.

(As amended Pub.L. 99-382, § 2, Aug. 14, 1986, 100 Stat. 811; Pub.L. 99-502, § 9(b)(3)-(5), (e)(2)(A), Oct. 20, 1986, 100 Stat. 1795, 1797.)

[1] So in original. Probably should be "or".

1986 Amendments. Subsec. (a). Pub.L. 99-502, § 9(b)(3), substituted "Office of Productivity, Technology, and Innovation" for "Office of Industrial Technology".

Subsec. (b). Pub.L. 99-502, § 9(b)(4), substituted "Assistant Secretary" for "Director" as the subsection catchline, and in text substituted "an Assistant Secretary for Productivity, Technology, and Innovation" for "a Director of the Office" and struck out provision which required that the Director of the Office be compensated at the rate provided for Level V of the Executive Schedule in section 5316 of Title 5.

Subsec. (c). Pub.L. 99-502, § 9(b)(5)(A), substituted "the Assistant Secretary" for "the Director" in provisions preceding par. (1).

Subsec. (c)(6). Pub.L. 99-502, § 9(b)(5)(A), substituted "the Assistant Secretary" for "the Director".

Subsec. (c)(7). Pub.L. 99-502, § 9(b)(5)(C), added par. (7). Former par. (7) redesignated (9).

Subsec. (c)(8). Pub.L. 99-502, § 9(b)(5)(C), added par. (8). Former par. (8) redesignated (10).

Subsec. (c)(9). Pub.L. 99-502, § 9(b)(5)(B), redesignated former par. (7) as (9).

Subsec. (c)(10). Pub.L. 99-502, § 9(b)(5)(B), redesignated former par. (8) as (10).

Subsec. (d). Pub.L. 99-382, § 2(2), added subsec. (d). Former subsec. (d) was redesignated (e).

Subsec. (e). Pub.L. 99-502, § 9(a)(2)(A), in subsec. (e) as so redesignated inserted "(as then in effect)" after "3712 of this title".

Subsec. (e). Pub.L. 99-382, § 2(1), redesignated subsec. (d) as (e).

Legislative History. For legislative history and purpose of Pub.L. 99-382, see 1986 U.S.Code Cong. and Adm.News, p. 1812; Pub.L. 99-502, 1986 U.S.Code Cong. and Adm.News, p. 3442.

§ 3705. Cooperative Research Centers

(a) **Establishment.**—The Secretary shall provide assistance for the establishment of Cooperative Research Centers. 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—

[See main volume for text of (1) to (6)]

(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 research;

[See main volume for text of (2)-(4); (c) and (d)]

(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 shall apply to the extent not inconsistent with this section.

(f) **Repealed.** Pub.L. 99-502, § 9(b)(10), Oct. 20, 1986, 100 Stat. 1796.

(As amended Pub.L. 99-502, § 9(b)(6)-(10), Oct. 20, 1986, 100 Stat. 1796.)

1986 Amendment. Catchline. Pub.L. 99-502, § 9(b)(6), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Subsec. (a). Pub.L. 99-502, § 9(b)(7), substituted "Cooperative Research Centers" for "Centers for Industrial Technology" in provisions preceding par. (1).

Subsec. (b)(1). Pub.L. 99-502, § 9(b)(8), struck out "basic and applied" following "industry-university".

Subsec. (e). Pub.L. 99-502, § 9(b)(9), substituted provisions that in research and development utilization under this section chapter 18 of Title 35 shall apply to the extent not inconsistent with this section for provisions establishing conditions under which each Center for Industrial Technology or supporting agency could acquire or retain title to any invention conceived or made under the auspices of the Center, or patent on such invention, and further establishing procedures for issuing licenses to responsible applicants, with de novo review of adverse decisions by the supporting agency available in the United States Court of Claims.

Subsec. (f). Pub.L. 99-502, § 9(b)(10), struck out subsec. (f), which had provided for consultation by the supporting agency with the Attorney General and issuance by the Attorney General of an advisory opinion as to whether the proposed joint research activities of a Center for Industrial Technology would violate any of the antitrust laws.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S.Code Cong. and Adm.News, p. 3442.

