Subtitle E--Committee on Symmetrical Access to Technological Research

SEC. 3871. ESTABLISHMENT OF COMMITTEE.

(a) ESTABLISHMENT.--Therre is established an interagency committee to be known as the "Committee on Symmetrical Access to Technological Research" (hereafter in this section referred to as the "Committee").

(b) COMPOSITION

(1) The Committee shall be composed of--

(A) the Secretary of Defense, or a delegate of the Secretary of Defense;

(B) the United States Trade Representative, or a delegate of the United States Trade Representative;

(C) the Secretary of State, or a delegate of the Secretary of State;

(D) the Director of the National Science Foundation, or a delegate of the Director; and

(E) the Secretary of Commerce, or a delegate of the Secretary.

(2) The Secretary of Commerce, or a delegate of the Secretary, shall be the chairman of the Committee.

(c) USE OF RESOUIRCES.--The Committee shall, to the maximum extend practicable, draw upon the resources of the departments and agencies represented on the Committee, as well as such other departments and agencies as it may determine to be necessary, including the United States International Trade Commission.

(d) FUNCTIONS.--The Committee shall--

(1) study the general concept of symmetrical access, which is the availability of equally valued technological knowledge and research across countries;

(2) advise the Department of State when considering international science and technology agreements of the degree of symmetrical access between the United States and a proposed foreign government partner along with a recommendation on the advisability of the agreement from a trade and technology perspective and recommend language to ensure the protection of their interests;

(3) recommend negotiating goals for the United States Trade Representative to follow in negotiations with foreign countries which are--designed to increase and the degree of symmetrical access between the United States and foreign countries; and

(4) submit an annual report to Congress, which shall include--

(A) the description of the international science and technology agreement entered into that year;

(B) recommendations for administrative or legislative changes in United States' policy that would improve symmetrical access to technological research between the United States and foreign countries;

(C) an explanation of the general concept of symmetrical access employed by the Committee and suggestions as to how that concept might be refined;

(D) a description of the negotiating goals

recommended to, and adopted by, the United States Trade Representative pursuant to paragraph (3); and

(E) an assessment of the progress made by the United States Trade Representative in achieving such goals during the year with which the report is concerned.

dynamic society, it does place a strain on the judicial branch to respond in a timely manner.

H.R. 7779 also eliminates the current prohibition on initially appointing an individual to the Tax Court after he has attained age 65. I believe this change will allow the Tax Court to attract highly qualified, mature persons for service on the bench.

Mr. Speaker, H.R. 7779 is a good bill. It will help the Tax Court discharge its responsibilities in a timely manner and will open Tax Court service to citizens of all ages.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. ULLMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 7779, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.".

A motion to reconsider was laid on the table.

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Mr. HARRIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 299) to amend title 5, United States Code, to improve Federal rulemaking creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The Clerk read the Senate bill as follows:

S. 299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediate after chapter 5 the following new chapter:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"§ 601. Definitions

"For purposes of this chapter—

"(1) the term 'agency' means an agency as defined in section 551(1) of this title;

"(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

"(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(5) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

"§ 602. Regulatory agenda

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their repersentatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

"§ 603. Initial regulatory flexibility analysis

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to

the Chief Counsel for Advocacy of the Small Business Administration.

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

"§ 604. Final regulatory flexibility analysis

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a sumary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

§ 605. Avoidance of duplicative or unnecessary analyses

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604, and 610 of this title.

"§ 606. Effect on other law

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

"§ 607. Preparation of analyses

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

"§ 608. Procedure for waiver or delay of completion

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

"(b) An agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be promulgated until a final regulatory flexibility analysis has been completed by the agency.

"§ 609. Procedures for gathering comments

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

"§ 610. Periodic review of rules

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

"§ 611. Judicial review

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

"§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chap-

ter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).".

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Speaker, the bill before us represents, I think, a great deal of work in both the other body and in this body with respect to trying to get regulation off the back of small business. The Small Business Committee, chaired by the distinguished Member from Iowa (Mr. SMITH), has had extensive hearings on this and has, in fact, reported out legislation.

The Judiciary Committee, and specifically the Administrative Law Subcommittee chaired by Mr. DANIELSON, of California, has also had extensive hearings and extensive markup with respect to a more comprehensive regulatory reform bill. What we have here is a bill that has been passed by the other body and does a number of important things with respect to alleviating the burden on small business of our regulatory procedure. It requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have any substantive economic impact on a substantial number of small entities.

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It requires an initial and final regulatory analysis of their rules to assess the impact on small entities. The analysis may be done in conjunction with any other required analysis. The analysis need not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, and the analysis may be waived or delayed in the event of emergency but for not more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on a rule's effectiveness. Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities. There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance, and it is the Office of Advocacy of the Small Business Administration that will in fact conduct a review.

Mr. Speaker, I would like to yield to my colleague, the gentleman from Iowa (Mr. SMITH), who is the one Member who has done so much to bring this matter into focus and bring to the attention of this House the problems of small business and the need for this sort of regulatory reform.

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this bill which gives clear recognition to the different impact which Federal rules and regulations have on small business as compared to big business. This bill, S. 299, would require Federal agencies and departments to consider the impact of proposed rules and where appropriate to exempt or adopt different and less burdensome regulations for small businesses, small nonprofit businesses and small cities, towns, and other political subdivisions. An exemption or simplified regulation would be required where the purposes of the law could be obtained while doing so.

Similar legislation (H.R. 4660) was extensively considered by the House Small Business Committee. The Subcommittee on Special Small Business Problems held hearings in 1977 and 1978 and developed the approach in the bill. The Small Business Committee members unanimously support that bill and each of them are cosponsoring it. I want to note that the House bill (H.R. 4660) was unanimously favorably reported by the Small Business Committee last October and the bill was then referred to the Judiciary Committee which was discharged from further consideration on May 28 of this year. Meanwhile, the Senate substituted this approach for the provisions in a bill they had held hearings on and passed the bill.

Overregulation of small entities is one of the ways big business has gained advantages over small businesses. The cost per unit for a big business to comply may be small due to a large volume. Small businesses cannot cope with the maze of Federal regulations and they cannot afford the hiring of lawyers, accountants, engineers, and consultants which are employed by large companies. Nor can they afford their own time needed to comply with existing regulations and reporting requirements.

As a result of overregulation, productivity and innovation have been curtailed and inflation has increased and in some cases competition from smaller businesses eliminated. Our committee's files are replete with documentation of these burdensome requirements which range from one company with three small shops receiving Federal forms weighing 45 pounds to another company which paid a $500 fine rather than fill out a Federal form which was 63-feet long.

I also want to point out that some laws and agencies currently use flexible regulatory strategies such as the Internal Revenue Code's provisions permitting salaried persons earning less than $20,000 per year to file a short form income tax form while other taxpayers are required to file the long form.

I believe that the provisions of this bill now under consideration (S. 299) will substantially reduce the burden imposed by Federal regulation upon small business and yet at the same time allow Federal departments and agencies to carry out their duties and functions. Although the Senate-passed bill differs in some respects from the bill favorably reported by the House Small Business Committee, it is designed to accomplish the same purpose and I hope that all Members will strongly support it today so that it may be sent to the White House without further delay. For the benefit of my colleagues I am attaching a brief statement concerning the provisions of the bill now under consideration.

I also want to point out that the concept of two-tier regulation was one of the issues considered by the recent White House Conference on Small Business which included a recommendation for two-tier legislation as No. 15 on the list of priorities. The Small Business Administration counsel for advocacy would have the authority and responsibility to make sure that agencies do as expected under the law.

Finally, I want to commend all of the Members who worked so long and hard on this matter and particulary the chairman of our Special Small Business Problems Subcommittee, ANDY IRELAND, the subcommittee's ranking minority member, Mr. BROOMFIELD, and the ranking minority member on the committee, JOE MCDADE. I also want to commend Representative MARTY RUSSO who previously served on the Small Business Committee and chaired the Special Small Business Problems Subcommittee. It was his initial efforts and drafting which laid the groundwork for the bill we are considering today.

The material follows:

S. 299

(As passed Senate 8-6-80)

Sec. 2. Provides extensive statement of findings and purposes.

Sec. 3. Amends 5 U.S.C. to provide regulatory flexibility—

§ 601. Definitions—

(1) Agency means as defined in 5 U.S.C. (1)

(2) Rule means rule covered under 553(b) and includes those on grants but excludes rules of particular applicability relating to wages, prices, etc.,

(3) Small Business means as defined under

§ 3 of Small Business Act unless agency redefines,

(4) Small organizations means not for profit, independently owned and operated and not dominant in field of operation,

(5) Smal governmental jurisdiction means political subdivision of less than 50,000 population unless agency can justify additional definition, and

(6) Small entity means small business, small organization and small governmental jurisdiction.

§ 602. Regulatory agendas—

(a) In October and April each agency shall publish a regulatory flexibility agenda including

(1) Expected rules with significant economic impact on substantial number of small entities,

(2) Summary of nature of rules,

(3) Name and phone number of involved agency official—

(b) Copy of agenda sent to Chief Counsel for Advocacy,

(c) Agency shall provide notice by letter, publication etc, and

(d) Agency may promulgate regulation even if not on agenda.

§ 603. Initial regulatory flexibility analysis—

(a) If proposed rule must be published, an analysis must be done of impact on small entities; requires publication in Federal Register and transmittal to SBA's Chief Counsel for Advocacy, and

(d) Analysis must contain—

(1) Reason for rule,

(2) Objectives and purposes,

(3) Estimate of number of small entities to which rule will apply,

(4) Description of anticipated compliance requirements, and

(5) Crossreferences to other rules.

(c) Description of significant alternatives considered, including discussion of—

(1) Different compliance or reporting requirements,

(2) Clarification, consolidation or simplification of compliance and reporting requirements,

(3) Use of performance rather than design standards, and

(4) Exemption for smalls.

§ 604. Final regulatory flexibility analysis—

(a) Final rule shall be accompanied by final analysis; including—

(1) Succinct statement of need for rule and objectives,

(2) Summary of issues raised by comments, Agency assessment of issues, Changes made in response, and

(3) Alternatives and why rejected.

(b) Agency must make analysis available and give notice of availability in Federal Register.

§ 605. Avoidance of duplication or unnecessary analyses—

(a) Agency may do analyses as part of other proceedings,

(b) Regulatory flexibility analysis not required if head of agency certifies that rule will not have significant economic impact on substantial number of small entities, and

(c) Related rules may be combined into one analysis.

§ 606. Effect on other laws—Regulatory flexibility analysis does not alter other laws.

§ 607. Preparation of analyses—Agency may use either a quantifiable or numerical description of effects of proposed rule or alternatives or a more general description if quantification is not practicable or reliable.

§ 608. Waiver or delay—

(a) Agency head may waive or delay initial analysis upon written finding that final rule is emergency one making compliance impracticable, and

(b) Agency head may not waive final analysis but may delay it for up to 180 days after final rule published if emergency rule making; if not done, the rule lapses.

§ 609. Comment gathering procedures—When rule is promulgated having significant economic impact on substantial number of small entities, agency head shall assure that small entities have been given opportunity to participate through techniques such as—

(1) Notification that rule may have significant economic effect on a substantial number of small entities,

(2) Publication of notice of rule making in publications likely to be obtained by small entities,

(3) Direct notification of small entities,

(4) Holding open conferences or public hearings, and

(5) Agency rules designed to reduce cost of participation by small entities.

§ 610. Periodic review of rules—

(a) Within 180 days of law, agency shall publish in Federal Register a plan for periodic review of rules with a significant economic impact upon substantial number of small entities. Purpose is to change as needed to minimize significant economic impact upon substantial number of small entities. All rules reviewed within 10 years and new ones within 10 years, except agency may delay review for up to 5 years one year at a time,

(b) In conducting review, agency shall consider—

(1) Continued need for rule,

(2) Complaints or comments,

(3) Complexity,

(4) Relationship with other Federal or state regulations, and

(5) Changes which have occurred.

(c) Agency annually publishes agenda of rules to be reviewed in next year.

§ 612 Judicial review—

(a) Agency decisions regarding regulatory flexibility implementation are not subject to judicial review except as below in (b),

(b) Regulatory flexibility analysis and compliance or non-compliance by agency are not subject to judicial review but the analysis shall be apart of record of agency action if rule is subject to judicial review, and

(c) Nothing herein bars judicial review of any other impact statement or analysis otherwise permitted by law.

§ 611. Reports and intervention rights—

(a) SBA's Chief Counsel for Advocacy shall monitor agency compliance and report to President and Congress annually;

(b) Chief Counsel for Advocacy may appear amicus curiae in any action to review a rule to present his views on effect of rule on small entities, and

(c) U.S. court shall grant application of Chief Counsel for Advocacy to appear for purpose of (b).

§ 4. Effective date—Act effective 1-1-81 except that provisions for initial regulatory flexibility analysis and final regulatory flexibility analysis apply only to proposed rules issued 1-1-81 or after.

Mr. HARRIS. Mr. Speaker, I would like to yield at this point to the chairman of the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, the gentleman from California (Mr. DANIELSON), who has worked on regulatory reform so assiduously over the past several months.

Does the chairman of that subcommittee wish me to yield to him at this point?

Mr. DANIELSON. Mr. Speaker, as long as the gentleman from Virginia (Mr. HARRIS) is here and is managing the bill on behalf of the Committee on the Judiciary, which has jurisdiction over this subcommittee, and with no other committee having that jurisdiction, I will allow him, with my thanks, to continue in the management of the bill, but I would like to have an opportunity to comment later. I trust the gentleman will give due recognition to members of the Committee on the Judiciary who are here and who would like to be heard.

Mr. HARRIS. Mr. Speaker, I would like to yield to our fine colleague from the Committee on the Judiciary, the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, the legislation before us today, the Regulatory Flexibility Act, may be one of the best means we have to acknowledge that our diversity, which is our strength, is based as much on size as on anything else.

This bill addresses the very real differences between big business and small business—large urban areas and small towns—major national organizations and small local nonprofit groups.

It says, basically, that the Federal Government should, where feasible and consistent with the intent of the law, develop regulations only after thoroughly assessing their impact on small entities—business, organizations and governmental jurisdictions.

The measure before us is a result of several years of effort, numerous hearings in the House and Senate, and compromises between the House, Senate and the administraiton. More than half the House has cosponsored some version of flexible regulation legislation.

The Senate has twice unanimously passed a version of this legislation—comparable to my own bill in the House—first on the last day of the 95th Congress, and most recently on August 6 of this year.

Senator CULVER deserves particular praise for his efforts on behalf of this legislation. He, along with Senator NELSON, developed the concept back in 1977, and they have built a body of testimony substantiating the need for such legislation.

The President has issued a statement in support of the bill and embodied it in a directive to agency heads last November. We propose to embody it in law to assure congressional oversight of agency compliance with regulatory flexibility provisions.

The bill requires that agencies consider the needs and interests of small entities in carrying out their mandates. In no other respect does it alter current procedures. In no respect does it alter substantive law.

The bill's treatment of judicial review is intended to strike a balance between two necessary goals.

First, to insure that the internal procedures of the agencies are not unnecessarily delayed by interlocutory and intermediate court review of the regulatory flexibility analysis; and

Second, the desire to insure that agencies take seriously their obligation under the law by providing for review of regulatory flexibility analyses as part of the entire record.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield at that point?

Mr. HARRIS. Mr. Speaker, I might note that I have the time here, and I am going to continue to yield to the

gentleman from Wisconsin (Mr. KASTENMEIER). I have the time.

Mr. KASTENMEIER. Mr. Speaker, may I conclude my remarks? The gentleman from Virginia (Mr. HARRIS) has the time, and perhaps he will yield to the gentleman from Georgia (Mr. LEVITAS) at the appropriate time.

Mr. LEVITAS. Mr. Speaker, if the gentleman from Virginia will yield, I have a question I would like to ask the distinguished member of the Committee on the Judiciary about that very point that he was just addressing. If he could explain it for the RECORD, it would be quite helpful.

Mr. HARRIS. Mr. Speaker, I do have a number of requests for time, but I do yield for the purpose of a question by the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I would simply like to inquire, what does this bill do by way of providing a judicial review to see that the procedures that have been written into this are in fact followed and can be reviewed by a court to see if they have been followed?

Mr. KASTENMEIER. Mr. Speaker, my understanding is, as the gentleman from Georgia (Mr. LEVITAS) knows because he has been following the bill, too, that this strikes a balance between having an appeal and not having appeals made on the record of the regulatory analysis as such, but when challenges to the rules themselves are made, that is, as a part of the complete record, the process of regulatory analysis may also then be reviewed, but only reviewed in that context judicially.

Mr. Speaker, if I may conclude my remarks, in other words, as I was saying, the courts may examine the regulatory flexibility analysis in determining the reasonableness of the final rule. The bill in no other way, changes or alters the right of judicial review under the Administrative Procedure Act.

Through this bill we can remove some of the burdensome requirements placed on small business and small governments. We can begin to free vitally needed capital and human resources from wasteful activities and direct these energies to more productive and efficient purposes. This can be an important component of our economic recovery program and one that all Members of this body should support.

Mr. HARRIS. Mr. Speaker, may I inquire of the Chair as to how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) has 10 minutes remaining.

The Chair recognizes the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I yield myself 5 minutes.

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Mr. Speaker, public discussion of overregulation and the need for regulatory reform all too often conjures up the oversimplified image of a confrontation between big government and big business. But, as we all know, it is small business that carries the heaviest burden with respect to governmental regulation. Other small entities such as hospitals, small colleges, and local governments are also hampered by the same situation. Unlike large corporations or unions, these organizations do not have the time, the personnel, nor the resources to adequately monitor and comply with the morass of regulation that confronts us all daily.

For this reason, I support the regulatory flexibility concept that is symbolized in S. 299.

I would like to point out by way of clarification how we happen to be where we are today. The Committee on Small Business of the House reported out some months ago H.R. 4660, the Small Business Regulatory Flexibility bill, which was sequentially referred to the Committee on the Judiciary. The concept was embodied into the regulatory reform bill that the Committee on the Judiciary has been working with.

However, the administration has sought to delay the progress of the regulatory reform bill in the full Judiciary Committee for reasons that have to do with its current contents. Thus the concept has not reached us or has not reached the House floor previously in what would be an orderly fashion. Incidentally, H.R. 4660 amended the Small Business Act, and that properly came out of the Committee on Small Business.

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This bill that comes to us from the other body, however, adds a chapter VI to the Administrative Procedures Act and thus, of course, appropriately is within the jurisdiction of the Judiciary Committee; but Small Business and the Judiciary Committee are certainly no strangers, and the interest is shared, of course, with the Small Business Committee in seeing a more appropriate type of approach to regulatory flexibility for small business.

The regulatory flexibility approach recognizes that it is often counterproductive and unfair to apply identical regulations to entities regardless of their size. The regulatory flexibility approach is based upon the understanding that generalized rules often do not advance the regulatory objective that is involved.

However, I would be less than candid if I did not express concern over our present involvement in a piece-meal approach to regulatory reform. This is only a part of the picture that we are dealing with today. As important as regulatory flexibility for small organizations is, it does not address the full range of problems brought on by overregulation. We on the Judiciary Committee have been working on comprehensive regulatory reform since last November. Tomorrow the full Judiciary Committee was scheduled to resume its consideration of the Regulatory Reform Act of 1980, H.R. 3263. This has been stalled for some time, since about last May, because of the direct intervention of the Carter administration whose regulatory reform program has been marked by confusion and hypocrisy. It remains my hope that we will be able to bring this broader, more comprehensive bill to the House floor before adjournment.

The concept of small business and small organization regulatory flexibility is an important element in H.R. 3263 that is before the Judiciary Committee. But this measure also would require that agencies consider the economic impact of regulation, as well as regulatory and geographic differences, in promulgating new rules. H.R. 3263 also contains provisions aimed at speeding up seemingly interminable administrative proceedings, along with encouraging expanded public and business input into the regulatory process.

In fact, it is particularly worth noting that the language of H.R. 3263 is even stronger than the bill before us today with respect to small business and small organization regulatory flexibility. The bill we consider today requires that regulatory agencies undertake a detailed analysis, so as to give special consideration to the impact of a proposed rule on small entities. However, there is no language specifically requiring that the agency act on the conclusions of their analysis. It is conceivable that we could study these problems and then choose to do nothing about them. In contrast, under H.R. 3263, an agency is empowered to exempt a small business or small organization from the scope of a regulation, or to set lower compliance standards, where such a distinction is lawful, desirable and feasible.

I urge that S. 299 be supported today, realizing it is only part of a larger picture.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. BEDELL).

(Mr. BEDELL asked and was given permission to revise and extend his remarks.)

Mr. BEDELL. Mr. Speaker, I rise in strong support of this legislation.

Mr. Speaker, I strongly support S. 299, the Regulatory Flexibility Act, and urge its passage by the full House.

As a small businessman myself, I am painfully aware of the need for a policy of 2-tier regulation as a means of helping small businesses. S. 299 addresses the fact that small businesses cannot and should not be expected to comply with all of the regulations developed for application to big businesses.