National Critical Materials Council, recommendations by Council regarding establishment of

§ 3707. National Science Foundation Cooperative Research Centers

(a) Establishment and provisions.—The National Science Foundation shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof.

[See main volume for text of (b) and (c)]

(As amended Pub.L. 99-502, § 9(b)(11), (12), (e)(2)(B), Oct. 20, 1986, 100 Stat. 1796, 1797.)

1986 Amendment. Catchline. Pub.L. 99-502, § 9(b)(11), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Subsec. (a). Pub.L. 99-502, § 9(b)(12), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Pub.L. 99-502, § 9(e)(2)(B), struck out provisions that sections 3705(e) and 3705(f) of this title would apply to Centers established under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3708. Administrative arrangements

[See main volume for text of (a) to (c)]

(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, 3710, 3710d, or 3712 of this title before funds are committed to such program in order to mount complementary efforts and avoid duplication.

(As amended Pub.L. 99-502, § 9(e)(2)(C), Oct. 20, 1986, 100 Stat. 1797.)

1986 Amendment. Subsec. (d). Pub.L. 99-502, § 9(e)(2)(C), added references to sections 3710 and 3710d of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3709. Repealed. Pub.L. 99-502, § 9(a), Oct. 20, 1986, 100 Stat. 1795.

Section, Pub.L. 96-480, § 10, Oct. 21, 1980, 94 Stat. 2317, related to the National Industrial Technology Board.

§ 3710. Utilization of Federal technology

(a) Policy

(1) 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.

(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) 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 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions 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.

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.

The agency head may waive the requirement set forth in clause (2) of the preceding sentence. If the agency head waives such requirement, 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 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;

(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 National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, 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;

(4) to provide technical assistance to State and local government officials; and

(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.

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) Dissemination of technical information

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

(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;

(4) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(3) of this section; and

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

(6) redesignated (5).

(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 Technical 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) of this section 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 October 20, 1986, and every year thereafter, the Chairman of the Consortium 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.

(f) Agency reporting

Each Federal agency which operates or directs one or more Federal laboratories shall report annually to the Congress, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section.

(g) Functions of 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 October 20, 1986 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 chapter. Other Federal agencies shall cooperate in the report's preparation.

(3) Not later than one year after October 20, 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.

(Pub.L. 96-480, § 10, formerly § 11, Oct. 21, 1980, 94 Stat. 2318, renumbered § 10 and amended by Pub.L. 99-502, §§ 3-5, 9(e)(1), Oct. 20, 1986, 100 Stat. 1787, 1789, 1791, 1797.)

1986 Amendment. Subsec. (a). Pub.L. 99-502, § 4(a), designated existing provisions as par. (1), and added pars. (2) and (3).

Subsec. (b). Pub.L. 99-502, § 4(b)(1), substituted "200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions" for "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time", added "Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development programs so as to ensure that highly competent technical managers are full participants in the technology transfer process", substituted "requirement set forth in clause (2) of the preceding sentence" for " requirements set forth in (1) and/or (2) of this subsection", and substituted "such requirement" for "either requirement (1) or (2)".

Subsec. (c)(1). Pub.L. 99-502, § 4(b)(2)(A), substituted "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" for "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".

Subsec. (c)(3). Pub.L. 99-502, § 4(b)(2)(B), substituted "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer" for "the Center for the Utilization of Federal Technology", and struck out "and" following the semicolon.

Subsec. (c)(4). Pub.L. 99-502, § 4(b)(2)(C), substituted "to State and local government officials; and" for "in response to requests from State and local government officials" and struck out the period at the end thereof.

Subsec. (c)(5). Pub.L. 99-502, § 4(b)(2)(D), added par. (5).

Catchline. Pub.L. 99-502, § 4(c)(1), substituted "Dissemination of technical information" for "Center for the Utilization of Federal Technology".

Subsec. (d). Pub.L. 99-502, § 4(c)(1), in provisions preceding par. (1), substituted "The National Technical Information Service shall" for "The Center for the Utilization of Federal Technology shall" and struck out provision establishing in the Department of Commerce a Center for the Utilization of Federal Technology.

Subsec. (d)(2). Pub.L. 99-502, § 4(c)(3), redesignated former par. (3) as (2), and in par. (2) as so redesignated struck out "existing" preceding "Federal Laboratory". Former par. (2) was struck out.

Pub.L. 99-502, § 4(c)(2), struck out former par. (2), which had required the Center for the Utilization of Federal Technology to coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories.

Subsec. (d)(3). Pub.L. 99-502, § 4(c)(4), added par. (3). Former par. (3) redesignated (2).

Subsec. (d)(4). Pub.L. 99-502, § 4(c)(5), redesignated former par. (5) as (4). Former par. (4) was struck out.

Pub.L. 99-502, § 4(c)(6), in par. (4) as so redesignated substituted "subsection (c)(3)" for "subsection (c)(4)".

Pub.L. 99-502, § 4(c)(4), struck out former par. (4), which had required the Center for the Utilization of Federal Technology to receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories.

Subsec. (d)(5). Pub.L. 99-502, § 4(c)(5), redesignated former par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (d)(6). Pub.L. 99-502, § 4(c)(5), redesignated former par. (6) as (5).

Subsec. (e). Pub.L. 99-502, § 3(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub.L. 99-502, § 3(1), redesignated former subsec. (e) as (f).

Pub.L. 99-502, § 4(d)(1), in subsec. (f) as so redesignated substituted "report annually to the Congress, as part of the agency's annual budget submission, on the activities" for "prepare biennially a report summarizing the activities".

Pub.L. 99-502, § 4(d)(2), in subsec. (f) as so redesignated struck out provision which had required that the report be transmitted to the Center for the Utilization of Federal Technology by Nov 1 of each year in which it was due.

Subsec. (g). Pub.L. 99-502, § 5, added subsec. (g).

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710a. 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, 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) of this section, 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 chapter.

(3)(A) Any agency using the authority given it under subsection (a) of this section 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) Definitions

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; 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.

(Pub.L. 96-480, § 11, formerly § 12, as added and renumbered § 11 by Pub.L. 99-502, §§ 2, 9(e)(1), Oct. 20, 1986, 100 Stat. 1785, 1797.)

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710b. 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.

(Pub.L. 96-480, § 12, formerly § 13, as added and renumbered § 12 by Pub.L. 99-502, §§ 6, 9(e)(1), Oct. 20, 1986, 100 Stat. 1792, 1797.)

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710c. 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 3710a of this title; and inventions of Government-operated Federal laboratories licensed under section 207 of Title 35, 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 October 20, 1986 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 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 October 20, 1986 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 October 20, 1986. If promulgation of the regulations occurs within two years after October 20, 1986, payments shall be made in accordance with such regulations, retroactive to October 20, 1986. 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).

(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 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 [1] 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 October 20, 1986, 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.

(Pub.L. 96-480, § 13, formerly § 14, as added, renumbered § 18 and amended by Pub.L. 99-502, §§ 7, 9(e)(1), (3), Oct. 20, 1986, 100 Stat. 1792, 1797.)

[1] So in original. Probably should be "invention".

Codification. Amendment to subsec. (a)(1) by section 9(c)(3) of Pub.L. 99-502, directing that "section 11" be substituted for "section 12" in provisions preceding subpar. (A), was not executed in view of renumbering of section 12 of Pub.L. 96-480 as section 11 by section 9(e)(1) of Pub.L. 99-502. Since both references translate as "section 3710a of this title" amendment by section 9(e)(3) of Pub.L. 99-502 resulted in no change in text.

1986 Amendment. Subsec. (a)(1). Pub.L. 99-502, § 9(c)(3), in provisions preceding subpar. (A) substituted reference to section 11 of Pub.L. 96-480 for reference to section 12 of Pub.L. 96-480. See Codification note set out under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3710d. Employee activities

(a) In general

If a Federal agency which has the right of ownership to an invention under this chapter 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.

(c) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(Pub.L. 96-480, § 14, formerly § 15, as added and renumbered § 14 by Pub.L. 99-502, §§ 8, 9(e)(1), Oct. 20, 1986, 100 Stat. 1794, 1797.)