In addition, small governmental jurisdictions with populations of less than 50,000 are also granted relief by this bill. It incorporates a number of methods of making regulations fore flexible, including, for example, the establishment of differing compliance and reporting requirements that take into account the amount of resources available to small businesses and mandate agency consideration of regulatory effects on small cities and towns, as well as on small enterprises and on individuals.

The present regulatory environment has a devasting effect on the competitive viability of the small business sector. Regulations when applied uniformly to big businesses and small businesses clearly provide huge advantages to the largest enterprises. Big business has the lawyers, accountants, engineers, consultants, and economic resources to comply with governmental regulations. On the other hand, the small business-

person often must spend critical time and resources sorting through a confusing morass of complex Federal regulatory requirements, which is a drag on national productivity.

As the chairman of the House Small Business Subcommittee on Antitrust, I have been a witness to the need for this legislation. I have heard not only from my constituents in northwest Iowa, but from small business people from all over the United States.

Last year, the Antitrust Subcommittee undertook an investigation into petroleum retail marketing practices. We found that several years of Federal attempts to regulate that industry have harmed the competitiveness of participating small businesses, contributing to tens of thousands of independent service station operators going out of business. Ironically, this effect was not the intent of the Federal regulations. Small businesses, whom the Government sought to protect, were smothered by a system imposed upon them that gave them no opportunity to respond to changing marketplace demands. Large oil companies, whom the Government attempted to control through regulation, easily found ways to manipulate and profit from Federal regulations, further entrenching their dominant industry position at the expense of the small business operator.

Today the gasoline retail market is structurally unsound, due to the uneven way Federal regulations have affected competition. As a result, the House Small Business Committee favorably reported the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722; a bill also identified by the Speaker's Task Force on Small Business as being one of this Congress most vital small business bills.

Regulations reward staid, inefficient business practices that often are found in large bureaucratic enterprises. Frequently, they are drafted to force these enterprises to respond to the interests of our national goals. But when applied uniformly to small business they stifle innovation, creativity and efficiency—the hallmark of the entrepreneur.

Of course, judicial review is necessary to assure that agencies comply with this act. The question of judicial review has been addressed very sensibly in this legislation, which provides that the courts should not be bogged down with lawsuits before the agencies have even finished their rulemaking. However, section 611(b) states that regulatory flexibility analyses can be examined by the courts when the validity of final rules is being determined. So judicial review in this act fits in well with the practice of judicial review under the law we are amending today and, I might add, with most of the other pending regulatory reform bills. I think this is a good, balanced approach to judicial review which will achieve the benefits the bill seeks without causing any unnecessary litigation.

Mr. Speaker, I have been supporting action on this problem ever since I came to Congress 6 years ago. A Federal policy of regulatory flexibility is long overdue. The delegates to the White House Conference on Small Business, representing the views of small business people from all across the United States, overwhelmingly endorsed the concept of reg-flex. Your task force on small business chose this legislation as a small business priority for this session of Congress. Two hundred and forty-six Members of Congress, including every member of the House Small Business Committee, are cosponsors of H.R. 4660, the original House version of S. 299. This legislation deserves the support of the entire House.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. LEVITAS).

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, I support the concept of S. 299, but I think it is important for the Members of this body to know that this legislation does not really, in the long run, solve the problem.

This legislation does rightfully address some of the problems faced by small businessmen. The small businessman must be given special consideration, as offered by this bill, for regulations which are applied generally, can be most oppressive to small businesses. But I do not want the American public, or the small businessman, to be taken in and made to believe that this legislation alone will accomplish meaningful regulatory reform.

As the gentleman from Ohio pointed out, all of the language in this legislation could be totally ignored by any agency. There is no effective enforcement mechanism. This legislation can be disregarded by the same bureaucrats who are trampling over the small businessman right now.

If the administration thinks it can get away with calling this bill alone regulatory reform, without action on the comprehensive regulatory reform bill, then they are going to have people across the country remind them of the hypocrisy of their actions, both on the Republican side and on the Democratic side, between now and November. Without more comprehensive regulatory reform, this bill alone will be comparable to attacking a dragon with a wet spaghetti noodle.

We need real regulatory reform that has teeth in it. This is a good move in the right direction, but it in and of itself will not accomplish the goals of effective regulatory reform. We need results, not cosmetics.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

(Mr. ALBOSTA asked and was given permission to revise and extend his remarks.)

[Mr. ALBOSTA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I rise in support of S. 299, which embodies the concept of regulatory flexibility. This means that agencies must analyze alternatives to proposed regulations that would minimize any adverse burden on small business. Among the alternatives would be the granting of outright exemptions or issuing regulations with different and less burdensome standards of compliance for small business. This concept has undergone several legislative changes in the last few months. And I am glad to say that these changes have improved the proposal significantly.

Earlier this year, a variation of this concept was presented in the form of an amendment to the Regulation Reform Act which the Judiciary Committee was considering in May. That amendment required an agency to issue regulations which exempt or lessen the burden on small businesses when the agency's analysis indicates it would be feasible to do so. I believe strongly that every effort must be made to free small businesses from unnecessarily burdensome regulations. At the same time it is important that this goal not be attained in ways that would result in significant weakening of other important public interests to which regulations may be directed.

For example, we must be careful not to make it easy for big businesses to spin off their dirty operations into small businesses that are not subject to a strict regulation. This occurred when the kepone scandal broke, involving the Allied Chemical plant in Hopewell, Va. Allied Chemical simply spun off the plant to a small business. Certainly we do not intend to say that being a small business, is in itself, sufficient grounds, for exempting it from public health and safety laws.

Another factor relates to productivity. In some cases, an exemption could create an incentive for a small business to stay small. Certainly we do not want to create any disincentives to economic growth.

Another important consideration is whether a particular exemption would impair the ability of the government to protect the public health and safety. For example, amendments have been offered from time to time to exempt from occupational safety and health laws any business employing less than 25 people. It is important to make sure that OSHA does not impose unnecessary burdens on small businesses. On the other hand, people who work for a business that employs less than 25 people surely are entitled to have their health and safety protected.

Because it seemed to me that agencies ought to consider such factors, I offered an amendment to the regulatory flexibility amendment during the Judiciary Committee markup in May. The amendment read:

In determining whether it is feasible and desirable, and in the public interest, to exempt or set differing and less burdensome standards for small businesses and small organization, the agency shall consider whether such exemption or standard would

(A) provide opportunities for businesses and organizations that are not small businesses and small organizations to avoid compliance with such rule;

(B) create incentives for small businesses and small organizations against increasing their productivity, hiring additional employees, merging with other businesses or organizations, or otherwise increasing their size; or

(C) impair the ability of the agency to pro-

tect the public health, safety or the environment or otherwise achieve statutory requirements.

While there was important committee support expressed for my amendment, it was the consensus of the committee that such language would be best handled in the report, rather than in the bill itself.

Representative ROBERT KASTENMEIER, one of the regulatory flexibility amendment's coauthors, stated that he supported report language to this effect. The regulatory flexibility amendment's other coauthor, Representative CALDWELL BUTLER, expressed appreciation to me for bringing this matter to the attention of the committee and stated that he would work with the subcommittee chairman in an effort to accommodate my recommendations into the legislative history.

Representative ROMANO MAZZOLI, who was managing the bill in the absence of Representative GEORGE DANIELSON, the chairman of the Subcommittee on Administrative Law and Government Relations, offered his services in drafting report language similar to the language in my amendment.

The reason I raise these points now is that the Judiciary Committee has not yet completed marking up the Regulation Reform Act and, therefore, no report has been written. In supporting the Senate bill we are now considering I want to make sure that the record reflects that my support, and I believe that of many other Members, is given with the understanding that such considerations are implicit in this legislation.

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in strong support of S. 299. At the same time, I wish to remind the Members of this body that the American people have been asking for true regulatory reform for many years. We are told that overregulation costs the American people over $100 billion a year. This bill is directed to only a small segment of the total amount of industry that is affected and the total number of people in this country who are affected by this overregulation.

This bill is a good first step, but I would hope that we would not take it as a substitute for H.R. 3263 which the Judiciary Committee and this Congress has been laboring over for many, many months.

The American people deserve to have true regulatory reform that deals with all of American industry and American problems of overregulation. This bill that we are considering today requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have significant economic impact on a substantial number of small entities, such as small businesses, organizations and governmental jurisdiction. It requires an initial and final regulatory analysis of all rules to assess their impact on small entities.

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The analysis may be done in conjunction with any other required analysis.

The analysis may not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The analysis may be waived but delayed in the event of an emergency, but not for more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on rules affecting them.

Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities.

There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance.

You can see from the things that this bill covers that there are many, many areas that are left totally uncovered. We do nothing in this legislation about a one- or two-House veto giving the Congress the right to decide themselves whether regulations are in order that have been passed by a regulatory agency. At the present time we have nonelected people that are determining the fate of thousands and thousands of American businesses and jobs of millions of American people without any real opportunity for the elected Members of Congress to react in such a way that they could overturn the regulations that are adopted, even though they are not in conformity with legislation that has previously been adopted by the Congress, or even if they are nonessential and go far beyond the problems that they seek to cure.

I think it is important in regulatory reform that the regulations at least are cost effective. This bill does not provide for that. It is a good first step, but please, let us not have the Congress fall for the kind of control that the present administration is presently imposing upon the Congress to prevent true regulatory reform.

Let us do something about this problem that we have promised the American people that we would do something about. Let us do it this year. Let us not let this bill take the place of a strong, true regulatory reform bill.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. MCDADE).

(Mr. MCDADE asked and was given permission to revise and extend his remarks.)

Mr. MCDADE. Mr. Speaker, I want to thank my friend, the gentleman from Ohio, for yielding to me.

Mr. Speaker, today the House will have the opportunity to approve legislation of tremendous significance to our Nation's small business men and women. The Small Business Committee has worked on this bill for almost 3 years, and I am pleased to say that I have cosponsored a similar measure and worked for its passage. Because the bill was stalled during the consideration of another bill in the Judiciary Committee, the Senate version has been used as a vehicle for this body to act upon this urgent request of the small business community.

S. 299 provides the impetus to Federal agencies to undertake innovative, flexible approaches when adopting and applying Federal regulations which otherwise may adversely affect smaller enterprises. Small organizations and small Government units are also covered by the bill's provisions.

The legislation under consideration revises administrative procedures to require Federal departments and regulatory agencies to perform an analysis of the economic and paperwork impact of a proposed rule on individuals, small businesses, organizations, and local governments. A number of alternatives designed to insure that rules promulgated are tailored to fit the size and scale of the entities to be regulated consistent with the applicable statute, are spelled out in the bill.

These include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation of compliance, and reporting requirements; and

Use of performance rather than design standards.

Regulatory flexibility legislation represents 3 years of hearings and related work by the Small Business and Judiciary Committees, with input by small business owners and their national associations, labor representatives, public interest groups, economists, fellow Members, and administration officials.

The need for flexible standards has generally been acknowledged and endorsed by these various interests. Prompt passage of this proposal is imperative, especially as we proceed through a period of escalated inflation, high unemployment, and business decline. By directing Federal agencies to consider the economic and redtape impact of their proposed regulations, we can expect less burdensome requirements for small entities. In this way, a measure of the resources necessary to get us back on the road to economic recovery can be directed to more efficient and productive purposes.

Mr. Speaker, no doubt each of us has heard from individuals operating small firms within our districts. The comments are always the same. Small business owners regularly report that they are unfairly burdened by complicated, costly regulations uniformly applicable to both large and small operations; by insensitive Federal regulators; and by detailed, time-consuming paperwork requirements. Such regulations strain the limited resources of small business owners who find that their limited capital must be spent on compliance and their precious time consumed by redtape demands. It is simply unfair to expect small outfits to be subject to the same rules as their counterparts, when less burdensome methods could be adopted and still serve the mandate of the applicable statute.

The measure under consideration today revises Federal administrative procedures so that whenever a Federal department or regulatory agency under-

takes a rulemaking, it must perform an analysis of the economic impact, including the cost of compliance, of a proposed rule on individuals and small businesses, organizations and governmental units. The purpose behind this requirement is to assure that Government agencies adopt reasonable alternatives, consistent with the underlying substantive statute which would be less burdensome for smaller concerns. The proposal spells out a number of solutions agencies are to seriously consider to insure that rules promulgated are tailored to fit the size and scale of the parties to be regulated. The alternatives recommended to minimize the impact of a proposed rule on individuals and small entities include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation and simplification of compliance and reporting requirements; and

Use of performance rather than design standards.

Let me point out that Federal agencies are not limited to consideration of these alternatives only. Other reasonable means of assuring regulatory flexibility may be discussed. But, these alternatives are included in the legislation so that agencies will be on notice of their authority and, in fact, of their duty to take flexible steps in their regulation of small entities, if this would be consistent with the applicable statute. The alternatives the agency reviewed and deemed feasible, along with the reasons why any were rejected, must accompany issuance of the final rule.

When undertaking a regulatory flexibility analysis, Federal agencies are also required to evaluate the impact of recordkeeping and reporting requirements imposed by a proposed rule, including an estimate of the time necessary to complete such paperwork. Additionally, S. 299 directs the agencies to actively seek the participation of small businesses, organizations and governmental units in the consideration and formulation of proposed regulations. To insure adequate advance notice, each agency will have to publish semiannually an agenda of rules and regulations expected to be issued or reviewed during the coming year. Finally, at least once every 10 years, agencies must assess regulations currently on the books, with a view toward modification of those which unduly impact on small entities.

I must emphasize that this legislation is not designed to confer special favors or advantages on certain individuals or groups within our society. Nor is it intended to strip away the advances we have made in laws promoting the public's health, safety, and well-being, including statutes calling for clean air and water, a safe workplace, and manufacture of safe goods, to name just a few. Small business owners who testified before the Small Business Committee have not called for a wholesale abrogation of these laws. Rather, they have sought recognition that the regulations implementing these laws accommodate the size and capabilities of affected parties. I feel that S. 299 ably accomplishes these goals.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of this bill.

Mr. Speaker, I would like to see congressional action to improve Federal agency rulemaking for all segments of our economy, and I certainly support S. 299 which is a positive beginning toward reducing the regulatory burden imposed upon small business by the Federal Government.

Small business plays a vital role in our Nation's economy. As a group, small businesses exemplify the traits which made America Great. Today, however, this important sector of our economy is being crushed by the weight of Federal regulations and the resulting paperwork. One of the most frequent complaints I hear from the small business people of my district concerns the burden of Federal regulations, and I believe this is true of most of us in the Congress. The small business community's message to us regarding the Federal regulations and paperwork burden has been loud and clear: Reduce it. And that is the aim of this bill: To reduce the impact of Federal regulations on small businesses.

The bill does not call for a special commission to make a study of the problem and issue a report to Congress. Nor does it call for a new agency to deal with the continuing growth of regulations. This bill checks the growth at its source.

This legislation will make some overdue changes in the way the Federal agencies develop and issue regulations. It requires the agencies to weigh carefully the effects of their rules on small businesses and not issue those regulations whose benefits do not justify their costs to small business.

It is not the intent of the legislation to undermine the important progress our country has made during the past two decades in providing safer food, drugs, places of work, and cleaner air and water. We must protect the health and welfare of people as well as small business. Many regulations are essential and were developed in response to rising expectations and demands of the public that the Federal Government "do something about that."

This bill does not seek the elimination of Federal regulations, but a control of the bureaucrats. It deals with those Federal regulations that severely impact small business, and are not necessary, equitable, or very poorly serve the public interest. The legislation meets the justified concerns of small businesses without sacrificing progress toward meeting the goals established by legislative mandate and public need.

This bill gives the Members of the House a chance to really do something about a major problem facing small business. It is not a final answer, but it is a first step toward keeping the regulatory agencies from being a nightmare for small businesses. I urge my colleagues to support it.

Mr. Speaker, I wonder if the gentleman from Pennsylvania would join me in a little colloquy on the intent of this bill.

Mr. McDADE. I would be delighted to.

Mr. BROOMFIELD. Mr. Speaker, I am concerned about the difference between this bill and H.R. 4660 which I cosponsored, was approved unanimously by my subcommittee and was passed out of the Small Business Committee. Particularly, I am worried about whether the agencies are actually required to analyze their regulations for impact on small businesses, or may merely slide over potentially devasting provisions with only a cursory glance.

Mr. McDADE. My friend, the gentleman from Michigan, as usual, has raised a tremendously important question, one that we looked at in the subcommittee with diligence. May I say that it is the intent of our committee, and we are the people who wrote and reported the companion bill, and I believe I can speak for the members of the committee, I know I certainly speak for my friend, the gentleman from Massachusetts, who has had 3 years of his life invested in this bill, that agencies and departments have a positive duty under this legislation to determine the impact on small businesses of each and every new regulation and a specific, and I repeat, specific statement of businesses to which the new rule will apply and the proposed alternatives to reduce that impact. Furthermore, the agency has a positive duty to consider alternatives that would lessen the impact upon small business.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield further?

Mr. McDADE. I would be delighted to yield to my friend.

Mr. BROOMFIELD. But what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy, or incomplete?

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. KINDNESS. Mr. Speaker, I yield 2 additional minutes to the gentleman from Pennsylvania.

Mr. BROOMFIELD. Mr. Speaker, repeating the question, but what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy or incomplete? What if the agency ignores significant information provided by an affected individual; or, more importantly, what happens if the agency ignores its own findings or makes a conclusion that is not in keeping with its own facts?

Mr. McDADE. Mr. Speaker, again I want to commend my friend. The question, I think, is terribly important as we establish the legislative history of this piece of legislation.

Let me say unequivocally as a member of the committee that wrote this bill, that in that instance, upon review of the final regulation, it is the intent of our committee that the court should strike down the regulation.

Now, I must make it clear that there are no intermediate court reviews. The

only review will be for final regulations; but when the court does review it, and I know I speak for my friend, the gentleman from Iowa, the distinguished chairman of the subcommittee on this, when the court finally does review it, then we intend that this regulation shall be invalidated.

Mr. BROOMFIELD. Mr. Speaker, I thank the gentleman.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I am delighted to yield to my friend, the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, I just want to point out that it is difficult to make sure in legislation that every agency will do what it is expected to do; but to try to guarantee that, this bill provides, and our bill provided, although I think our bill was a little stronger, that the Chief Counsel for Advocacy has both the authority and the responsibility to carry through within the administration to make sure agencies do what they are expected to do under this legislation. The Chief Counsel for Advocacy does have a measure of independence within the administration and we will be sure he gets the personnel to do that.

Mr. McDADE. I thank my chairman. I could not agree with him more. It is our intent that our bill, and I agree with the chairman, it was stronger than the one we are considering today, but the intent of all of us in passing this legislation is to do exactly what the gentleman says and to make the agencies respond.

I thank my friend, the gentleman from Iowa, for his contribution.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. CONTE).

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I stand in support of this critical legislation. With the passage of this measure before us today, the House takes a major step forward on behalf of the overregulated small businessman and woman in this recession-ridden country.

For years now the small business community has been disproportionately burdened by the same reporting requirements as the corporate giants in the United States, those multinational, multibillion dollar entities which comprise the Dow-Jones industrial stock average. This is true even though the problems which gave rise to the Government action may not have been caused by the smaller entities.

It is obvious to all in this Chamber that unnecessary regulations create many barriers in many industries and discourage potential businessmen and women from introducing beneficial products and processes into the mainstream How far do you think Wilbur and Orville would have gone if faced with similar regulations?

Mr. Speaker, as a member of the Small Business Committee since 1965, I have actively supported and cosponsored legislation designed to achieve the stated goals of this legislation. It is critical for the future posture of our industrial, high-technology Nation that it provide the innovative and productive sector of our society, small business men and women, the opportunity to direct most of its energies on production and not paperwork.

Failure to pass this long-awaited measure translates into continued diminution of this country's image as a world leader in innovation and technology. The long-term effect will be that the Japan's and Germany's in the world marketplace will continue to surge ahead in their relative productivity figures.

Therefore, it is imperative that Federal agencies endeavor to fit regulatory and information requirements to the scale of the businesses. If we can accomplish the objectives of this legislation, small businesses throughout the United States will save the millions of nonproductive man hours and billions of dollars required each year to comply with these unnecessary regulations.

I urge passage of this important matter.

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In closing, Mr. Speaker, I want to congratulate the subcommittee, the gentleman from Iowa (Mr. SMITH) and the gentleman from Florida (Mr. IRELAND), who is chairman of the subcommittee. I also want to thank the gentleman from Pennsylvania (JOE MCDADE) and all of the others on the Small Business Committee, who have worked so hard and diligently for the past 3 years on this piece of legislation which I, too, have cosponsored.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. NOWAK).

(Mr. NOWAK asked and was given permission to revise and extend his remarks.)

Mr. NOWAK. Mr. Speaker, today we will consider landmark legislation on behalf of small business. For the first time, Government regulations must be designed to "fit the scale of those being regulated." Regulatory flexibility is not a new concept. Both Houses of the Congress have considered similar measures over the last few years.

Recently, I voted, along with 29 of my other colleagues on the Small Business Committee, to report a similar bill, H.R. 4660. And every Member knows the issue: They have been directly involved with constituent cases, and have seen how excessive Government regulations hamper smaller firms.