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

§ 3711. National Technology Medal

[See main volume for text of section]

(Pub.L. 96-480, § 15, formerly § 12, Oct. 21, 1980, 94 Stat. 2319, renumbered § 16 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 15 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3712. Personnel exchanges

[See main volume for text of section]

(Pub.L. 96-480, § 16, formerly § 13, Oct. 21, 1980, 94 Stat. 2320, renumbered § 17 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 16 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3713. Authorization of appropriations

[See main volume for text of section]

(Pub.L. 96-480, § 17, formerly § 14, Oct. 21, 1980, 94 Stat. 2320, renumbered § 18 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 17 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to the provisions of this chapter (other than sections 3710a, 3710b and 3710c of this title) except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub.L. 96-480, § 18, formerly § 15, Oct. 21, 1980, 94 Stat. 2320, renumbered § 19 and amended by Pub.L. 99-502, §§ 2, 9(b)(13), Oct. 20, 1986, 100 Stat. 1785, 1796, renumbered § 18 and amended by Pub.L. 99-502, §§ 9(e)(1), (4), Oct. 20, 1986, 100 Stat. 1797.)

Codification. Amendment by section 9(e)(4) of Pub.L. 99-502, directing that "sections 11, 12, and 13" be substituted for "sections 12, 13, and 14" was not executed in view of renumbering of sections 12, 13, and 14 of Pub.L. 96-480 as sections 11, 12 and 13, respectively, of Pub.L. 96-480 by section 9(e)(1) of Pub.L. 99-502. Since both references translate as "sections 3710a, 3710b, and 3710c of this title", amendment by section 9(e)(4) of Pub.L. 99-502 resulted in no change in text.

1986 Amendment. Pub.L. 99-502, § 9(b)(13), added exception relating to sections 3710a, 3710b and 3710c of this title.

Pub.L. 99-502, § 9(e)(4), substituted reference to sections 11, 12 and 13 of Pub.L. 96-480 for reference to sections 12, 13 and 14 of Pub.L. 96-480. See Codification note set out under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Library References

War and National Emergency ⇐36, 40.
C.J.S. War and National Defense §§ 44, 48.

§ 3803. Duties of Secretary of Energy

[See main volume for text of (a) and (b)]

(c) Assurance respecting scope of program activities

In assuring the effective management of this program, the Secretary shall have specific responsibility to ascertain that the program includes activities to—

[See main volume for text of (1) to (7)]

(8) ascertain any changes in fuel supply patterns, tax policies, and standards governing the manufacture of vehicles which are needed to facilitate the manufacture and use of methane-fueled vehicles.

[See main volume for text of (d)]

(As amended Pub.L. 97-375, Title I, § 106(c), Dec. 21, 1982, 96 Stat. 1820.)

1982 Amendment. Subsec. (c)(8). Pub.L. 97-375 struck out "and report to the Congress on" after "ascertain".

Legislative History. For legislative history and purpose of Pub.L. 97-375, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

Code of Federal Regulations

Review and certification of agreements, see 10 CFR 478.1.

CHAPTER 65—LIABILITY RISK RETENTION

Sec.
3902. Risk retention groups.
(a) to (c) [See main volume for text].
(d) Documents for submission to State insurance commissioners.
(e) Power of courts to enjoin conduct.
(f) State powers to enforce State laws.
(g) States' authority to sue.
(h) State authority to regulate or prohibit ownership interests in risk retention groups.
3903. Purchasing groups.
(a) to (c) [See main volume for text].
(d) Notice to State insurance commissioners of intent to do business.
(e) Designation of agent for service of documents and process.
(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws.
(g) State powers to enforce State laws.
(h) States' authority to sue.
3905. Clarification concerning permissible State authority.
(a) State motor vehicle no-fault and motor vehicle financial responsibility laws.
(b) Applicability of exemptions.
(c) Prohibited insurance policy coverage.
(d) State authority to specify acceptable means of establishing financial responsibility.
3906. Injunctive orders issued by United States district courts.

Library References

Insurance ⇐31.1.
C.J.S. Insurance § 91 et seq.

§ 3901. Definitions

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1986, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of