S. 299, the Regulatory Flexibility Act, is the first step toward the establishment of a broad, tiered Government policy, one which recognizes the special needs and limits of smaller firms. Ultimately, this policy will restore our free enterprise system.

It will insure that the small business community will continue to create the jobs, competition, and innovation our economy so desperately needs in the 1980's.

S. 299 provides a framework which will yield regulatory flexibility. Federal agencies are required to periodically publish a regulatory flexibility agenda. And they must prepare a regulatory flexibility analysis which will explain how their rules can be tiered to accommodate smaller firms. Lastly, they must review existing regulations and change them if they adversely affect small business.

Tiered regulations are not a drastic departure from past regulatory practice. A good example of a two-tiered reporting requirement is the personal income tax form. Salaried persons earning less than $20,000 a year are permitted to file a short form, 1040A, while others fill out the more detailed long form.

The Securities and Exchange Commission has embarked on an ambitious program of tiering. The Department of Energy tiers, the Environmental Protection Agency tiers, the Occupational Safety and Health Administration tiers. The problem is that, in some cases, past efforts to promote flexible regulations within the agencies have been undertaken without adequate economic analysis. The results are sporadic and sometimes inconsistent.

What this bill would do is impose an orderly, Government-wide, process on a rather ad hoc process. Some may ask, if we impose too many restrictions on the agencies' informal rulemaking, are we opening the door to the possibility that agencies will get around the restrictions by increasing enforcement efforts in an attempt to establish legal precedents? Agencies, of course, can, and should pursue violators of the law. However, when enforcement becomes petty or ill conceived, Congress has shown little reluctance to step in and chastise agencies through the oversight and budget review process.

Small business' demands are not outrageous. They only want straightforward, equitable laws. They are willing to pull their own weight, to hire employees, sell their products, to pay taxes, and contribute to our economy. Today, unfortunately, what they have is a jungle of conflicting regulation, and a Tax Code skewed in favor of the wealthy and the large corporations.

Tiered laws and regulations will move us a step closer to our goal. S. 299 is an important and vital first step which should be overwhelmingly supported by this House.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON).

(Mr. SKELTON asked and was given permission to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, I rise in support of S. 299, the Regulatory Flexibility Act.

The House version, H.R. 4660, the Smaller Enterprise Regulatory Improvement Act was unanimously reported by the Small Business Committee on October 17, 1979, and had 245 cosponsors.

S. 299 was unanimously passed by the Senate August 6, 1980.

This legislation would require Federal agencies to assess the small business impact of their regulations and tailor them to fit the size of the entity being regulated.

Legislation of this nature was one of the major goals of the White House Conference of Small Business.

Our Nation's small businesses file more

than 305 million Federal forms every year, totaling over 850 million pages and containing over 7.3 billion questions. The cost of this paperwork is about $12.7 billion, a cost that is eventually passed along to the consumer.

I commend the gentleman from Florida (Mr. IRELAND) for his work and leadership on this measure. I support it and urge its passage.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

(Mr. HEFTEL asked and was given permision to revise and extend his remarks.)

[Mr. HEFTEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. IRELAND)..

(Mr. IRELAND asked and was given permission to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, today marks the next to last step of a very long journey—that of the odyssey of the concept of regulatory flexibility for small business. I need not take up the House's time explaining how the mounting tide of Federal regulation and paperwork has swept away small business after small business. We have all heard the horror stories. The Small Business Committee has worked on this issue for years.

The result of several years of effort in our committee was H.R. 4660. This bill gained 246 cosponsors. Over 60 more Members asked to cosponsor after the report on the bill had been filed. The main concepts of the bill were later incorporated into major House regulatory reform legislation. Apparently, that legislation may not proceed further this Congress. In any event, small business cannot wait any longer.

Today we have before us Senate bill S. 299. This bill, which passed the Senate unanimously, is essentially the same as H.R. 4660. In fact, in all candor, S. 299 improves upon several sections of H.R. 4660.

What will this bill do for small business? First, Federal agencies will be required to publish in the Federal Register every 6 months a regulatory flexibility agenda. This agenda will also be sent to the Chief Counsel for Advocacy at the Small Business Administration and agencies will also endeavor to notify small businesses of the agenda through other channels. The agenda will contain a summary of any rules to be proposed which will have a significant economic impact on small business as well as the name and telephone number of a knowledgeable agency official among other things.

Second, whenever an agency has to publish notice of general rulemaking they are to prepare and make available for comment an initial regulatory flexibility analysis. They then must prepare a final regulatory flexibility analysis after having reviewed all comments. In this analysis, they must explain how their rules can be "tiered" or their burdens on small business otherwise lessened.

Third, agencies must review all regulations currently on the books and determine the continued need for any rules which have a substantial impact on small business. They have 10 years in which to complete this task and may use 1-year extensions, not to exceed 5 years, to complete the task.

Finally, the Chief Counsel for Advocacy of the Small Business Administration will monitor agency compliance with this law and will report at least annually to the Congress on said subject.

The Members of the House should know that regulatory flexibility was one of the major priority recommendations to come out of the White House Conference on Small Business. Last November, the President issued an executive memorandum that directed Federal agencies to consider flexibility in future rulemakings.

Mr. Speaker, the United States is presently in the midst of a rapid and pervasive expansion of Government influence over business. To assure a future for private, competitive enterprise, Federal policy needs to give careful attention to ways of dealing with the increasing intrusion of Government into the mechanics of the marketplace.

The design of the regulatory process goes right to the heart of the relationship between the Government and the people. It is the most tangible contact many people have with their Government. Every aspect of our lives is affected in some way by Government regulation: The air we breathe, the food we eat, our daily transactions in the marketplace, our safety as we drive our cars or work at our jobs. Government intervention in the economy is today much more the rule than the exception.

Although Federal regulation has helped our society achieve many desirable goals, evidence is growing that too many regulations are poorly designed to begin with, or have outlived their usefulness. Such unnecessary regulations have imposed tremendous burdens on the public.

The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: First, the disproportionate impact of Government regulation on small business reduces the competitive capacity of small business, thereby placing Government in the strange position of encouraging ecoprices. Thus, while the most immediate sumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

The time to act is now. The vehicle is S. 299.

I would like to take this opportunity to commend President Jimmy Carter for the leadership and concern he has shown in this area of regulatory relief for small business. While the congressional wheels were turning, the President put regulatory flexibility into an executive memorandum and in effect got the ball rolling early. His staff has been very helpful in the latter stages of this process and their expertise and assistance was much appreciated.

The Nation's small businesses owe a special debt of gratitude to the former chairman of the Subcommittee on Special Small Business Problems, Representative MARTY RUSSO. MARTY worked long and hard on this legislation and due to his appointment to the Ways and Means Committee was unable to continue as chairman. We all know that MARTY RUSSO has been a leader in the fight against needless regulation not only on this bill but also by his work on independent bakers' labeling problems.

Needless to say this bill has wide support. Chairman NEAL SMITH and ranking minority member, JOSEPH MCDADE, of our committee have been towers of strength for years in the battle against overregulation of small business. Also, SBA Administrator A. Vernon Weaver, Chief Counsel for Advocacy Milton D. Stewart and, Jere W. Glover, Director SBA Office of Interagency Office Affairs, have been instrumental in this process. The National Federation of Independent Business and the National Small Business Association have played a major supportive role during considerations on this bill.

I would like to thank the subcommittee staff which has worked for several years on this issue—Stephen P. Lynch and Patricia E. Reese of the majority staff; Marvin W. Topping of the minority staff; and James W. Morrison, former consultant to the subcommittee.

Mr. Speaker, at this point I would like to insert in the RECORD a legislative history of H.R. 4660, a discussion of the issues involved in regulatory flexibility, and a letter from Senator CULVER.

I also would ask permission to revise and extend my remarks.

WON'T TIERED REGULATIONS ENCOURAGE LARGE BUSINESSES TO SET UP "DUMMY" SMALL BUSINESSES TO TAKE ADVANTAGE OF LESSER REQUIREMENTS ON SMALL BUSINESS?

The bill provides that the definition of a small business shall be that employed by SBA or a definition of the agency's choosing. The SBA definition, at 15 USC 632 provides, among other things, that a small business concern "shall be deemed to be one which is independently owned and operated . . ." This tough, explicit definition provided by Congress has been strengthened by SBA criteria which further refine the concept of a small and independent business. SBA has more expertise on this matter than any other agency in Washington. Its Size Standards Division has carefully researched the question of business size for many years. An important body of case law has developed around these SBA definitions.

For instance, the courts have held that the SBA definitions have the force of law. (See for example: *Otis Steel Products Corp. vs. U.S.*, 1963, 316 F. 2d,937,161 Ct. Cl. 694.) The courts have also backed up SBA's refusal to consider an affiliate of a big business as a small business. (See, for example. *American Electric Co., vs. U.S.*, D.C. Hawaii 1967, 270 F. Supp. 689 and *Springfield White Castle Co. vs. Foley*, D.C. Mo. 1964, 230 F. Supp. 77.)

Thus, these highly-developed, legally binding SBA criteria should be adequate in nearly every situation. However, should a rare case arise in which an agency feels it needs even more stringent criteria to define a small business, the bill would allow the agency to de-

velop its own definition. Given these stringent safeguards against abuse, and given the bill's stipulation that critical matters of public health, safety, and welfare are never to be compromised, the issue of potential misuse of the tiers would seem to be fully addressed within the legislation.

SEPTEMBER 8, 1980.

Hon. THOMAS P. O'NEILL, JR.,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: This is in response to your inquiry with regard to the judicial review provisions of S. 299 recently approved by the Senate. I understand that your concerns relate to part of the explanation on page S. 10939 in the Congressional Record of August 6, 1980.

I believe your concern can be resolved by the addition of the words "and consciously" between "completely" and "ignores" in lines ten and eleven of the second column, and by striking the word "therefore" in the eighteenth line of that column.

Sincerely,

JOHN C. CULVER.

LEGISLATIVE HISTORY OF H.R. 4660 OF THE HOUSE SMALL BUSINESS COMMITTEE

H.R. 4660 was the result of 3 years of hearings and related work by the Committee. During the Ninety-Fifth Congress two relevant bills were referred to the Committee, H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. Caldwell Butler of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative Andy Ireland of Florida. The purpose of his bill was to give Federal agencies flexibility in the issuance of Federal regulations.

Hearings were held on these bills on February 1, March 8, March 9, and March 16, 1978.

During this Congress, several similar bills were introduced and forwarded to the Committee. They were:

H.R. 1306, introduced by Representative Richard Schulze of Pennsylvania. The purpose of his bill was to require the preparation of small business impact statements in connection with Federal agency rules.

H.R. 1745, introduced by Representative Andy Ireland of Florida. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 2837, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of her bill was to require the preparation of small business impact statements in connection with Federal agency rules, and for other purposes.

H.R. 2908, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 3011, introduced by Representative Robert Lagomarsino of California. The purpose of his bill was to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs.

Hearings on these and the concepts considered last Congress were held on April 5, April 24, May 17, and May 22, 1979.

In these eight hearings the Committee heard from almost 40 witnesses from the public and private sectors. The result of all of this was a Committee bill combining the original Butler and Ireland concepts with refinements—H.R. 4660. This bill was considered and ordered favorably reported by the Full Committee 30–0, on July 17, 1979, as amended. At present 246, including all 39 members of the Small Business Committee, are co-sponsoring this legislation.

THE NEED FOR THE LEGISLATION

The Committee has for the last several years received evidence and heard testimony from countless small businesses complaining about Federal overregulation. These individuals have not opposed all regulation, but have drawn attention to instances of too much regulation and of ill-conceived regulation which has had an extraordinary economic impact.

Most of the witnesses who addressed themselves to this legislation sought means for balancing the goals of Federal regulation with those of a market economy. One such witness, Dr. Murray L. Weidenbaum, the Director of the Center for the Study of American Business at Washington University in St. Louis, has devoted considerable effort to studying the various impacts Federal regulation has upon business. In testimony before the Committee, he eloquently outlined some problems of regulatory impact. Turning to the Occupational Safety and Health Administration (OSHA), for example, he noted that the agency "provided a complex pamphlet containing 24 pages of fine print just listing theapplicable standards for 'general industry'." And the explanation of those standards? For this the reader was referred to 29 CFR 1910. How is the average businessman supposed to know that CFR is the Code of Federal Regulations, that 29 is the volume 29 dealing with labor, and 1910 is section 1910, devoted to OSHA?

"(Assuming such a business person eventually located) * * * a copy of 29 CFR 1910, he is in for some surprises. The document contains 455 pages of fine print, including algebraic equations and trigonometric functions, but no index. Let us assume, generously, that our small business executive skips over the obviously technical parts and turns to what seems to be a simple section—the definition of an exit. By way of reference, the dictionary tells us that exit is 'a passage or way out.' For OSHA, however, defining exit is a challenge to its bureaucratic prerogatives, and it is not found wanting.

"To OSHA, an exit is 'that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment * * *' to provide a protected way of travel to the exit discharge." Obviously, our business executive now needs to find out what is "a means of egress" as well as an "exit discharge."

"Exit discharge is the easier term. It is defined merely as 'that portion of a means of egress between the termination of an exit and a public way.' Next comes OSHA's definition of a means of egress: 'a continuous and unobstructed way to exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel (?) and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards.'"

Anyone who followed all this would ultimately discover that OSHA is saying that an exit is an exit is an exit. In the case of "ladder" there are three renditions of the same tedious set of definitions plus one trigonometric function.

OSHA is certainly not the only offender when it comes to abstruse regulations. One could note the proposed regulations on job testing written by the Equal Employment Opportunity Coordinating Council. The guidelines were drafted with the best of intentions—to assure that tests do not discriminate on the basis of race, color, religion, sex or national origin. The objective surely is worthy. Yet the guidelines have been challenged by such professional organizations as the American Society for Personnel Administration and the American Psychological Association.

Reading the proposed regulations reveals the basis for the objections. Here is a typical section, one of which in fact attempts to ease the burden on employers:

"A selection procedure has criterion-related validity, for the purpose of these guidelines, when the relationship between performance on the procedure and performance on at least one relevant criterion measure is statistically significant at the .05 level of significance * * * If the relationship between a selection procedure and a criterion measure is significant but non-linear, the score distribution should be studied to determine if there are sections of the regression curve with zero or near zero slope where scores do not reliably predict different levels of job performance."

Should such guidelines be enforced, the result would surely not be fairer testing but a shift from what would be very costly and cumbersome procedures back to the simpler but far more bias-prone oral interview.

A CASE STUDY OF REGULATORY EFFECT ON SMALL BUSINESS LABELING RULES AND INDEPENDENT BAKERS

The Subcommittee on Special Small Business Problems conducted all the hearings leading up to H.R. 4660. In addition they have held many other hearings concerning regulatory impact on small business. One of the most telling examples of what is happening came in their hearings on small bakers and a Food and Drug Administration labeling regulation.

In the 1930's there were more than 10,000 idependent bakers in America. Between 1939 and 1964, while the volume of bread production increased fivefold, the number of bakery plants declined to less than 5,000. Today the number of independent bakers is less than 1,000. Several large metropolitan areas have only one independent to serve them.

Independent bakers have made significant contributions to their industry as well as to the economy. For example, all of the following bakery innovations are attributed to independent bakers:

1. Wrapped bread.
2. Marketing of sliced bread.
3. Baking of a continuous-mix bread.
4. Bag bread.
5. End labels.
6. Bread in cellophane.
7. Bake-and-serve items.

Under sections 401 and 403 of the Federal Food, Drug, and Cosmetic Act, Congress directed the Food and Drug Administration to require careful and detailed labeling of food products. In particular, the act requires that all foods composed of two or more ingredients be labeled with the common or usual names of those ingredients. The FDA, in interpreting the law has for the most part required that ingredients be listed in the order of predominance.

In 1978 the FDA was prepared to put a new labeling regulation into effect. The rule had no flexibility and called for all products to be listed in strict order of predominance on the label. Since small bakeries tend to have more variable sources of supply the requirement would have necessitated the printing of an almost infinite number of labels by such small operations. Small bakers complained to the Subcommittee that this one new rule would add vast new costs and would drive a number of them out of business

Subcommittee members had several meetings with the bakers, FDA officials, and consumer advocates. Once various consumer representatives who had urged the FDA to adopt the regulation saw what the results

would be, they were ready to modify the rule. The FDA was very cooperative. A new rule was issued, taking into account the needs of smaller bakeries.

Based on this and other similar experiences, the FDA has now set up four information desks throughout the nation for small business. The agency also now seeks out small buinesses for all their views, not just on labeling.

The lesson of this experience is important. An accelerated decline in independent bakeries would have led to a concentrated group of dominant companies and might well have created a baking monopoly or oligopoly. Characteristics of monopolies and/or ologopolies are all to well known—controlled output, high prices, and excess profits. Such a situation would confront the consumer with a market functioning according to the whims of a few. An objective of Federal regulation is to stop such concentration, not to create it. But a Congressional Subcommittee cannot realistically be expected to intervene in every such situation.

OTHER EXAMPLES

The Committee's files are replete with documentation of burdensome regulations adversely affecting small business. Productivity and innovation have ben curtailed. Inflation has been increased. Instances like the following are unfortunately all too commonplace:

A gas station owner spent 600 hours last year filling out just his Federal reporting forms.

An Idaho businessman paid a $500 fine rather than fill out a Federal form which was 63 feet long.

A New Hampshire radio station paid $26.23 in postage to mail its license renewal back to Washington.

A dairy plant licensed by 250 local governments, 3 states, and 20 agencies had 47 inspections in 1 month.

A butcher had one Federal agency tell him to put a grated floor in his shop 1 month and then the next month was told by another Federal agency he could not have a grated floor.

A company was forced out of the toy business because one of its main products was inadvertently placed on a Federal ban list.

An Oregon company with three small shops received Federal forms weighing 45 pounds.

THE OVERALL REGULATORY CLIMATE FOR SMALL BUSINESSES AND SMALL ORGANIZATIONS

A regulatory environment which necessitates the hiring of lawyers, accountants, engineers and consultants for businesses of any size to survive will clearly provide competitive advantages of the largest, most automated businesses and increase the size of firms which can enter the marketplace or remain there.

Professor Milton Kafoglis, formerly Senior Economist of the Council on Wage and Price Stability, set forth the problem in testimony on this legislation:

"* * * the regulatory agencies usually assume—contrary to fact—that costs imposed by regulation can be passed through to consumers with equal ease by all firms. This assumption tends to blunt the concern of regulatory agencies about disproportionate impacts on various sizes and classes of business.

"Though 'uniform' regulatory treatment of all businesses seems to be a reasonable criterion, it must be remembered that there are real differences and that uniformity of regulation could represent an economically inefficient solution * * *

"Uniform application of regulatory requirements seems to increase the size of firm that can effectively compete. In technical jargon, the unit-cost curve of the firm is shifted upward and to the right with its minimum point occurring at a larger output. That is, the imposition of regulations will, in most cases, artificially increase the size of the firm that can survive. If one employs the economists' theoretical 'dominant firm' model and introduces such upward shifts in cost curves (the small firm's cost curve shifting more than that of the dominant firm's), the market share of the dominant firm will increase while that of the small firms will decrease. As a result, industrial concentration will have increased. Thus, the 'small business' problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly.

"The usual paperwork and reporting burden whose total costs are invariant to output is the most obvious example of economies of scale imposed by regulation. Whereas large firms typically have a managerial structure and/or legal section that can absorb these costs with either no increase in staff or with an incremental increase, small firms must either add increments which are large relative to the size of the firm or seek consulting services which are expensive and not very highly specialized in the firms' particular needs. All such expenses are invariant to output, and their cost per unit of output declines as output increases. Such costs raise the cost curves of all firms but place the small firm at a relative disadvantage on a unit-cost basis.

"More importantly, the technology imposed by most regulations is itself subject to scale economies * * *

"Standards which impose technologies involving large fixed costs also raise barriers to entry, imposing capital burdens that small or medium-size firms cannot handle, and solidifying the market positions of existing firms. Indeed, large firms are likely to support such regulations since they are capable of insulating the industry from new competition * * *

"* * * there is not to my knowledge a government regulation which (if uniformly applied to all firms) would generate diseconomies of scale and increase the number of firms in an industry, thus encouraging deconcentration and increased competition."

Our Committee found ample evidence, on the other hand, that flexible regulatory strategies are not only workable in theory but have in fact been used on a sporadic and ad hoc basis throughout the agencies. An example of a two-tiered reporting requirement with which most Americans are familiar is the income tax form. Salaried persons, earning less than $20,000 are permitted to file their tax returns on Form 1040A (the "short form"), while other taxpayers are required to fill out Form 1040 (the "long form"). In this instance the Internal Revenue Service has made a determination that less information is necessary from low- and middle-income taxpayers with a single major source of income than is necessary from other taxpayers. Other agencies on occasion use multi-tiered techniques and they should continue to do so.

The Committee discovered numerous examples of such flexibility (both legislatively and administratively mandated) throughout the Code of Federal Regulations. The National Federation of Independent Business (NFIB) presented schematic charts of some of the varieties of existing "tiered" Federal regulation in a dozen different regulatory areas. Other witnesses compiled lists of flexible regulations in specific industries.

Unfortunately, however, efforts to promote regulatory flexibility have until now been sporadic, lacking in overall Congressional guidance, and at times ill considered. For example, the General Accounting Office's (GAO) testimony drew attention to the Department of Energy's crude oil entitlements program, which has enabled smaller refineries to purchase crude oil at subsidized prices. An unintended consequence of this program was that 37 of the 38 refineries built in the United States between January 1974 and September 1977 were designed to process less than 40,000 barrels per day, the threshold of the entitlements program, whereas the minimum technologically efficient refinery size is 175,000 barrels per day.

Our Committee is persuaded that the most direct and practical solution to counterproductive flexible regulations, is to stimulate a much greater degree of participation in rulemaking by affected parties. Offering agencies the means for tailoring regulations to the resources of affected parties must be accompanied by a strong mandate to involve those parties in the deliberations.

Thus, although administrative and legal precedents support the general approach of the bill, they do not obviate the need for the legislation.

In fact, much of the thrust of the legislation could be met by the agencies by adapting their application of Executive Order 12044 to the demonstrated problems of small businesses and small organizations.

The Executive order requires that regulations should be as simple and clear as possible and should achieve legislatively mandated goals effectively and efficiently. It states that:

"They shall not impose unnecessary burdens on the economy, on individuals, on public and private organizations, or on state and local governments."

While this policy is completely consistent with the purposes of H.R. 4660, such as reducing unnecessary requirements and simplifying and clarifying necessary ones, there are numerous provisions of H.R. 4660 which are not addressed in the Executive order.

The order does not address the issue of the different impact of uniformly applied regulations on individual segments of the population, nor does it urge agencies to issue rules which apply differently to such segments of the population. Although the order does improve the opportunities for public comment on substantive rules, its provisions are narrower than those of H.R. 4660, and it does not open reporting requirements for public comment.

Finally, the Small Business Committee noted that enforcement of the Executive order is restricted. Since the question of agencies' compliance with the order is not subject to judicial review, realization of the benefits the order seeks to provide will largely depend upon the personal sensitivity and good faith of the rulemakers. Adherence to the order by the independent regulatory agencies, which are not part of the executive branch, is completely voluntary. Moreover, the Office of Management and Budget has limited structural mechanisms for enforcing the order, even within the executive agencies.

H.R. 4660 does not conflict with the Executive order and does not represent a duplication of objectives. H.R. 4660 would supplement and strengthen the order in several ways, notably by adding two new regulatory objectives: improving public participation and an assessment of alternative regulatory strategies in light of their impact on small concerns. Thus, the Committee believes this legislation is not only necessary, but timely.

Indeed, the Committee agrees with the testimony offered by the General Accounting Office (GAO) that:

"In the absence of Congressional action establishing comprehensive guidelines to improve agency rulemaking, we would support legislation designed specifically to ease the regulatory burden on small business."

H.R. 4660 has been carefully designed to permit such broad scale reform in the future, and nothing in the legislation would stand

in the way of comprehensive rulemaking reform. Each major aspect of the bill accords with generally accepted principles under Executive Order 12044 or existing administrative law.

THE CONCEPT OF FEDERAL REGULATION OF THE MARKETPLACE

Federal regulations have the effect of law when finalized. Though thousands of new regulations are created every year, very few are ever taken off the books. Estimates of the cost to the economy of all these regulations ascend to $100 billion. In such a situation, it is important to keep track of the main lines of reasoning in support of Federal intervention in the marketplace.

There are two main arguments. Market failure, a term which economists use to designate a flaw in the marketplace which produces undesirable consequences, can create several problems. Regulations can remedy many of these problems. Among them are:

Natural monopoly, resulting in high prices, reduced output, and excess profits;

Interdependencies in natural resource extraction, resulting in the inefficient use of natural resources;

Destructive competition, resulting in chronically sick firms unable to satisfy consumer demand;

Externalities, which impose costs in society but not on the person who causes them; and

Inadequate information in the marketplace, resulting in poor decisions and wasted resources.

A regulation in any of these areas is meant to improve the market system and aid competition.

The second line of reasoning concerns social or political problems which demand regulation. Among these are regulations which are intended to:

Alter income distribution;

Strengthen national security;

Improve the environment;

Protect public health and safety;

Promote new industries;

Give special protection to groups like small business or family farms;

Provide special assistance to smaller communities and/or rural areas.

In each of these cases, regulation serves to meet an important social need. Difficulties arise when bureaucracies which are not responsible to the electorate exceed their statutory authority or fail to consider rulemaking alternatives which would have a less burdensome impact on the regulated public. It is this imbalance between goals and unnecessary burdens which this legislation is designed to address. The Committee did not intend to sanction any diminution of the legislatively mandated goals of Federal regulation.

AGENCY ENFORCEMENT

During the hearings an issue arose concerning an option which agencies may use rather than regulation. One of the witnesses before the Subcommittee, Mr. Calvin Collier, a former Deputy Director of OMB and former Chairman of the Federal Trade Commission, raised the possibility that agencies confronting new rulemaking procedures might evade them by resorting to the creation of legal precedents through enforcement actions against "worse case" offenders, and subsequent enforcement of such precedents upon the regulated public as though the precedents were actual rules.

While our Committee believed such agency action is much more likely under the more sweeping regulatory reform measures now pending before Congress, and that the Smaller Enterprise Regulatory Improvement Act would impose little additional burden on any agency, the Committee would note that agency enforcement budgets will be subject to rigorous oversight if evidence suggests that enforcement actions are being used as a surreptitious form of "rulemaking."

A PUBLIC PROBLEM

Overregulation is not just a small business probem. It is a problem with significant public consequences. One witness summed it up this way:

"The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: (1) the disproportionate impact of government regulation on small business reduces the competitive capacity of small business, thereby placing government in the strange position of encouraging economic concentration, and (2) consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

"The disproportionate impact of regulation on small business stems from economies of scale inherent in the regulatory process. This fact is neither unexpected nor stunning once attention is drawn to it. But as often is the case of the obvious, we tend to dismiss it in our preoccupation with the more specific."

On October 17, 1979, H.R. 4660 was referred to the House Judiciary Committee. On May 28, 1979, the Judiciary Committee was discharged from further consideration of H.R. 4660.

DISCUSSION OF ISSUES

When the Senate passed S. 299 on August 6, a "Description of Major Issues and a Section-by-Section Analysis" was provided to explain certain substitute language adopted for that bill. (See 126 Congressional Record S. 10934–43.) Members of the House of Representatives took an active role in helping the various parties in interest achieve the understandings which were necessary to bring the measure before the Senate, just as members of the Senate have provided much help in bringing the measure before the House of Representatives today. Thus the Senate document entered into the Record on August 6 already reflects many of the concerns of House members who have been involved in the development of regulatory flexibility legislation. Indeed, much of S. 299 as passed is derived from provisions of H.R. 4660. Rather than commenting again on each of the various sections of S. 299, as passed by the Senate, this Discussion of Issues will supplement the Senate document by noting some general themes and objectives of the legislation, occasionally amplifying some of the points made during Senate consideration, and drawing upon, where appropriate, House Report 96–519 on H.R. 4660 (which should be incorporated by reference into the legislative history of the pending bill.) That House report more fully conveys the views on regulatory flexibility legislation of the principal authors and sponsors in the House of Representatives. Agreement on the matters discussed in this Discussion of Issues has helped provide the broad political consensus necessary to bring S. 299 before the House of Representatives in lieu of H.R. 4660. House members who have worked on this legislation are deeply grateful for the active and creative participation of Senators Culver, Nelson, Laxalt, Thurmond, and others in developing S. 299. Senator Culver has shown particular strength and perseverance in the long effort to enact regulatory flexibility legislation.

In general, regulatory flexibility legislation is designed to eliminate the unnecessary regulatory burdens which attend uniform or rigid regulatory strategies, particularly with respect to those on whom such unnecessary burdens weigh the most heavily—small businesses, small organizations, and small jurisdictions of government. The legislation directs agencies promulgating federal rules, reporting, and recordkeeping requirements to carefully examine them with the purpose of seeking less burdensome "flexible" alternatives.

The agencies are directed to assess such options as "tiering" (that is setting differing and less burdensome requirements on smaller entities), exemptions from all or parts of rules, the structuring of differing timetables for compliance, the use of performance standards rather than design standards, and so on. It is important to note that agencies are not restricted to use of the options specifically enumerated in S. 299. When S. 299 refers (in Section 603(c)) to "any significant alternatives to the proposed rule" and then enumerates alternatives "such as" those mentioned above, it means just that—that those alternatives are examples or possibilities, but that any other appropriate flexible regulatory strategory which is suggested must be given serious consideration. The Act does not specifically mention the adoption of less frequent reporting requirements for smaller entities, for example, although this form of flexible regulation is already used by many agencies, and is indeed completely consonant with S. 299. Equally appropriate in the future, although again not explicity noted in the Act, would be such current agency practices as adopting multitier regulations, and using criteria which have the effect of tiering by size (as for example, the EPA regulations affecting leather tanneries which are tiered according to volumes of effluent discharge.) The Act does not specifically cite the entitlements programs now in use by some agencies, although entitlements programs are a form of flexible regulation. Nor does it take no of imaginative new approaches like the Environmental Protection Agency's "bubble" concept, which takes into account that agency's mandate to clean up the air while lessening unnecessary burdens through a flexible application of a statute.

Neither S. 299 nor any other single piece of legislation could ever begin to specify the appropriate solution to address every situation regulators will encounter, now and in the future, and it would be unwise to attempt to do so. Reguatory flexibility should be viewed by the agencies as Congressional encouragement to reward agency personnel for seeking out and applying creative solutions to the genuine problems our smaller entities face in complying with broad, general statutes. Statutory mandates must never be compromised—that is why section 606 explicitly states that the Act does not alter any other statutory standard—but agencies are required by the Act to solicit and consider flexible approaches in the application of their statutes, where legally permissible.

Agencies may undertake initiatives which would directly benefit such small entities. Thus, the term "significant economic impact" is neutral with respect to whether such impact is beneficial or adverse. The statute is designed not only to avoid harm to small entities but also to promote the growth and well-being of such entities.

Ascertaining the impact on small entities is the heart of the regulatory flexibility analysis. It is a finding of substantial impact on a substantial number of small entities which triggers the consideration of flexible regulatory strategies. Evidence of such impact upon any one of the three types of entities—the small businesses, the small organizations or the small jurisdictions of government—requires agency compliance with applicable provisions of this legislation. Normally, rules will not affect two or three types of small entities simultaneously, but when this does occur, agencies should take steps to involve each type of entity in their rulemaking, and account for each in their

regulatory flexibility analyses. Agencies should promulgate final rules whose flexible provisions are based on the rule's potential impact on each of the different types of affected small entities.

Thus the possibility that a rule may cause a substantial impact on a significant number of small entities is central to an agency's determinations under this legislation. Exactly what a "significant economic impact on a substantial number of small entities" is will vary from case to case. For example, if there were 500 small organizations of a certain description, and 200 of them would face major new reporting requirements if a certain rule were implemented, then the rule should be expected to have a significant economic impact on a substantial number of small entities (in this case small organizations). If there were only 25 small businesses in an industry dominated by 12 large businesses, then a rulemaking initiative which would threaten the economic viability of 15 of those small businesses, and thus adversely affect competition and industrial concentration, would have a "significant economic effect on a substantial number of small entities" within the meaning of the legislation, even though the absolute number of small businesses involved would be minuscule. As this example makes clear, economic impacts include effects on competition and economic concentration. The phrase "significant economic impact on a substantial number of small entities" is ambiguous in order to cover critical situations such as these examples without imposing exact numerical thresholds on the agencies overall. But clearly, any anticipated rulemaking which common sense would suggest could have a direct, noticeable economic impact on several thousand or more small entities (of any type) should be considered as included within the concept of having a "significant economic impact on a substantial number of small entities." Obviously, agencies are not expected to estimate the unforeseeable or to avoid ever making any mistakes in their estimates. Rather, the agencies should make good faith efforts to arrive at reasonable estimates and should scrupulously follow the procedures outlined in the legislation.

Those procedures can be delineated in a step-by-step manner. The initial decision the agency makes is a determination that the provisions of this Act are applicable to the agency and to the actions that it takes. This is clearly an important decision, which the agency should consider very seriously. The legislation is intended to be as inclusive as possible, and doubts about its applicability should be resolved in favor of complying with the provisions of the Act. Any significant comments from the public or especially the Office of Advocacy that a rulemaking should be accompanied by a regulatory flexibility analysis should be given the utmost serious consideration by an agency.

Although these more inclusive interpretations may result in additional effort for the agencies in the short run, such inconvenience should be viewed in light of the final rule's long-term advantages: more just application of the laws and more equitable distribution of economic costs, which will ultimately serve both the society's and the government's best interests.

It is difficult to ascertain how many regulatory flexibility analyses agencies will be required to prepare or publish under this Act. One estimate is that there will be about 500 per year. There may be more or fewer. The number will surely vary according to the subject areas the agencies choose to consider in any given year.

Having made the determination described above, the agency must then perform the regulatory flexibility analysis. The first step in this analysis is a careful estimation or projection of whether a rule, not yet proposed, may if implemented have a significant economic effect on a substantial number of small entities. This estimation will become a part of the agency's permanent rulemaking record. Under normal circumstances, a positive finding regarding impact should be followed by notification on the agendas required by section 602 that the rule, if implemented, could have such an effect on small entities. Sometimes, very early in rulemaking, agencies may only know in general terms that an area of rulemaking activity could have such an effect. This, too, should be noted on the agendas. In other words, an agency does not need to have a specific rule already developed to provide the public with agenda notification; agency activity in an area which is likely to result in a proposed rule having such an effect should also be noted. For purposes of agenda publication, agencies should interpret potential impact liberally. It would be preferable to have the agendas err on the side of anticipating more impact than subsequent rulemaking records indicate is likely to occur than to have such impact overlooked on agendas. For in cases where such potential impact proves to be unsupported by subsequent evidence, agencies are completely free to suspend any further regulatory flexibility analysis (provided appropriate certification is published pursuant to section 605(b) of this Act), but the rulemaking record will have been enhanced by public comment on the agenda items. (Such public comment on agendas should be gathered in accordance with Section 609 of this Act, to the extent feasible.) A different type of situation occurs when an agency obtains evidence later in its rulemaking that suggests that an estimation of "significant economic impact on a susbtantial number of small entities" would be appropriate. In such a situation, the agency should proceed directly to the publication of an initial regulatory flexibility analysis. In other words, when, an agency must consider or act upon an item which did not appear in an agenda, it may do so. And an agency will not be required to consider or act upon any matter solely because it appeared in an agenda. In preparing agendas, as with other responsibilities under this Act, agencies may reduce their paperwork and avoid duplicative analyses by considering a group of closely related rules as one rule for purposes of simplifying analyses. But agencies may not avoid the requirements of this Act by dividing a larger rule into smaller rules with less impact.

Following the receipt and consideration of comments on the agency's impact assessment, as published in its agenda, the next step in the regulatory flexibility analysis is either the agency head's certification, under section 605(b), that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, on the publication of an initial regulatory flexibility analysis under section 603. A certification under 605(b) must be made by the agency head personnaly, must be based upon sufficient evidence with in the rulemaking record, and must not ignore or fail to account for any significant evidence to the contrary. Certifications under section 605(b) should not be abused or taken lightly; they represent an important step in the evolution of an agency's regulatory flexibility analysis and overall rulemaking. Such certifications will also become a part of an agency's rulemaking record. For the administrative convenience of the agencies, the Act allows, certifications under section 605(b) to be published either concurrently with proposed rule publication, or after publication of an initial regulatory flexibility analysis (under section 603) concurrently with final rule publication. This timing of publication is flexible so that section 605(b) certifications can serve as the final evaluation in the analysis: The point at which the evidence makes clear that a flexible rule is not warranted by a rule's potential impact.

Agencies are required to notify the Chief Counsel for Advocacy of the Small Business Administration whether they publish an initial regulatory flexibility analysis under section 603 or whether they publish a certification under 605(b). The Chief Counsel's office was set up by Congress (under P.L. 94-305, 90 Stat. 669) to be an advocate for small business within the Federal Government. In that role, the Chief Counsel's office has been empowered to take part in a variety of inter-governmental activities, including participation in agency rulemaking proceedings. Comments by the Chief Counsel's office on agency certifications under section 605(b) should be viewed by the agencies as being just as significant as comments by the Chief Counsel's office on other parts of the regulatory flexibility analysis, such as comments upon the publication of the initial regulatory flexibility analysis under section 603. Because of the broad role Congress is assigning the Chief Counsel in the Administrative Procedure Act in monitoring agency compliance with this legislation, any comments submitted by the Chief Counsel in connection with an agency rulemaking should be given the utmost serious consideration by the agency. Agencies will benefit from the considerable experience of the Chief Counsel in developing flexible alternatives under this new area of law.

The reports on agency compliance which the Chief Counsel is required to submit to the President and to Congress under section 612(a) of this Act should include a listing of the Chief Counsel's comment submissions regarding the applicability to agency actions of provisions of the Act, including especially sections 602(b), 603(a), 605(b), and 610, as well as candid evaluations of all instances of disagreement between the Chief Counsel and the agencies involved. The reports will measure the progress of regulatory reform by compiling the number of regulatory flexibility analyses completed, rules under review, rules reviewed and flexible alternatives adopted. Inasmuch as the Chief Counsel is required to report "at least" annually, he may report more frequently, and may from time to time issue special reports on matters of particular significance with respect to regulatory flexibility implemention. Reports by the Chief Counsel's office, and other responsibilities of the Chief Counsel under this Act, should be implemented in accordance with existing procedures under that office's authorizing statute, P.L. 94-305. Section 612 of the Regulatory Flexibility Act provides that the Chief Counsel for Advocacy be permitted to appear as amicus curiae in any action in any U.S. Court to review a rule, to present his views with respect to the effect of a rule upon entities covered under the Act. This judicial role complements his already-established function of monitoring federal rulemaking affecting small business and participating in such rulemaking where appropriate.

After publishing an initial regulatory flexibility analysis, an agency should take the steps stipulated in section 609 for gathering comments, and should do so with special vigor if such steps have not already been taken following agenda publication under section 602.

Section 609 is quite explicit about the direct involvement of affected smaller entities in rulemaking. The participation of affected smaller entities in an agency's deliberations regarding flexible alternatives is an absolutely essential responsibility of an agency under this legislation. Such public participation will doubtlessly produce a number of significant contributions to an agency's search for the least burdensome regulatory strategy consistent with its mandate.

Analysis of comments gathered using these procedures, as well as comments, if any, from the Chief Counsel's office should form the foundation for the agency conclusions as expressed in the publication of the final regulatory flexibility analysis. An agency's final regulatory flexibility analysis of a rule should be directly linked to the final rule. It would not be reasonable for an agency to publish a finding that a rule is unnecessarily burdensome and that it could and should be made flexible, and for the agency then to fail to promulgate such a flexible rule.

Agencies may conduct emergency rulemaking in exceptional situations. The initial steps of a regulatory flexibility analysis need not be performed if a rule is being promulgated in response to an emergency, although the agency head must personally so certify, as in the case of certifications under section 605(b). However, as noted in section 608 (b), all rules, even emergency rules, must have a final regulatory flexibility analysis published for them, but such publication may occur up to 180 days after the rule is promulgated. Failure to publish a final regulatory flexibility analysis within 180 days shall cause a rule to lapse.

To help agencies cope with unusual circumstances, particularly when unforeseen difficulties arise in the future, an agency head is permitted to extend the time limit for the review beyond ten years, for a year at a time, up to fifteen years. This authority should be used very sparingly, on a case-by-case basis for each rule involved. This provision of section 610(a) is most emphatically not intended to extend the review period beyond ten years on a wholesale basis for any agency. The agency plan for review of its rules, which must be published within 180 days of the enactment of this legislation, should be based on a ten-year cycle of review. In reviewing existing rules, agencies should follow the procedures described in sections 602–609 to the extent appropriate. Of course, such reviews should be consistent with the objectives stated within the underlying statutes of the agencies, as should all agency actions under this Act.

Ultimately, the Regulatory Flexibility Act is directed to agencies which in the past may not have known whether they were permitted by Congressional mandate to promulgate rules which were flexible enough to take into account special problems faced by small entities. The Act is designed to eliminate such uncertainty as well as to encourage agencies already promulgating flexible rules to continue doing so.

The sponsors of this Act hope that those agencies, and the agencies already working to implement flexible rules, will take their new responsibilities under this Act seriously and will make steadfast good faith efforts to comply. There are sanctions available for agencies which do not comply with this legislation, of course, in Congress and in the courts. This Act represents more than three years of careful work by both Houses of Congress to provide responsible legislative assistance to groups of Americans who feel sorely and justifiably afflicted by the way their government has treated them. Congress' concern about this problem is vividly expressed in the legislative history of regulatory flexibility proposals, a history which has included numerous unanimous votes in subcommittees, in full Committees, and on the Floor. In fact, there has never been a single negative vote cast against any regulatory flexibility bill since the introduction of the first such bill in the 95th Congress. Today's vote on the Floor of the House of Representatives finalizes a now general consensus that proper implementation of this legislation will result in much needed relief and significant benefits to our Nation's small entities.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from California, chairman of the Subcommittee on Administrative Law and Governmental Relations (Mr. DANIELSON).

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. DANIELSON. Mr. Speaker, I should like to point out a few things in connection with this bill which we are today considering, S. 299.

First of all, this bill has never been considered by any committee or by any subcommittee of the House of Representatives. It stands here naked, by itself, the product of the other body, which was passed by the other body, but has never been referred to a committee of the House of Representatives.

Comment has been made, as to the subject matter of judicial review, to the effect that judicial review is provided for in this bill. I should like to point out that section 611 on page 15 of the bill provides as follows:

Except as otherwise provided in subsection(b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

Insofar as there may be Members who feel that judicial review is encompassed within this bill, I trust that the foregoing reference to the language of the bill itself will set that point straight.

I am willing to state as I stand here that this bill has some merit, and I emphasize the word "some." But I submit that it has very little.

The problems of regulatory reform are not fully addressed by this bill. If one were to use a form of common analogy, one could say that this is but a band aid on an economic cancer. The public and the business community have for years been clamoring for some relief from the overregulation from which we all suffer.

My subcommittee and I have worked long and hard to provide that relief. But apparently what we are confronted with now, under suspension of the rules, with no opportunity to amend, is a very small and inadequate substitute.

This bill, S. 299, falls far short of realizing the promise of regulatory reform as heralded so long ago by Executive Order No. 12044 which was issued on March 23, 1978, and which is now scheduled to expire on April 30, 1981.

In response to the public clamor, from all walks of life, for some meaningful reform of the regulatory process which would lift some of the burden of overregulation from the backs of our business and governmental community, the President issued Executive Order No. 12044 setting forth a realistic, meaningful, and hopeful proposal to make some real and substantial changes in the process under which Government regulations are issued to govern the business and community relationships of all our people.

In response to Executive Order No. 12044 I, together with Chairman PETER RODINO of the Judiciary Committee, and others, introduced the bill H.R. 3263 on March 27, 1979. That bill sought to bring about many improvements in the regulatory process and, at the same time, to extend its coverage to govern the regulatory procedures of the so-called independent agencies as well as those agencies which are a part of the Executive Office.

The Judiciary Committee's Subcommittee on Administrative Law, of which I am the chairman, conducted hearings for many months in order to obtain the information which would be necessary to mark up an effective bill which would carry out the purposes of Executive Order No. 12044. We had 10 days of testimony during which we heard more than 100 witnesses from every walk of life, from every section of the business community including small businesses and big businesses alike, from legal scholars, from the officials of many executive department agencies and from independent agencies, from legal scholars and practicing lawyers, from professors and administrative law judges, from organized labor, from public interest groups, Members of Congress, numerous Government officials and others. We benefited greatly from the opinions and experiences of this wide variety of witnesses. There followed 13 days of subcommittee markup before we concluded our amendments to the bill, H.R. 3263, and reported the same to the full Judiciary Committee.

Later the Judiciary Committee held 5 days of markup making sundry amendments to different parts of the bill but largely sustaining the work of the subcommittee.

In fact on May 14, 1979, when we concluded the fifth day of markup by the full committee, we were within about 2 hours of completing our work. Since then we have held the bill, H.R. 3263, in abeyance at the request of those who wish to work out some kind of compromise or agreement on two of the more controversial provisions of the bill; namely, those relating to the so-called legislative veto and those relating to the so-called Bumpers amendment.

Nevertheless, the bill, H.R. 3263, is completed in substantial respect and is an excellent bill which, with or without legislative veto and with or without the Bumpers amendment, could bring about the salutory and meaningful regulatory reform that the executive department, the legislature, the business community, labor, and the public so urgently need.

H.R. 3263 covers the entire spectrum of regulatory reform and would require many innovative techniques to be used by regulatory agencies in the preparation and promulgation of the rules and regulations to which it is directed. The bill would require advance notice to all concerned through a mandated regulatory agenda published twice a year identifying prospectively all major and significant rules that an agency might consider.

It requires regulatory analysis prior to rulemaking for all major and significant rules. As marked up by the Judici-

ary Committee that bill provides the maximum of regulatory flexibility which would take into account the specific needs of smaller businesses, smaller organizations and smaller units of Government.

It would also require flexibility as to geographical sectors since it is obvious, for example, that a rule regulating water must be treated differently in a water rich area such as the Northeastern United States than in an arid area such as the Southwestern part of the United States. H.R. 3263 would require that regulations be drafted in plain English that can be understood by all, that there be an opportunity for public participation in the hearings on ruemaking procedure; and that there be review provisions for those regulations already in effect so that regulations which are no longer necessary could be eliminated and those which no longer meet the problems for which they are intended could be amended and modified. The bill, H.R. 3263, takes into consideration many other factors most of which are not even considered in the present bill S. 299.

One of the inadequacies of the present bill, S. 299, is shown by the following:

The question of whether Treasury regulations issued under the Internal Revenue Code are covered by S. 299 is not resolved by this bill. S. 299 was never considered in the Judiciary Committee nor in any subcommittee thereof. The bill by its terms applies only to the rules and regulations governed by section 553(b) of the Administrative Procedures Act, and that section excepts—excludes—interpretative rules.

Therefore, to the extent that Treasury Department regulations are in fact and in law interpretative rules they would be excluded. Otherwise, they would not be excluded. There are many other "open questions" in the bill which would be avoided by the passage of H.R. 3263.

Mr. Speaker, I respectively submit that the bill, S. 299, is not necessarily a bad bill. Truly, it amounts to nothing. It does not respond at all to, and does not meet, the need for regulatory reform which all of us have heard and considered during the past several years. It certainly does not meet the promise of regulatory reform that the public has come to expect as a result of the clamor of the last few years. After all the clamor and discussion concerning regulatory reform in the past 2 years the public has a right to expect a monumental work which will truly bring about meaningful and useful regulatory reform; instead of that what we are producing here today is a very small molehill.

Mr. Speaker, I hope that no one uses this bill as an excuse for, and that this bill will not lessen the demand for, regulatory reform. And I hope that this poor bill will not be used by the administration, by the Congress, or by anyone else as an excuse for not proceeding further with the bill, H.R. 3263, which is capable of providing the public with meaningful regulatory reform and which could be completed in the remaining days of this 96th Congress.

Mr. KINDNESS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. ROTH).

(Mr. ROTH asked and was given permission to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, I rise in support of the bill, S. 299, the Small Business Regulatory Flexibility Act. S. 299 amends the Administrative Procedure Act to provide for increased flexibility in the application of the Federal rulemaking process to small businesses, small governmental jurisdictions, and small organizations.

This measure further provides that agencies must include economic and red-tape impact analysis for small businesses, small governmental jurisdictions and small organizations whenever it publishes notice of a proposed rulemaking and must give public opportunity to comment on the initial analysis.

Moreover, this measure provides that agencies must publish a final regulatory flexibility analysis when it issues a final rule, explaining how rules can be "tiered" and offer reasons why less burdensome alternatives were rejected. If the Agency fails to do the required analysis or fails to take its own study into account when the final rule is published, the regulation is subject to being struck down by the courts. I want to point out that this act does not deny the statutory responsibility of the agencies. On the contrary, the act makes it perfectly clear to the agencies that they have a congressional mandate to adopt flexible alternatives.

By embracing S. 299, the House can take a quantum leap forward in the reduction of regulatory burdens which small businesses must shoulder. It must be recognized that Federal regulatory policies work a hardship on the small firm that the large is able to escape. Large firms have at their command a myriad of resources—lawyers, accountants, and greater organization that enable them to absorb and sometimes deflect the impact of Federal regulations. We must remember that in order for an economic system to remain competitive, it needs a strong and healthy small business section and I believe S. 299 is a step in the right direction toward insuring this goal.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HUGHES).

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I want to say to my colleagues that as a member of the Administrative Law and Governmental Relations Subcommittee of the Committee on the Judiciary, I am extremely disappointed at how the administration has tried to slip this particular bill through as some means of regulatory reform. Our subcommittee has worked for the better part of 10 months in trying to craft a bill that would actually achieve the reform that is needed in the regulatory process.

H.R. 3263 is a much, much superior bill. The bill that was reported out by the Small Business Committee, and the Small Business Committee worked long and hard on, is a much preferable bill. This is not even half a loaf. It does not go anywhere near where we have to go in reforming the regulatory process.

Those that suggest they are cosponsors of this legislation are totally in error. There are no cosponsors to this legislation. This bill is S. 299—a Senate bill. There have been no hearings to look at any aspect of this particular bill, and no Members of Congress in this body have had an opportunity to cosponsor or work their will on this legislation. In fact, I am greatly concerned at this point that the administration will believe that this legislation is an adequate substitute for the bill we should be passing, H.R. 3263.

Mr. LUKEN. Mr. Speaker, I have always been a strong supporter of regulatory flexibility, because I believe burdensome and unnecessary regulations are a threat to the survival of the small businesses of this Nation.

We are currently facing declining productivity and innovation in the United States. Small business can reverse this trend if it is allowed to do so and is not regulated to death. Time and time again, small business has proven itself to be the innovator in our country.

For example, during the period of 1953–73, firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations.

Furthermore, the small business community has proven to be the backbone of our economic system. Recent reports indicate that 43 percent of the GNP is generated by small business and 57 percent of all employees in the United States are employed by small businesses.

In recent years, the regulatory burden for small business has continued to increase to levels that are suffocating their entrepreneurial qualities. This paperwork burden has spread to all types of interaction that small businesses have with the Federal Government. The Small Business Energy Subcommittee, which I chair, has heard testimony from numerous witnesses on the number of forms they must complete to apply for Federal funding and Government procurement. One solar small businessman stated that he has a 4-pound application file, containing 52 different forms, exhibits, and financal statements, requiring no fewer than 1,127 segments of data. Added to this were approximately 5,000 words of narrative descriptions and thousands of calculations and hundreds of hours of preparation time.

Small businesses must be relieved of this unnecessary and costly drain on their time and financial resources. Small business men and women cannot afford to spend the majority of their time completing forms, nor should they have to. If this trend is not reversed, many small businesses will have to close their doors, because they cannot overcome the demands imposed by the Federal Government. We must not let this occur, but we must do everything possible to stand behind the small businesses which are so valuable to our Nation's well-being.

S. 299, the Regulatory Flexibility Act of 1980, is an important step in reducing this disproportionate burden small business face. This legislation tailors regulations to the size and capabilities of those being regulated. Small business will no longer have to bear the brunt of uniform rules and regulations created by Federal agencies. I urge you to join me in supporting this much-needed and valuable legislation. Thank you.●

● Mr. BUTLER. Mr. Speaker, I rise in support of the Regulatory Flexibility Act now pending before us. As the author of the first small business impact bill, H.R. 7739, in the 95th Congress, I am extremely gratified to find that my regulatory approach has now received such widespread support shown in the unanimous enactment of S. 299 by the Senate. I thank my Senate colleagues for their cooperation with me and the other principal House sponsors in the process of revising S. 299. The act we are voting on today is consonant with the objectives of my original bill and H.R. 4660 and creates a viable consensus on those important issues covered by the legislation.

When I served on the Small Business Committee, I was horrified at some of the testimony presented before the committee by small businessmen regarding some Government regulations, and the seeming lack of concern by Federal agencies for the plight of the small businessman in complying with these regulations. Examples are numerous. Horror stories over OSHA regulations are legion, making OSHA a four-letter word among businessmen.

The number and functions of Government regulatory agencies have expanded at an alarming rate in the 1960's and 1970's, and it is obvious that almost every facet of business activity is subject to one or more governmental agencies who have the power to inspect, review, modify or reject the work of private industry; we are talking about regulation which affects nearly every aspect of industry, commerce, agriculture, trade, banking, and even private life.

And this regulation comes to us with an incredible price tag for which the consumer picks up the tab.

The cost of Government regulation in 1979 is estimated to run over $100 billion. Of that amount, $4.8 billion will go to operating costs of the agencies themselves but the cost of compliance with regulation will be over 20 times that. This compliance cost is especially alarming, considering it has doubled since 1974, and is five times its cost in 1970. Regulatory agency staffs now number 80,000, or nearly triple their size in 1970.

The successful small business in this country is the personification of the individual spirit that has characterized the achievements and accomplishments of this Nation. We must do what we can to halt the decline of small business if we are to preserve our free enterprise system. The purpose of well-conceived, meaningful regulations can still be accomplished and small businesses can still be protected if Government agencies will only take small business into consideration when they draft regulations. This act, in my opinion, would help make Government agencies cognizant of small business, would help the agencies implement their statutory goals, and would help preserve small business in our economy.

This legislation directs Federal agencies to consider less burdensome alternatives to regulations with significant economic impact on a substantial number of small entities. The specific requirement to analyze small business needs and regulatory goals will vastly improve the quality of rulemaking and will benefit both society and the affected entities.

Agencies will be required to prepare and publish an initial regulatory flexibility analysis for every proposed rule meeting the impact criterion. This preliminary analysis should generally explain the proposal's goals, the expected impact on small entities and the need for the proposed rule. Such an analysis will also include a preliminary discussion of significant less burdensome atlernatives.

Agencies are invited to go beyond the alternatives presently in use (such as multitiered regulations, reduced paperwork and additional time for compliance and adopt innovative approaches for regulatory flexibility, for example, the EPA "bubble" approach. Additional innovative approaches are especially desirable for the fulfillment of statutory goals with the minimum cost to the affected entities and the public that would inevitably bear a portion of the additional costs.

Let me emphasize that this act does not, in any way, comprise the statutory mission of the agencies. The act simply clarifies the authority of the agencies to adopt flexible alternatives. Where the underlying statute does not specifically preclude the consideration of flexible alternatives, Congress confirms the authority of every agency to incorporate flexible alternatives in its promulgation of rules.

I would like to add that this act also provides an excellent vehicle for agencies to fulfill their obligation under the Small Business Act, other applicable Federal laws and applicable executive orders and memoranda that direct federal agencies to promote and protect the interests of small business. There have been numerous instances of the use of regulatory flexibility approaches to strengthen small business' ability to compete in the marketplace. The term "significant economic impact" was deliberately used to convey the intent of Congress that agencies would continue their practice of utilizing the regulatory flexibility analysis framework to develop rules that will benefit small businesses directly, as well as reducing the burdens on small businesses.

In other words, because the agencies are required to identify all proposed rules with significant economic impact," both adverse and positive, they will consequently be considering alternatives which also promote the health and well-being of small businesses. This benefit from this legislation is particularly welcome news at a time when vigorous small business activity would go far toward reducing inflation and unemployment and promoting the Nation's economic health.

After the receipt of comments from the affected small entities, from the Chief Counsel for Advocacy, if any, and from other interested parties, the agency shall prepare and then publish a final regulatory flexibility analysis. Such analysis shall explain the basis for the adoption of the final rule, and shall include discussion of the significant flexible alternatives.

The act does not require that an agency adopt a rule establishing differing compliance standards. exemptions or any other alternative to the proposed rule. It simply provides that the agency must explain its rejection of any reasonable alternative rule which would have been significantly less burdensome or significantly more beneficial to small entities. The act also insures that agencies which determine that the inclusion of small entities poses a significant burden to the small entities and is also of minimal value to the realization of the statutory goals will be certain to exempt those small entities from the scope of the final rule.

This legislation also recognizes that unforeseen events will occasionally preclude timely compliance with the initial and final regulatory flexibility analysis requirements (sections 603 and 604). Under certain conditions, an agency is permitted to waive or delay the preparation and publication of the initial regulatory flexibility analysis.

However, section 608(b) clearly provides that a final regulatory analysis must be completed for every final rule.

Thus, even rules issued in final (pursuant to section 553(b)(3)(B) of title 5, the "good cause" exception) without a proposed rule published for comment will be subject to a final regulatory analysis.

Although the provision for judicial review in S. 299 is less encompassing than the review applicable in H.R. 4660, this provision nevertheless insures that Government agencies will take seriously their obligation to comply with this new mandate. Current implementation of the concept of regulatory flexibility varies greatly among the agencies. The judicial review provision is designed to eliminate undesirable interlocutory or purely procedural challenges to rulemaking proceedings, but leave unimpaired the present right under the Administrative Procedure Act of review of the final rule. Judicial review of the lack of or adequacy of the regulatory flexibility analysis is permitted to the extent it is relevant to a review of the validity of the final rule. While the compliance of an agency with respect to particular provisions of this legislation is not subject to independent judicial review, such matters may be relevant to a determination of the reasonableness of the final rule.

Thus, unlike the situation regarding environmental impact statements, the failure to perform a regulatory analysis would not be grounds for injunctive relief in advance of the issuance of the final rule. However, the failure to perform an analysis of a reasonable alternative consistent with the desired regulatory goal may be adequate grounds

for a determination that the final rule is unreasonable. Similarly, an agency's unreasonable determination not to perform a regulatory flexibility analysis may provide a basis for invalidation of the final rule, but would not be grounds for interlocutory relief.

The requirement of agenda publication, section 602, and the public notification requirements of section 609 will go far toward assuring adequate small business participation in the formulation of proposed rules with significant small business impact. For example, such a provision could have prevented the recent failure of the Department of Energy (DOE) to consider certain flexible alternatives in its recent proposal of appliance energy efficiency standards. Because the advance notification requirements were not in place, DOE overlooked informing the affected small business trade associations that the Department was proposing to include a testing requirement beyond that required by the Federal Trade Commission that had been developed months earlier. By DOE's own estimate, the new requirement would force some 65 percent of the small appliance manufacturers out of business.

Specifically with regard to small manufacturers of refrigerators, freezers, ranges/ovens, water heaters and room air conditioners, the Department indicated that these manufacturers had a 0.0 percent chance of successfully financing compliance with the new requirement. In its Economic Analysis, DOE simply stated that this was "an acceptable impact."

Furthermore, compliance with the provisions of section 603 requiring an initial regulatory flexibility analysis would have prevented DOE from failing to consider flexible alternatives at the time of the proposal. The Department did not consider the desirability of the alternative of not imposing the additional burdensome testing requirements, nor did it evaluate the impact of the proposal on competition in the industry.

When this act becomes effective, perhaps the Department of Energy will, at last, pay more attention to its statutory mandate and Executive directives to promote and protect small businesses. If the Department still entertains any doubts regarding its authority to promulgate flexible alternatives under its existing laws to aid small businesses and to alleviate small business burdens, this legislation resolves all such doubts and directs DOE to consider and promulgate such alternatives where appropriate.

Let me add a few words about the role of the Chief Counsel for Advocacy of the U.S. Small Business Administration. Under Public Law 94-305, the Chief Counsel for Advocacy is already required to file reports with the President and the Congress. This new law simply specifies the content of one of those reports. The Chief Counsel is already empowered under Public Law 94-305 to compel agency disclosure of the pertinent information required to perform these duties. It is expected that the Chief Counsel for Advocacy's monitoring efforts will insure compliance with the new law and aid Federal agencies in developing effective regulatory alternatives. The Office of Advocacy should act as a catalyst for innovative experimentation with regulatory alternatives by the agencies.

The legislation also provides that the Chief Counsel for Advocacy be permitted to appear as an amicus curiae in any action in any U.S. court to review a rule. He will present the views of the small business community with respect to the effect of a rule on small businesses. This judicial role complements his current role as the primary Federal regulatory watchdog for small business at the agency rulemaking stage. Courts should profitably draw from the considerable experience and expertise of the Chief Counsel in considering the unchartered waters of this regulatory reform. This provision provides an additional incentive for agencies to comply with the new legislation.

As the author of the first small business impact bill, H.R. 7739, I am extremely pleased to have played a part in helping this regulatory flexibility legislation be enacted into law. I am convinced that this act will mark the most significant legislative achievement for small business since the passage of the Small Business Investment Act 22 years ago.●

● Mr. RUSSO. Mr. Speaker, it is with extreme pleasure that I rise today to urge the House to act favorably upon legislation which embodies the concept of regulatory flexibility for small business. Through the majority of work done on H.R. 4660, I was the chairman of the House Subcommittee on Special Small Business Problems. Since that was the case, I believe it only appropriate that for the record I state the history of this concept.

James W. Morrison, who at the time was on Senator GAYLORD NELSON's staff, developed the concept of regulatory flexibility in August 1977. Senator NELSON, along with Senator JOHN CULVER, introduced the concept as a bill, S. 1974. It passed the Senate unanimously last Congress.

Last Congress several regulatory bills were introduced and referred to my subcommittee. The two primary bills were H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. CALDWELL BUTLER of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative ANDY IRELAND of Florida. The purpose of this bill was to give Federal agencies flexibility in the issuance of Federal regulations.

The concepts in these two bills were merged and formed the basis for H.R. 4660. The interest and hard work of the members of the subcommittee were instrumental in the forging of our final product. The subcommittee also was fortunate to have had Mr. Morrison on board as a consultant during our hearing process for a period of 6 months.

Representative ANDY IRELAND, a member of the subcommittee, became chairman upon my departure and has done a most commendable job of promoting regulatory flexibility. He has perservered and after endless meetings with various parties, he has brought us today to the brink of a new era in the relationship between the Federal Government and the small business community. The Senate on August 6 passed S. 299, thanks to the diligent efforts of many people. Senators JOHN CULVER, GAYLORD NELSON, and PAUL LAXALT deserve special praise.

S. 299 embodies the concept of our own H.R. 4660, and in fact, improves the bill in several areas. We need this legislation.

In poll after poll, growing Federal regulation and its accompanying paperwork demands rank near the top and often are the No. 1 complaint of the Nation's small businessmen and women. Our Nation has a mixed economy. Public and private sectors necessarily interact. The Federal Government, through some regulation, attempts to bolster competition among businesses by laws designed to eliminate restraint of trade. Conversely, certain business activities are directly regulated by the Government. In effect, this substitutes Government decisionmaking for the normal workings of the marketplace. All types of Federal regulation have grown so much in recent years, that virtually every industry and household is now affected in often highly visible ways.

The time to act is at hand. We have the vehicle before us. Let us pass S. 299 and send the bill to the President.●

● Mr. BALDUS. Mr. Speaker, today is a special day for the small business men and women in this country. At last, we, in Congress, are heeding the pleas that they have long made to us to reduce the crush of Federal regulation that they must face on a daily basis.

This bill, S. 299, not only admits that such a problem exists, it addresses that problem as well. If we pass this bill today, in the future, Federal bureaucrats will have to understand, as well as be more sensitive to, the impact of the regulation they generate, and, we will all be better off because of it.

In the last Congress, as a Small Business Subcommittee chairman, I strongly and vigorously supported regulatory flexibility in several different legislative proposals. In this 96th Congress, S. 299 is the culmination of a long search for substantive regulatory flexibility for the small business community. I am especially pleased that this bill also recognizes that small organizations and small governmental jurisdictions are also in need of the same relief.

The primary sponsors of H.R. 4660—Representatives ANDY IRELAND, MARTY RUSSO, and M. CALDWELL BUTLER, should be highly commended for their perseverance in this field. President Carter, who earlier issued an Executive order calling for regulatory flexibility, should also be thanked for his assistance, and it is my hope that he will sign this bill as soon as possible.

Small business makes a tremendous contribution to our Nation's economy. Small business, as defined by the Small Business Administration, constitutes over 13 million businesses, comprises about 97 percent of all U.S. businesses, and accounts for more than one-half of all pri-

vate employment in this country. Small business also accounts for 43 percent of business output, and one-third of the gross national product. Small businesses account for nearly all of the major innovations and inventions that move our technology ahead, as they have since World War II, and small business increases employment by about 4 percent per year as compared to the fortune 500 companies which increase it only about 0.07 percent per year. In terms of economic growth, the record of small business is about twice that of the fortune 500 companies, again, by percent.

For all of these vital contributions small business makes to our economy and the American way of life itself, small business asks very little from us in return. The small business community is one of entrepreneurs that have made it on their own, and believe that they can continue to make it on their own, maintaining their exceptional record of achievement, if they are not unduly interfered with by Government. The Federal help that these 13 million small businesses do receive each year is in the form of 270,000 loans from the Small Business Administration, but the recipients of these loans promise to return the money to the Government, with interest, and on time.

The clearest and most fervent request of these independent, small businessmen and women to the Federal Government is one which distinguishes them from the other special interest groups the Federal Government deals with. In exchange for their substantial contributions to our Nation's economy, they ask not for a handout, but only that the Government stop unreasonably regulating the environment in which they must function.

While the Government will always require a certain amount of information from business and while some regulation of industry may be inevitable, it should and can be accomplished in a reasonable and an equitable manner. It is clear that as it now stands, the amount of Government regulation has grown to self-defeating proportions which is deleterious to small business' very existance.

Mr. Speaker, S. 299 is a major first step in completing the task of reducing the regulation which stifles small businesses in a time when we need small businesses more than ever.

I urge the House to pass this bill.●

● Mr. RATCHFORD. Mr. Speaker, I welcome the opportunity to take a moment today to voice my support for S. 299, the Regulatory Flexibility Act.

My colleagues in the House have all become more conscious of the burdens which Federal regulations place on business and industry, and of the heavy responsibility which rests with the Congress to insure that regulations are neither excessive nor unnecessary. The regulatory process poses particularly large burdens for small businesses, which have neither the capacity nor the resources to challenge or to comply with Federal rules and regulations. It is this concern for the plight of the small businessman to which S. 299 is addressed.

Every week, when I return to Connecticut's 5th District, I hear the frustration of small businessmen who are being increasingly overwhelmed by the burdens of Federal regulation. The White House Conference on Small Business which was convened this January reaffirmed this message, and among the conference recommendations given the highest priority were calls for the establishment of greater regulatory flexibility with regard to small business. The White House Conference on Small Business reminded us all that we cannot treat large corporations and small firms as though they were identical, and the legislation before us today reflects the extent to which Congress has heard and responded to that important message.

The Regulatory Flexibility Act will take some crucial first steps in recognizing the special needs of small business. The legislation requires Federal agencies to analyze the likely impact of their regulations on small, privately owned businesses and other concerns. The bill also requires each agency to publish semiannual lists of rules it anticipates issuing which are likely to have a serious economic impact on small businesses and other concerns. Finally, provisions of S. 299 are designed to encourage small businesses to participate more fully in the Federal regulatory process.

The above provisions are significant, in that they represent the beginning of a growing awareness that regulations must be sensitive to the situation of small businessmen while protecting the public interest. In addition to these advances in the development of new Federal regulation, S. 299 also addresses problems in existing Federal regulations by requiring agencies to review all new and existing rules within 10 years. I have long supported the concept of "sunset" legislation which would mandate a periodic review of Federal programs to assess their effectiveness, and I strongly applaud the use of this type of mechanism in the Regulatory Flexibility Act to protect small business from excess in existing regulations.

Mr. Speaker, I have little doubt that this landmark legislation for regulatory flexibility with regard to small businesses will receive overwhelming approval by my colleagues in the House. The need for greater sensitivity in applying regulations to small businesses is all too apparent, and the merits of this legislation are equally clear. I simply wish to register my strong support for the Regulatory Flexibility Act, and to express my deep hope that this legislation represents the beginning of an honest effort in Congress to shape a regulatory process which serves the public interest while remaining manageable for the small businessmen who have contributed so much to our Nation's strength and prosperity.●

● Mr. RODINO. Mr. Speaker, the Congress, working with the administration, has been moving toward an extraordinary record in regulatory reform. In the last 3 years, we have passed major deregulation bills covering the airline, trucking, and banking industries and we are working on railroads, communications, and a comprehensive overhaul of the regulatory process.

The Regulatory Flexibility Act, which the House is considering today, is a vital part of that program. It will help the small businesses of our country and thereby strengthen competition.

Too many Federal regulations and paperwork requirements are written with big companies in mind, without considering the effect on small business. These rules can have a disproportionate and unfair impact on small businesses, reducing their ability to compete.

The Regulatory Flexibility Act requires all regulators to assess the impact of a proposed rule or report on small organizations. When the impact is significant, the agency must consider alternative approaches, such as requirements tailored to the size of the organizations affected and performance standards that give more leeway on how to comply. The creative approaches to regulation in this act will ease the burden on small business without sacrificing our commitment to protect the public's health and safety.

This act is drafted to help small businesses deal with the regulatory process. Many valid regulations are tied up in years of litigation, and small businesses often cannot afford the legal costs to participate. The judicial review standard in this bill is carefully designed to avoid needless litigation.

I want to commend the chairman of our Subcommittee on Administrative Law and Governmental Relations, Mr. DANIELSON; Mr. HARRIS, the manager of this bill, S. 299; and all of my colleagues who have supported the major deregulation bills that we have passed in the 96th Congress. S. 299 is a very significant part of the overall regulatory reform effort, and I urge my colleagues to vote for its passage.

□ 1530

Mr. HARRIS. Mr. Speaker, I want to recognize all those who worked so hard on this bill. The fact of the matter is that this is a good bill. I think it is time that we remove the tremendous burden of unnecessary regulation upon the small business community. I think they deserve it; I think they need it; I think our economy will benefit from it.

Mr. Speaker, I urge the passage of this bill and yield back the remainder of my time.

Mr. REGULA. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. LENT).

(Mr. LENT asked and was given permission to revise and extend his remarks.)

● Mr. LENT. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act.

As a cosponsor of similar legislation, the Smaller Enterprise Regulatory Improvement Act (H.R. 4660), I am gratified that legislation requiring Federal agencies to assess the small business impact of their regulation is on the agenda for final congressional action. This legislation was unanimously passed by the Senate last month. Prompt and positive action today can insure that this legislation is enacted without further delay.

Though I have long sought comprehensive improvements to administrative rulemaking to alleviate unnecessary and costly Federal regulation, I believe expeditious action on behalf of small business, small organizations, and small governmental jurisdictions—"small entities"—is absolutely necessary.

Small organizations face special burdens resulting from Federal regulation; uniformly applied Federal regulations often have a disproportionately greater economic impact on small entities unable to benefit from large-firm economies of scale. Overly burdensome Federal regulations have adversely affected competition and created barriers to innovation and creativity in many industries. Paperwork such as reporting and record-keeping requirements pose special hardships on firms not having in-house accounting and legal departments; too often, compliance with such Federal regulatory requirements necessitates that costly outside assistance be retained.

This legislation is designed to alleviate this counterproductive situation by providing a measure of flexibility in the application of the Federal rulemaking process to small entities. Where necessary, agencies are directed to institute procedures including two-tiered rulemaking and exemptions from all or part of some rules to help reduce the disparate economic impact of rules and regulations on small entities. By assuring that the Small Business Administration is informed of proposed agency rules likely to have a significant economic impact on a substantial number of small entities, this legislation can increase small business participation in the Federal rulemaking process—a process which for too long has remained isolated from the organizations it most affects.

Along with calling for periodic review of new and existing rules affecting small entities, the bill also contains a provision waiving the requirement that a regulatory flexibility analysis be prepared in those cases where a proposed regulation has no significant economic effect on a substantial number of small businesses.

On balance, this legislation makes sense and I urge my colleagues to support passage of S. 299 so this legislation can be enacted into law without further delay.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken.

Mr. HUGHES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum will be considered withdrawn.

GENERAL LEAVE

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 299.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

NATIONAL AQUACULTURE ACT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 20) to provide for the development of aquaculture in the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 20

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquaculture production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology—

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture.

The House amendment to S. 1625 is of a technical nature and makes no substantive change. I urge my colleagues to concur in the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TALMADGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOREN). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 1½ hours and that Senators may speak therein.

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

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, today I am making my 22d speech on a subject of the United States Senate. I will relinquish the floor at any time any Senator wishes to speak and I will be glad to also relinquish the floor to accomplish the transaction of any business. At the moment, there is none that is cleared, but it may be that some business may be cleared before the day is over. It is also possible that some business can be cleared for tomorrow and the remaining days of the week. But for now there is nothing but waiting to be done.

In the event I do yield the floor to another Senator or for the purpose of suggesting the absence of a quorum before completing my statement, Mr. President, I ask unanimous consent that my statement may not show an interruption in the RECORD and that it appear today just before the statement of the program for tomorrow and the motion to recess.

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

(The remarks of Mr. ROBERT C. BYRD at this point on the United States Senate are printed later in the RECORD, by unanimous consent.)

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the nomination of Barbara S. Thomas of New York to be a member of the Securities and Exchange Commission.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that the nomination of Barbara S. Thomas is cleared on our Executive Calendar and we have no objection to the consideration and confirmation.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination will be stated.

SECURITIES AND EXCHANGE COMMISSION

The legislative clerk read the nomination of Barbara S. Thomas, of New York, to be a member of the Securities and Exchange Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the United States be immediately notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection it is so ordered.

SENATE CONCURRENT RESOLUTION 121—TO CORRECT THE ENROLLMENT OF S. 299

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAKER and myself, we send a concurrent resolution to the desk to make a technical correction in S. 299 and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

Senate concurrent resolution (S. Con. Res. 121) to correct the enrollment of S. 299.

The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made:

In section 608(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . ."

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INFANT FORMULA ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 999, S. 2490, the Infant Formula Act of 1980.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not, the reservation is for the purpose of advising the majority leader that Calendar Order No. 999 is cleared on our calendar, and we have no objection to its consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2490) to provide certain requirements for infant formula, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Infant Formula Act of 1980".

SEC. 2. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 411 the following new section:

"REQUIREMENTS FOR INFANT FORMULAS

"SEC. 412. (a)(1) An infant formula shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by this section;

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the quality control requirements prescribed by the Secretary under this section.

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients provided under subsection (g);

"(B) revise the required level for any such nutrients;

"(C) establish requirements for quality factors for such nutrients; and

"(D) establish the quality control procedures as the Secretary determines necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records). Quality control procedures prescribed by the Secretary shall include the periodic testing of infant formula to determine whether such infant formula is in compliance with this section.

"(b)(1) On the 90th day after the date of the enactment of this section, and on each 90th day thereafter, a manufacturer of infant formula shall notify the Secretary that each infant formula manufactured by such manufacturer provide the nutrients required under subsection (g). Such notification requirement shall expire upon the effective date of regulations relating to qualify control procedures prescribed by the Secretary under subsection (a)(2)(D).

"(2) Not later than the 90th day before the first processing of any infant formula for commercial or charitable distribution for human consumption, the manufacturer shall notify the Secretary whether—

"(A) such infant formula provides nutrients in accordance with this section and

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The SPEAKER pro tempore. The unfinished business is on the question of suspending the rules and passing the Senate bill, S. 299.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

INSTRUCTING SECRETARY OF SENATE TO MAKE CHANGE IN ENROLLMENT OF S. 299

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 121) instructing the Secretary of the Senate to make a change in the enrollment of S. 299, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. LEVITAS. Mr. Speaker, reserving the right to object, would the gentleman from California (Mr. DANIELSON) explain what this does.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from California.

Mr. DANIELSON. I will be pleased to explain.

This is simply to make a correction in the enrollment of the bill as it left the other body, and it follows upon the passage of S. 299 here in order that both Houses concur in correcting the enrollment of the bill. It does not make an amendment in substance. It cross-references two sections of the bill.

Mr. LEVITAS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. DANIELSON)?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 121

Resolved by the Senate (the House of Representatives concurring), The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made: In section 606(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . .".

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 4310, RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1979

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York? The Chair hears none, without objection, appoints the following conferees: Messrs. ASHLEY, MURPHY of New York, BIAGGI, OBERSTAR, HUGHES, ULLMAN, ROSTENKOWSKI, VANIK, CORMAN, MCCLOSKEY, PRITCHARD, EVANS of Delaware, CONABLE, and DUNCAN of Tennessee.

There was no objection.

RAIL ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7235) to reform the economic regulation of railroads, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7235, with Mr. AUCOIN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, September 5, 1980, title III was open for amendment at any point. Pending was an amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I ask unanimous consent to be allowed to proceed for 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. STAGGERS. Mr. Chairman, I take one moment to say to one of my colleagues, the gentleman from Florida (Mr. GIBBONS) that I am very sorry about the remarks I made to the gentleman the other day concerning this bill. I was misinformed about the gentleman's intentions and what he was trying to do.

The gentleman from Florida, SAM GIBBONS, is one of the real gentlemen of this House, one who has served his Nation well, who has been a good friend and a great American, and I am sure that whatever he decides to do will be for the right, as he sees it. I believe that his constituents were wise in sending him here, and certainly I hope that they will send him back as he deserves to be reelected to the House.

Mr. Chairman, I rise in support of my amendment, an amendment that has been carefully crafted since H.R. 7235 was last on the House floor in July. Mr. RAHALL and Mr. LEE are also cosponsors of this compromise—they have worked diligently to turn out a bill that is supported by groups as diverse as the AFL-CIO and the American Farm Bureau. I believe this compromise deserves the support of each and every Member of the House who is concerned about the deteriorating condition of our Nation's rail system.

What we have attempted to do in this amendment is give the railroads the flexibility to price transportation services according to the marketplace, up to a certain threshold level. Over that threshold level, the ICC retains jurisdiction over rates. The amendment gradually lifts that threshold level over a period of 4 years, but the threshold never rises above 180 percent of variable cost. Similarly, we have provided a zone of freedom for railroads to raise rates without the fear of having such increases suspended or investigated unless the rate is 20 percentage points above the threshold. I emphasize that these are indeed gradual, orderly forms of pricing flexibility that will not bring chaos to rail shippers.

Other provisions of the compromise are also significantly improved. The surcharge proposal permits a railroad to recover its costs expended in making a particular movement, but provides protection for short-line railroads and shippers. Members from agricultural States have impressed upon us the need to repeal demand-sensitive rates and the need for a shipper's needs board to address the continuing concerns of rail shippers. This we have done. Intrastate rail movements rates will continue to be regulated by State regulatory agencies with uniformity and consistency. Provisions are included in the compromise that provide transaction assistance for lines of the Rock Island and the Milwaukee Railroads that have been abandoned and for which there are purchasers and the necessary legal protections for the Rock Island Railroad to permit the benefits we enacted in the Rock Island Transition Act to flow without further delay.

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I would just like to mention a few of the cosponsors of this bill, the ones who are for it now:

The American Farm Bureau supports this compromise.

The United Mine Workers.

The Railroad Labor Executives Association.

The Brotherhood of Railway and Airline Clerks.

The American Short Line Railroad Association.

(10) such other information as the Secretary may require to determine the nature and quality of the proposed project and the applicant's ability to carry out the project.

(c) APPROVAL OF APPLICATIONS.—(1) The Secretary shall, in approving applications under this section, give special consideration to programs that—

(A) demonstrate the greatest need for services assisted under this subchapter on their numbers or proportions of secondary school children from low-income families and numbers or proportions of low-achieving secondary school children; and

(B) offer innovative approaches to improving achievement among eligible secondary school children and offer approaches which show promise for replication and dissemination.

(2) The Secretary shall ensure that programs for which applications are approved under this section are representative of urban and rural regions in the United States.

(d) ADMINISTRATIVE COSTS.—Not more than 5 percent of any grant under this subchapter may be used for administrative costs.

Subchapter C—General Provisions

SEC. 6081. GENERAL PROVISIONS.

(a) DEFINITION OF SCHOOL DROPOUT.—The Secretary shall, not later than 60 days after the date of the enactment of this chapter, establish a standard definition of a school dropout, after consultation with pertinent organizations and groups.

(b) TIMELY AWARD OF GRANTS.—To the extent possible, for any fiscal year the Secretary shall award grants to local educational agencies and educational partnerships under this subchapter not later than June 30 preceding such fiscal year.

(c) GRANTS MUST SUPPLEMENT OTHER FUNDS.—A local educational agency receiving Federal funds under this chapter shall use such Federal funds only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources or under provisions of Federal law other than this chapter for activities described in subchapter A or subchapter B of this chapter, as the case may be.

(d) EVALUATION.—The Secretary shall evaluate programs operated with funds received under this chapter, and shall issue a report at the end of the grant period, but in no case later than January 30, 1991.

(e) COORDINATION AND DISSEMINATION.—The Secretary shall require local educational agencies receiving grants under this chapter to cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(f) AUDIT.—The Comptroller General shall have access for the purpose of audit and examination to any books, documents, papers, and records of any local educational agency or educational partnership receiving assistance under this chapter that are pertinent to the sums received and disbursed under this chapter.

(g) WITHHOLDING PAYMENTS.—Whenever the Secretary, after reasonable notice and opportunity for a hearing to any local educational agency or educational partnership, finds that the local educational agency or educational partnership has failed to comply substantially with the provisions set forth in its application approved under section 6075 or section 6076, the Secretary shall withhold payments under this chapter in accordance with section 453 of the General Education Provisions Act until the Secretary is satisfied that there is no longer any failure to comply.

H.R.3

SEC. 6082. DEFINITIONS.

(a) As used in this title—

(1) The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which has a proven record of providing effective educational or related services to individuals in the community.

(2) The term "basic skills" includes reading, writing, mathematics, and computational proficiency as well as comprehension and reasoning.

CHAPTER 8—MISCELLANEOUS

SEC. 6091. DRUG-FREE SCHOOLS PROGRAM.

(a) WITHIN STATE ALLOCATIONS.—The second sentence of section 4124 of the Drug-Free Schools and Communities Act of 1986 is amended to read as follows: "From such sum, the State educational agency shall distribute funds for use among areas served by local or intermediate educational agencies or consortia on the basis of the relative enrollments in public and private, nonprofit schools within such areas.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a) of the Act shall take effect October 27, 1986.

(2) Notwithstanding paragraph (1), a State educational agency may allot fiscal year 1987 funds to local and intermediate educational agencies and consortia under section 4124(a) of the Drug-Free Schools and Communities Act of 1986 on the basis of their relative numbers of children in the school-aged population.

Subtitle B—Technology and Training

CHAPTER 1—TRANSFER OF EDUCATION AND TRAINING SOFTWARE

SEC. 6101. SHORT TITLE.

This chapter may be cited as the "Training Technology Transfer Act of 1988".

SEC. 6102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) Federal agencies, particularly the Department of Defense, have made extensive investments of public funds in the development of education and training software;

(2) much knowledge and education and training software, especially computer programs and videodisc systems, is directly transferable to the private sector or could be transferable to the private sector after conversion;

(3) the transfer of education and training software to the public and private sector could properly augment existing Fed-

eral programs for the training of new industrial workers or the retraining of workers whose jobs have been disrupted because of technological developments, foreign trade, and changes in consumer requirements; and

(4) the transfer of education and training software to the public and private sector would be especially beneficial to small business concerns which lack the resources to develop such software independently.

(b) PURPOSE.—Therefore, it is the purpose of this chapter to facilitate the transfer of education and training software from Federal agencies to the public and private sector and to State and local governments and agencies thereof, including educational systems and educational institutions, in order to support the education, training, and retraining of industrial workers, especially workers in small business concerns.

SEC. 6103. OFFICE OF TRAINING TECHNOLOGY TRANSFER.

(a) OFFICE ESTABLISHED.—There is established in the Office of Educational Research and Improvement of the Department of Education an Office of Training Technology Transfer. The Office shall be headed by a Director, who shall be appointed by the Secretary of Education. The Director shall be compensated at the rate provided for GS–16 of the General Schedule under section 5332 of title 5, United States Code.

(b) PERSONNEL.—To carry out this chapter, the Director may appoint personnel in accordance with the civil service laws, and may compensate such personnel in accordance with the General Schedule under section 5332 of title 5, United States Code.

SEC. 6104. FUNCTIONS OF THE OFFICE.

(a) CLEARINGHOUSE REQUIRED.—(1) The Director shall compile and maintain a current and comprehensive clearinghouse of all knowledge and education and training software developed or scheduled for development by or under the supervision of Federal agencies. The clearinghouse shall include, with respect to each item of education and training software listed in the clearinghouse—

(A) a complete description of such software, including the purpose, content, intended academic level or competency level, date of development, imbedded learning and instructional strategies, and mode of presentation of such software;

(B) a description of each type of computer hardware which is compatible with such software and of any other equipment required to use such software;

(C) a specification of any patent, copyright, or proprietary interest affecting the copying, conversion, or transfer of such software; and

(D) information with respect to any conversion or transfer of such software pursuant to this chapter.

(2) In compiling the clearinghouse required by this subsection, the Director shall—

(A) consult with and utilize fully the resources of all Federal agencies engaged in the collection and dissemination of information concerning education and training software; and

(B) request the participation and cooperation of entities in the legislative and judicial branches of Government.

(b) DISSEMINATION REQUIRED.—(1) The Director shall disseminate widely and on a regular basis the clearinghouse required by subsection (a) and any revisions thereof in order to enable all potential commercial users and public interest users of education and training software to receive ample notice that Federal agencies have developed such software, or have scheduled such software for development. In carrying out the preceding sentence, the Director shall—

(A) utilize all interagency and intergovernmental communication mechanisms, including the National Center for Research in Vocational Education, the National Occupational Information Committee, State educational agencies, State occupational information coordinating committees, State job training coordinating councils, private industry councils, State economic development agencies, regional educational laboratories, and the Small Business Administration; and

(B) encourage the participation of independent private sector organizations, including organizations representing State and local educational agencies, educational institutions, technical and professional organizations, and trade associations.

(2) The Director shall develop and distribute, in conjunction with the dissemination of the clearinghouse required under subsection (a), detailed instructions and procedures for securing copies, including such rights thereto as may be required, of education and training software listed in such clearinghouse and guidelines for cooperative agreements between commercial users and public interest users under subsection (d).

(c) CONSULTATION; PUBLIC INTEREST USER.—(1) The Director shall advise, consult with, and may provide grants to any prospective public interest user of a education and training software listed in the clearinghouse required under subsection (a) and shall assist such user in securing the transfer of such software from the Federal agency which developed such software at a cost to the public interest user based upon the ability of such user to pay for such transfer. In providing such assistance, the Director shall encourage such public interest user to obtain such software by working with the Training Technology Transfer Officer of such agency. If an agency has not established procedures for the transfer of education and training software, the Director shall negotiate the transfer of such software upon application by such user.

(2) The Director, to such extent and in such amounts as provided in advance by appropriation Acts, may enter into contracts with any qualified agency having expertise in the field of education and qualified private sector business concerns for the conversion of education and training software in order to adapt such software to the requirements of a public interest user.

(d) CONSULTATION; COMMERCIAL USER.—(1) The Director shall advise and consult with any prospective commercial user of an education and training software listed in the clearinghouse required under subsection (a)(1). The Director may sell or lease such training software, including exclusive or nonexclusive rights in copyrights or patents pertaining thereto, to a commercial user for a price or fee which reflects a reasonable return to the Government.

(2) The Director may waive purchase prices or lease fees for a commercial user of training software, may negotiate reduced purchase

prices or lease fees for such commercial user, or may negotiate exclusive sale or lease agreements or other terms favorable to such commercial user if such commercial user agrees to enter into a cooperative agreement with a public interest user or a group of public interest users in accordance with this section. Under the preceding sentence, the Director may not waive such prices or fees, negotiate reduced prices or fees, or negotiate exclusive agreements or favorable terms for a commercial user unless such cooperative agreement—

(A) provides for the conversion of the education and training software by the commercial user in order to meet the specific needs of the public interest user or group of public interest users;

(B) provides that such conversion will be performed without charge to the public interest user or group of users; and

(C) is acceptable to the Director.

(3) In negotiating terms for the sale or lease of education and training software pursuant to subsection (b), the Director shall give preferential consideration to cooperative agreements which—

(A) will result in enhancing the employment potential and potential earnings of the maximum number of individuals;

(B) encourage and promote multiple uses of education and training software converted pursuant to this section by users with similar education needs; and

(C) provide beneficial uses of education and training software for businesses.

(4) Any education and training software converted pursuant to subsection (b) shall be listed in the clearinghouse required by subsection (a)(1) and shall be available for transfer to any other public interest user.

(e) STUDY REQUIRED.—(1) The Director shall study the effectiveness of transfers and conversions of education and training software pursuant to this chapter, and shall analyze national needs for methods to convert education and training software which are in addition to the method provided in subsection (d)(2).

(2) The Director shall submit to the Congress a report that—

(A) describes the study and analysis conducted as required by paragraph (1); and

(B) contains recommendations of the Director concerning whether the public interest is served through the program of grants and contracts to public interest users to support conversion of education and training software.

(3) The Director shall submit the report required by subparagraph (A) before the expiration of the two-year period beginning on the date of enactment of this Act.

SEC. 6105. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—In carrying out this chapter, the Director is authorized—

(1) to promulgate such rules, regulations, procedures, and forms as may be necessary to carry out the functions of the Office, and delegate authority for the performance of any function to any officer or employee of the Office under the direction and supervision of the Director;

(2) to utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal agencies and of State, local, and private agencies and instrumentalities, with or without reimbursement therefor;

(3) to enter into agreements with other Federal agencies as may be appropriate;

(4) to accept voluntary and uncompensated services, without regard to the provisions of section 1342 of title 31, United States Code;

(5) to request such information, data, and reports from any Federal agency as the Director may from time to time require and as may be produced consistent with other law; and

(6) to use the facilities of the Office of Educational Research and Improvement.

(b) SPECIFIC DELEGATION OF CLEARINGHOUSE AND DISSEMINATION FUNCTIONS.—The Director shall enter into interagency agreements with the National Technical Information Service of the Department of Commerce to perform on a reimbursable basis the functions specified in sections 6104(a) and 6104(b) of this Act.

SEC. 6106. COORDINATION WITH FEDERAL AGENCIES.

(a) USE OF FEDERAL PROGRAMS.—In carrying out this chapter, the Director shall utilize, to the fullest possible extent, all existing Federal programs to promote the identification, conversion, and transfer of knowledge and education and training software in accordance with this chapter.

(b) EDUCATION AND TRAINING SOFTWARE TRANSFER OFFICER.—The head of each Federal agency which develops knowledge for or uses education and training software shall designate, from the officers and employees of the agency, an education and training software transfer officer. The education and training software transfer officer of an agency shall—

(1) supply information to the Office of Education Software Transfer for inclusion in the clearinghouse;

(2) receive and process inquiries and requests from prospective users of knowledge and education and training software employed by such agency;

(3) promote direct contact between prospective users of knowledge and education and training software and personnel of the agency;

(4) facilitate the prompt transfer for knowledge and education and training software to public interest users; and

(5) refer requests for education and training software from commercial users to the Office of Training Software Transfer for the negotiation of the purchase or lease of such software.

(c) COOPERATION OF FEDERAL AGENCIES.—

(1) IN GENERAL.—All Federal agencies shall cooperate with the Director in the implementation of this chapter. If the head of a Federal agency finds that such agency is unable to cooperate with the Director for reasons of national security, or for any other reason, such agency head shall report such finding to the Secretary. The Secretary shall report to the Congress by July 1 of each year all such findings received by the Secretary during the preceding 12-month period.

(2) COOPERATION WITH EXCHANGE CENTER.—The Director shall cooperate with the Federal Software Exchange Center of the National Technical Information Service to facilitate the transfer of education and training software between Federal agencies.

(3) AVAILABILITY OF FEDERAL SERVICES, EQUIPMENT, PERSONNEL, AND FACILITIES.—Upon request of the Director, the head of each Federal agency shall promptly make the services, equipment, personnel, facilities, and information of the agency (including suggestions, estimates, and statistics) available to the Office to the greatest extent practicable.

(d) EQUITY RULE.—In carrying out the purposes of this chapter, the Director shall consider special equity concerns, including psychological, physiological, sociological, and socioeconomic factors, which could prevent some persons from benefiting from new technological developments, and shall, to the extent possible, ensure that such persons benefit from software transfer activities under this chapter.

SEC. 6107. DEFINITIONS.

For the purpose of this chapter—

(1) the term "commercial user" means any individual, corporation, partnership, or other legal entity which operates for profit and which uses or intends to use the education and training software of a Federal agency;

(2) the term "community-based organizations" has the same meaning as in section 2704(5) of the Job Training Partnership Act;

(3) the term "conversion" means the process whereby education and training software is modified and revised to meet the needs of a commercial user or a public interest user;

(4) the term "Director" means the Director of the Office of Training Technology Transfer established pursuant to section 6103;

(5) the term "Federal agency" has the meaning given to the term "agency" in section 551(1) of title 5, United States Code;

(6) the term "National Occupational Information Coordinating Committee" means the National Occupational Information Coordinating Committee established under section 422(a) of the Carl D. Perkins Vocational Education Act;

(7) the term "Office" means the Office of Training Technology Transfer established pursuant to section 6103;

(8) the term "private industry council" means a private industry council established under section 102 of the Job Training Partnership Act;

(9) the term "public interest user" means—

(A) any nonprofit entity which—

(i) provides job training, vocational education or other educational services, including public school systems, vocational schools, private preparatory schools, colleges, universities, community colleges, private industry councils, community-based organizations, and State and local governments and agencies thereof; and

(ii) which uses or intends to use the education and training software of a Federal agency; or

(B) any Federal agency which uses or intends to use the education and training software of another Federal agency;

(10) the term "small business concern" has the same meaning as in section 3 of the Small Business Act;

(11) the term "State job training coordinating council" means a State job training coordinating council established under section 122 of the Job Training Partnership Act;

(12) the term "State occupational information coordinating committee" means a State occupational information coordinating committee established under section 422(b) of the Carl D. Perkins Vocational Education Act;

(13) the term "education and training software" means computer software which is developed by a Federal agency to educate and train employees of the agency and which may be transferred to or converted for use by a public interest user or a commercial user and includes software for computer based instructional systems, interactive video disc systems, microcomputer education devices, audiovisual devices, and programmed learning kits, and associated manuals and devices if such manuals and devices are integrally related to a software program;

(14) the term "transfer" means the process whereby education and training software is made available to a commercial user or a public interest user for the training of the employees of such user, with or without the conversion of such software.

CHAPTER 2—INSTRUCTIONAL PROGRAMS IN TECHNOLOGY EDUCATION

SEC. 6111. PURPOSE.

It is the purpose of this chapter to assist educational agencies and institutions in developing a technologically literate population through instructional programs in technology education.

SEC. 6112. TECHNOLOGY EDUCATION DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—Subject to the availability of funds for purposes of this chapter, the Secretary of Education shall establish a program of grants to local educational agencies, State educational agencies, consortia of public and private agencies, organizations and institutions, and institutions of higher education to establish not more than 10 demonstration programs in technology education for secondary schools, vocational educational centers and community colleges.

(b) USES OF GRANT FUNDS.—(1)(A) Funds made available under this chapter may be used to develop a model demonstration program for technology education which, to the extent practicable, address the components described in paragraphs (2) through (12).

(B) To the extent feasible, the Secretary shall give priority under subparagraph (A) to model demonstration programs which address the largest number of components described in paragraphs (2) through (12).

(2) Educational course content based on—

(A) an organized set of concepts, processes, and systems that is uniquely technological and relevant to the changing needs of the workplace; and

(B) fundamental knowledge about the development of technology and its effect on people, the environment, and culture.

(3) Instructional content drawn from introduction to technology education courses in 1 or more of the following areas—

(A) communication—efficiently using resources to transfer information to extend human potential;

(B) construction—efficiently using resources to build structures on a site;

(C) manufacturing—efficiently using resources to extract and convert raw or recycled materials into industrial and consumer goods; and

(D) transportation—efficiently using resources to obtain time and place utility and to attain and maintain direct physical contact and exchange among individuals and societal units through the movement of materials, goods, and people.

(4) Assisting students in developing insight, understanding, and application of technological concepts, processes, and systems.

(5) Educating students in the safe and efficient use of tools, materials, machines, processes, and technical concepts.

(6) Developing student skills, creative abilities, confidence, and individual potential in using technology.

(7) Developing student problem solving and decisionmaking abilities involving technological systems.

(8) Preparing students for lifelong learning in a technological society.

(9) Activity oriented laboratory instruction which reinforces abstract concepts with concrete experiences.

(10) An institute for the purpose of developing teacher capability in the area of technology education.

(11) Research and development of curriculum materials for use in technology education programs.

(12) Multidisciplinary teacher workshops for the interfacing of mathematics, science, and technology education.

(13) Optional employment of a curriculum specialist to provide technical assistance for the program.

(14) Stressing basic remedial skills in conjunction with training and automation literacy, robotics, computer-aided design, and other areas of computer-integrated manufacturing technology.

(15) A combined emphasis on "know-how" and "ability-to-do" in carrying out technological work.

(c) LIMITATION ON FEDERAL ASSISTANCE.—Federal assistance to any program or project under this chapter shall not exceed 65 percent of the cost of such program in any fiscal year. Not less than 10 percent of the cost of such program shall be in the form of private sector contributions. Non-Federal contributions may be in cash or in kind, fairly evaluated, including facilities, overhead, personnel, and equipment.

SEC. 6113. APPLICATIONS FOR GRANTS.

(a) IN GENERAL.—A local educational agency, a State educational agency, a consortium of public and private agencies, organizations, and institutions, or an institution of higher education which desires to receive a grant under this chapter shall submit an application to the Secretary. Applications shall be submitted at such time, in such form, and containing such information as the Secretary shall prescribe.

(b) CONTENTS OF APPLICATION.—An application shall include—

(1) a description of a demonstration program designed to carry out the purpose described in section 6111;

(2) an estimate of the cost for the establishment and operation of the program;

(3) a description of policies and procedures for the program that will ensure adequate evaluation of the activities intended to be carried out under the application;

(4) assurances that Federal funds made available under this chapter will be so used as to supplement and, to the extent practicable, increase the amount of State and local funds that would be in the absence of such Federal funds be made available for the uses specified in this chapter, and in no case supplant such State or local funds;

(5) a provision for making such reports, in such form and containing such information, as the Secretary may require; and

(6) a description of the manner in which programs under this chapter will be coordinated, to the extent practicable, with programs under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, and other Acts related to the purposes of this chapter.

(c) GEOGRAPHIC DISTRIBUTION.—In making grants under this chapter, the Secretary shall consider the equitable geographic distribution of such grants.

SEC. 6114. NATIONAL DISSEMINATION OF INFORMATION.

The Secretary shall disseminate the results of the programs and projects assisted under this chapter in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators.

SEC. 6115. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $2,000,000 for fiscal year 1988 and such sums as may be necessary for each of fiscal years 1989 through 1993 to carry out the provisions of this chapter.

SEC. 6116. DEFINITIONS.

As used in this chapter, the term "technology education" means a comprehensive educational process designed to develop a population that is knowledgeable about technology, its evolution, systems, techniques, utilization in industry and other fields, and social and cultural significance.

CHAPTER 3—REPLICATION OF TECHNICAL EDUCATION PROGRAMS

SEC. 6121. REPLICATION MODELS FOR TECHNICAL EDUCATION PROGRAMS DESIGNED TO IMPROVE THE QUALITY OF EDUCATION FOR AMERICA'S TECHNICALLY TRAINED WORKFORCE.

(a) IN GENERAL.—The Secretary, through the National Diffusion Network established under section 583(c) of the Education Consoli-

dation and Improvement Act of 1981 (20 U.S.C. 3851), in addition to its duties under such Act—

(1) shall gather, organize, and disseminate information on innovative programs at institutions of postsecondary education and secondary schools designed to—

(A) enhance the development of technical skills needed to improve the competitiveness of American industry;

(B) encourage the development of higher skills among individuals facing or likely to face job dislocation;

(C) encourage the acquisition of basic literacy skills among youth as well as adults; or

(D) involve the business community in the planning and offering of employment opportunities to the trained workforce;

(2) shall gather, organize, and disseminate information on consultative and collaborative efforts by elementary education, secondary education, postsecondary education, business, labor, local, State and Federal governments designed to—

(A) improve the efficiency, productivity, and competitiveness of American business; or

(B) enhance the international competitiveness of American business (such as international trade education and foreign language training for business);

(3) in carrying out the activities described in paragraphs (1) and (2), shall produce a catalog of exemplary consultative and collaborative efforts which have the highest probability of being replicated; and

(4) may provide technical assistance to any institution or entity to facilitate the gathering of information for replication models.

(b) CONFORMING RULE.—Any program of replication shall conform to the provisions of subsection (a) if such program—

(1) is being conducted by the National Diffusion Network on the date of the enactment of this chapter; and

(2) has the same purpose as the programs described in such subsection.

CHAPTER 4—VOCATIONAL EDUCATION PROGRAMS

SEC. 6131. ADULT TRAINING, RETRAINING, AND EMPLOYMENT DEVELOPMENT.

(a) IN GENERAL.—Part C of title III of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2371 et seq.) is amended—

(1) by inserting after the part heading the following:

"SUBPART 1—BASIC PROGRAM";

(2) by striking out "this part" each place such term appears in sections 321 through 324 and inserting in lieu thereof "this subpart"; and

(3) by adding at the end the following new subpart:

'Subpart 2—Special Program

"FINDINGS AND PURPOSE

"SEC. 326. (a) FINDINGS.—The Congress finds that—

"(1) technological change, international competition, and the demographics of the Nation's workforce have resulted in increases in the numbers of experienced adult workers who are unemployed, who have been dislocated, or who require training, retraining, or upgrading of skills,

"(2) the individuals who are entering and reentering the labor market are less educated, trained, or skilled and are disproportionately employed in low-wage occupations and require additional training, and

"(3) these needs can be met by education and training programs, especially vocational programs, that are responsive to the needs of individuals and the demands of the labor market.

"(b) PURPOSE.—It is the purpose of this part to (1) provide financial assistance to States to enable them to expand and improve vocational education programs designed to meet current needs for training, retraining, and employment development of adults who have completed or left high school and are preparing to enter or have entered the labor market, including workers who are 55 years of age and older, in order to equip adults with the competencies and skills required for productive employment, and (2) to ensure that programs are available which are relevant to the labor market needs and accessible to all segments of the population.

"AUTHORIZATION OF GRANTS AND USES OF FUNDS

"SEC. 327. (a) GRANTS TO STATES.—The Secretary shall make grants in proportion to the amount received under section 101 to States for programs, services, and activities authorized by this part.

"(b) STATE ADMINISTRATION.—(1) Grants to States under this part shall be made to the board established under section 111 to serve as the grant recipient and catalyst to public-private training partnerships.

"(2)(A) Such board shall make awards on the basis of application from educational institutions (e.g. community colleges, vocational schools, service providers under the Job Training Partnership Act (29 U.S.C. 49 et seq.), four-year colleges, universities, and community based organizations) which link up with one or more private companies in order to train people for jobs in high growth fields.

"(B) The board shall establish criteria for application, application content and criteria, and procedures for the awarding of grants under this section.

"(3) Business must be actively involved in the planning, designing, operating, and monitoring of the education and training programs so that they will meet their needs.

"(4) Training can include entry level training, employee upgrading, retraining, and customized training.

"(5) Grants shall not be awarded for more than 50 percent of the costs. The remainder must come from the private sector in either cash or related equipment and services which would be at least equivalent to the Federal grant portion.

FEB 23 1998

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Technology
Washington D.C. 20230

FEB 23 1998

TO: JOE ALLEN
(304) 243-4389

Honorable Constance A. Morella
Chairwoman, Subcommittee on Technology
Committee on Science
U.S. House of Representatives
Washington, D.C. 20515-6301

Dear Madam Chairwoman:

In response to the request of the Subcommittee staff, we have prepared comments on H.R. 2544. These were developed by the Interagency Working Group on Federal Technology Transfer, which includes the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Interior and Transportation, as well as the National Aeronautics and Space Administration.

We fully support the goal of H.R. 2544 to simplify the requirements imposed on Government-owned and operated federal laboratories in the licensing of their inventions. An additional important goal is ensuring federal agencies maintain the ability to exercise proper stewardship over the commercialization of government technologies. Each federal agency has a mission which ultimately provides benefit to the public. To achieve that mission, each agency must be able to exercise its stewardship responsibilities and ensure that commercialization is achieved in an appropriate and timely manner.

However, we believe several provisions of the bill should be revised in order to better achieve these goals. A few technical changes to related statutes are recommended to facilitate the transfer of federal technologies. They are included, per the request of Subcommittee staff.

The Office of Management and Budget advises that there is no objection to the transmission of this report from the standpoint of the Administration's program.

We look forward to working with you and your staff on this important bill.

Sincerely,

Gary Bachula
Acting Under Secretary
for Technology

Enclosure: Consensus Comments

NATIONAL TECHNOLOGY TRANSFER CENTER
MARKET AND TECHNOLOGY ASSESSMENT
Wheeling Jesuit University/ 316 Washington Ave./ Wheeling, WV 26003
Phone: (304) 243-2130 Fax: (304) 243-4389

FACSIMILE TRANSMISSION

Date: October 29, 1997

To: Norm Latker

Organization: Browdy and Neimark

Telephone number: 202-628-5197

Fax number: 202-737-3528

Total number of pages: 7 **(including this cover sheet)**

Original mailed? _____ **Yes** X **No**

From: Joe Allen

Please call immediately if the telecopy you received is incomplete or illegible.

Telephone number: 304/243-2130 **Fax number: 304/243-4389**

Thank you.

Oct 28, 1997

TO: NORMAN LATKER

FROM: JOE ALLEN

SUBJECT: WRITTEN COMMENTS ON MORELLA BILL

Thanks (as always) for your help! Enclosed is a copy of my draft letter. If you see anything missing or left out (or wrong) please let me know.

I've also attached a copy of the bill as introduced. Note that they changed our suggested notification procedure in Sec. 3(e). Let me know if this is a problem.

October 28, 1997

Honorable Constance A. Morella
Chair
House Subcommittee on Technology
2319 Rayburn House Office Building
Washington, D.C. 20515-6307

Dear Representative Morella:

During my recent testimony before your Subcommittee on your "Technology Transfer Commercialization Act of 1997," I was asked to comment in writing on the proposed amendments to the bill contained in the testimony of Federal Laboratory Consortium Chairman Dan Brand. I have listed below the FLC suggestions and my comments on them.

1. *Provide notice of invention availability and intent to license.*

H.R. 2544 has already adopted this suggestion in Section 3 (e) which requires agencies to provide public notice that inventions are available for licensing for at least 30 days before the license is granted.

2. *A related issue has to do with the information that must be included in the notice of intent .*

H.R. 2544 simply states that a notice must be given and does not list what information must go into the notice. I recommended in my testimony that agencies be encouraged to provide notices electronically as the most efficient method of alerting as many potential licensees as possible that a license is available. The current regulations calling for another round of notifications when someone has sought an exclusive license would be negated by the current bill. This is a significant step forward toward the goal of efficiently commercializing Government-owned inventions. I believe that the current bill language is appropriate as currently drafted.

3. *Potential licensees should be required to submit a commercial development plan prior to the granting of an exclusive license.*

~~H.R. 2544 has adopted this provision in~~ Section 3 (d)(2). permits Agencies to require such a plan at their discretion which I consider adequate

4. *Language should be restored to 15 USC 3710c(1)(A)(i) to read, "The head of the Agency or laboratory, or such individual's designee shall pay each year the first $2,000, and thereafter at least 15 percent, of the royalties or other payments to the inventor or coinventors* ***whose rights in the invention have been assigned to the United States*** *...*

I agree with this recommendation.

5. *Provide that the Government can license as well as assign its rights to an invention to the co-inventing party and that a co-inventor may voluntarily assign its rights to the Government for licensing.*

I am not aware that this has been a serious problem. I am concerned, however, that while the intent is clear that a co-inventing party should make such an assignment "voluntarily," such a provision raises the possibility that entities receiving sizable Government grants or contracts might feel coerced to make such assignments rather than upset their funding source. I suggest that this provision receive careful study and that it should probably not be placed in the current legislation until the university and small business community have an opportunity to comment and testify on its implications.

6. *Just what constitutes an invention is not always consistent in the statutes-regulations covering government funded inventions (Bayh-Dole), Government-owned inventions, patent statutes, Federal Technology Transfer Acts, CRADAS, etc.*

This suggestion is true, but raises several very controversial issues that far exceed the scope of the current bill. Legislation has already been introduced in previous Congress' by Rep. Morella attempting to allow Government-owned and Operated laboratories to copyright software under CRADA's. This is indeed a serious legal deficiency, but its inclusion would substantially cloud the current bill's chances of passage.

Similarly, many procurement agencies would probably have serious concerns with restricting their rights to inventions "conceived" under federal support and not also including "or first actually reduced to practice." Again this is a legitimate issue, but would raise possible formidable opposition to enactment.

I recommend that both issues be delayed for separate legislation and hearings since they are not directly related to the scope of the current bill and the important issues it already addresses.

7. *It is recommended that the proposed language be modified to state that authority is limited to the licensing of federal technologies directly related to the scope of work under the CRADA and such licenses are subject to the requirements of Section 209 of the Bayh-Dole Act.*

I have no problem with this recommendation.

8. *The legislation should be amended to continue to state that it is preferable to have non-exclusive licenses but permit the use of exclusive licensing as deemed appropriate by the federal agency.*

I do not agree with this comment. The current bill in no way restricts an agencies' ability to license non-exclusively if that is the most appropriate means of insuring prompt commercialization and protecting the rights of the American public. The comments implies that non-exclusive licensing is somehow morally superior and intrinsically in the public interest more than exclusive licensing. This is not justified. Licensing is difficult enough without Government artificially imposing these kinds of artificial barriers to commercialization. The language in the Morella bill should be retained.

9. *The proposed amendment removes current subparagraph 209(c)(1)(D), requiring that the terms and scope of an exclusive license not be greater than reasonably necessary to provide the applicant with incentives to develop the invention.*

This provision seems redundant since Section 3(d) TERMS AND CONDITIONS, states that "Licenses granted under this section shall contain such terms and conditions as the granting agency considers appropriate." Section 3(d)(2) further allows agencies to require that prospective licensees supply them with a "plan for development or marketing the invention." It would seem that these provisions would provide adequate authorities for agencies to conclude that the terms of the license should be tailored to these requirements.

There is no implication in the Morella bill that agencies are required to provide exclusivity to fields of use outside the marketing plan or to all applications of the invention. Agencies should not need legislation in order to exercise good judgment. I recommend keeping the bill language as presently constituted.

10. *The proposed amendment retains language aimed at antitrust considerations, but revises it to delete consideration of "undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates," currently contained in 209(c)(2)(d).*

I am not sure what this change actually does to improve the language in Section 3(a)(4) or how useful it is in real life.

11. *Changes in the termination language (d)(1)B)(I) which deletes the demonstration to the satisfaction of the government that the licensee has taken or is likely to take steps to achieve practical utilization of the invention.*

I do not see specifically what terms are missing from the Morella bill that is being sought. Section 3(d)(1) requires periodic reporting from the licensee on their utilization of the invention and allows the agency to terminate it if the licensee is not achieving practical utilization within a reasonable time, is not manufacturing the product substantially within the U.S., or because termination is necessary to meet requirements for public use as specified by Federal regulations issued after the date of the license, and such requirements are not reasonably satisfied by the licensee. This seems to exactly parallel the current termination requirements in Section 209 of Bayh-Dole.

I hope that this has been helpful. If I can provide any additional information to you or other members of the Subcommittee, please let me know.

Sincerely,

Joseph P. Allen
President, National Technology Transfer Center

FILE h2544.ih

HR 2544 IH
105th CONGRESS
1st Session
To improve the ability of Federal agencies to license federally owned inventions.

IN THE HOUSE OF REPRESENTATIVES
September 25, 1997

Mrs. MORELLA introduced the following bill; which was referred to the Committee on Science, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the ability of Federal agencies to license federally owned inventions.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE.

This Act may be cited as the `Technology Transfer Commercialization Act of 1997'.

SEC. 2. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

Section 12(b)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)(1)) is amended by inserting `or, subject to section 209 of title 35, United States Code, in a federally owned invention directly related to the scope of the work under the agreement,' after `under the agreement,'.

SEC. 3. LICENSING FEDERALLY OWNED INVENTIONS.

(a) AMENDMENT- Section 209 of title 35, United States Code, is amended to read as follows:

`Sec. 209. Licensing federally owned inventions

`(a) AUTHORITY- A Federal agency may grant an exclusive or partially exclusive license on a federally owned invention if--

`(1) granting the license is a reasonable and necessary incentive to--

`(A) call forth the investment capital and expenditures needed to bring the invention to practical application; or

`(B) otherwise promote the invention's utilization by the public;

`(2) the Federal agency finds that the public will be served by the granting of the license, as indicated by the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

`(3) the applicant makes a commitment to achieve practical utilization of the invention within a reasonable time;

`(4) granting the license will not substantially lessen competition or create or maintain a violation of the antitrust laws; and

`(5) in the case of an invention covered by a foreign patent application or patent, the interests of United States industry in foreign commerce will be enhanced.

`(b) MANUFACTURE IN UNITED STATES- Licenses shall normally be granted under this section only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

`(c) SMALL BUSINESS- First preference for the granting of licenses under this section shall be given to small business firms having equal or greater likelihood as other applicants to bring the invention to practical application within a reasonable time.

`(d) TERMS AND CONDITIONS- Licenses granted under this section shall contain such terms and conditions as the granting agency considers appropriate. Such terms and conditions--

`(1) shall include provisions--

`(A) requiring periodic reporting on utilization of the invention, and utilization efforts, by the licensee; and

`(B) empowering the Federal agency to terminate the license in whole or in part if the agency determines that--

`(i) the licensee is not adequately executing its commitment to achieve practical utilization of the invention within a reasonable time;

`(ii) the licensee is in breach of an agreement described in subsection (b); or

`(iii) termination is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license, and such requirements are not reasonably satisfied by the licensee; and

`(2) may include a requirement that the licensee provide the agency with a plan for development or marketing the invention. Information obtained pursuant to paragraph (1)(A) shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5, United States Code.

`(e) PUBLIC NOTICE- No license may be granted under this section unless public notice of the availability of a federally owned invention for licensing in an appropriate manner has been provided at least 30 days before the license is granted. This subsection shall not apply to the licensing of inventions made under a cooperative research and development agreement entered into under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).'.

(b) CONFORMING AMENDMENT- The item relating to section 209 in the table of sections for chapter 18 of title 35, United States Code, is amended to read as follows:

`209. Licensing federally owned inventions.'.

Executive Order 12356 of April 2, 1982

National Security Information

TABLE OF CONTENTS

This Order prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of its Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under this Order unless its disclosure reasonably could be expected to cause damage to the national security.

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

Part 1

Original Classification

Section 1.1 *Classification Levels.*

(a) National security information (hereinafter "classified information") shall be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Except as otherwise provided by statute, no other terms shall be used to identify classified information.

(c) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within thirty (30) days.

Sec. 1.2 *Classification Authority.*

(a) *Top Secret.* The authority to classify information originally as Top Secret may be exercised only by:

(1) the President;

(2) agency heads and officials designated by the President in the **Federal Register**; and

(3) officials delegated this authority pursuant to Section 1.2(d).

(b) *Secret.* The authority to classify information originally as Secret may be exercised only by:

(1) agency heads and officials designated by the President in the **Federal Register**;

(2) officials with original Top Secret classification authority; and

(3) officials delegated such authority pursuant to Section 1.2(d).

(c) *Confidential.* The authority to classify information originally as Confidential may be exercised only by:

(1) agency heads and officials designated by the President in the **Federal Register**;

(2) officials with original Top Secret or Secret classification authority; and

(3) officials delegated such authority pursuant to Section 1.2(d).

(d) *Delegation of Original Classification Authority.*

(1) Delegations of original classification authority shall be limited to the minimum required to administer this Order. Agency heads are responsible

source or relationship not otherwise evident in the document or information:

(1) one of the three classification levels defined in Section 1.1;

(2) the identity of the original classification authority if other than the person whose name appears as the approving or signing official;

(3) the agency and office of origin; and

(4) the date or event for declassification, or the notation "Originating Agency's Determination Required."

(b) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. Agency heads may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of this Order, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials specified in Section 3.1(b).

Sec. 1.6 *Limitations on Classification.*

(a) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) The President or an agency head or official designated under Sections 1.2(a)(2), 1.2(b)(1), or 1.2(c)(1) may reclassify information previously declassified and disclosed if it is determined in writing that (1) the information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office.

(d) Information may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of this Order (Section 3.4) if such classification meets the requirements of this Order and is accomplished personally and on a document-by-document basis by the agency head, the deputy agency head, the senior

agency official designated under Section 5.3(a)(1),[1] or an official with original Top Secret classification authority.

Part 2

Derivative Classification

Sec. 2.1 *Use of Derivative Classification.*

(a) Derivative classification is (1) the determination that information is in substance the same as information currently classified, and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) observe and respect original classification decisions; and

(2) carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

Sec. 2.2 *Classification Guides.*

(a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information.

(b) Each guide shall be approved personally and in writing by an official who:

(1) has program or supervisory responsibility over the information or is the senior agency official designated under Section 5.3(a)(1);[1] and

(2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agency heads may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

Part 3

Declassification and Downgrading

Sec. 3.1 *Declassification Authority.*

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Agencies shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1.3 despite the passage of time will continue to be protected in accordance with this Order.

[1] **Editorial Note:** The correct citation is Section 5.3(a).

(b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the agency head or the senior agency official designated pursuant to Section 5.3(a)(1).[1]

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified, pending a prompt decision on the appeal.

(d) The provisions of this Section shall also apply to agencies that, under the terms of this Order, do not have original classification authority, but that had such authority under predecessor orders.

Sec. 3.2 *Transferred Information.*

(a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this Order.

(b) In the case of classified information that is not officially transferred as described in Section 3.2(a), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this Order. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.

(c) Classified information accessioned into the National Archives of the United States shall be declassified or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Office, and agency guidelines.

Sec. 3.3 *Systematic Review for Declassification.*

(a) The Archivist of the United States shall, in accordance with procedures and timeframes prescribed in the Information Security Oversight Office's directives implementing this Order, systematically review for declassification or downgrading (1) classified records accessioned into the National Archives of the United States, and (2) classified presidential papers or records under the Archivist's control. Such information shall be reviewed by the Archivist for declassification or downgrading in accordance with systematic review guidelines that shall be provided by the head of the agency that originated the information, or in the case of foreign government information, by the Director of the Information Security Oversight Office in consultation with interested agency heads.

(b) Agency heads may conduct internal systematic review programs for classified information originated by their agencies contained in records determined by the Archivist to be permanently valuable but that have not been accessioned into the National Archives of the United States.

[1] **Editorial Note:** The correct citation is Section 5.3(a).

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

Sec. 3.4. *Mandatory Review for Declassification.*

(a) Except as provided in Section 3.4(b), all information classified under this Order or predecessor orders shall be subject to a review for declassification by the originating agency, if:

(1) the request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and

(2) the request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort.

(b) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of Section 3.4(a). The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information no longer requiring protection under this Order. They shall release this information unless withholding is otherwise authorized under applicable law.

(d) Agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They shall also provide a means for administratively appealing a denial of a mandatory review request.

(e) The Secretary of Defense shall develop special procedures for the review of cryptologic information, and the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods, after consultation with affected agencies. The Archivist shall develop special procedures for the review of information accessioned into the National Archives of the United States.

(f) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order:

(1) An agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under this Order.

(2) When an agency receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response under Section 3.4(f)(1) is required, the referring agency shall respond to the requester in accordance with that Section.

Part 4

Safeguarding

Sec. 4.1 *General Restrictions on Access.*

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made by agency heads or designated officials and provided that such access is essential to the accomplishment of lawful and authorized Government purposes.

(b) Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(c) Classified information shall not be disseminated outside the executive branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the executive branch.

(d) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this Section, the Department of Defense shall be considered one agency.

Sec. 4.2 *Special Access Programs.*

(a) Agency heads designated pursuant to Section 1.2(a) may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders. Such programs may be created or continued only at the written direction of these agency heads. For special access programs pertaining to intelligence activities (including special activities but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence.

(b) Each agency head shall establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office, consistent with the provisions of Section 5.2(b)(4), shall have non-delegable access to all such accountings.

Sec. 4.3 *Access by Historical Researchers and Former Presidential Appointees.*

(a) The requirement in Section 4.1(a) that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in Section 4.3(b) for persons who:

(1) are engaged in historical research projects, or

(2) previously have occupied policy-making positions to which they were appointed by the President.

(b) Waivers under Section 4.3(a) may be granted only if the originating agency:

(1) determines in writing that access is consistent with the interest of national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this Order; and

(3) limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

Part 5

Implementation and Review

Sec. 5.1 *Policy Direction.*

(a) The National Security Council shall provide overall policy direction for the information security program.

(b) The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. The Administrator shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.

Sec. 5.2 *Information Security Oversight Office.*

(a) The Information Security Oversight Office shall have a full-time Director appointed by the Administrator of General Services subject to approval by the President. The Director shall have the authority to appoint a staff for the Office.

(b) The Director shall:

(1) develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order, which shall be binding on the agencies;

(2) oversee agency actions to ensure compliance with this Order and implementing directives;

(3) review all agency implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this Order or implementing directives. Any such decision by the Director may be appealed

to the National Security Council. The agency regulation or guideline shall remain in effect pending a prompt decision on the appeal;

(4) have the authority to conduct on-site reviews of the information security program of each agency that generates or handles classified information and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior official designated under Section 5.3(a)(1) [1] may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect pending a prompt decision on the appeal;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend presidential approval;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the information security program;

(7) have the authority to prescribe, after consultation with affected agencies, standard forms that will promote the implementation of the information security program;

(8) report at least annually to the President through the National Security Council on the implementation of this Order; and

(9) have the authority to convene and chair interagency meetings to discuss matters pertaining to the information security program.

Sec. 5.3 *General Responsibilities.*

Agencies that originate or handle classified information shall:

(a) designate a senior agency official to direct and administer its information security program, which shall include an active oversight and security education program to ensure effective implementation of this Order;

(b) promulgate implementing regulations. Any unclassified regulations that establish agency information security policy shall be published in the **Federal Register** to the extent that these regulations affect members of the public;

(c) establish procedures to prevent unnecessary access to classified information, including procedures that (i) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and (ii) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs; and

(d) develop special contingency plans for the protection of classified information used in or near hostile or potentially hostile areas.

[1] **Editorial Note:** The correct citation is Section 5.3(a).

Sec. 5.4 *Sanctions.*

(a) If the Director of the Information Security Oversight Office finds that a violation of this Order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior official designated under Section 5.3(a)(1) [1] so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, and grantees shall be subject to appropriate sanctions if they:

(1) knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under this Order or predecessor orders;

(2) knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directive; or

(3) knowingly and willfully violate any other provision of this Order or implementing directive.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) Each agency head or the senior official designated under Section 5.3(a)(1) [1] shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5.4(b) occurs. Either shall ensure that the Director of the Information Security Oversight Office is promptly notified whenever a violation under Section 5.4(b) (1) or (2) occurs.

Part 6

General Provisions

Sec. 6.1 *Definitions.*

(a) "Agency" has the meaning provided at 5 U.S.C. 552(e).

(b) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(d) "Foreign government information" means:

(1) information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

[1] **Editorial Note:** The correct citation is Section 5.3(a).

(e) "National security" means the national defense or foreign relations of the United States.

(f) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(g) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

Sec. 6.2 *General.*

(a) Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this Order with respect to any question arising in the course of its administration.

(c) Nothing in this Order limits the protection afforded any information by other provisions of law.

(d) Executive Order No. 12065 of June 28, 1978, as amended, is revoked as of the effective date of this Order.

(e) This Order shall become effective on August 1, 1982.

RONALD REAGAN

THE WHITE HOUSE,
April 2, 1982.

Editorial Note: The President's statement of Apr. 2, 1982, on signing Executive Order 12356 is printed in the *Weekly Compilation of Presidential Documents* (vol. 18, p. 431).

Executive Order 12357 of April 6, 1982

Sinai Support Mission

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Chapter 6 of Part II of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2348, 2348a–2348c), and Section 6 of the Special International Security Assistance Act of 1979 (22 U.S.C. 3404), Section 2 of Executive Order No. 11896, as amended, is further amended by adding thereto the following:

"(f) The functions vested in the President by Section 6 of the Special International Security Assistance Act of 1979 (22 U.S.C. 3404) are delegated to the Director.

"(g) The Director shall, as soon as possible after the Multinational Force and Observers becomes operational on April 25, 1982, phase-out the activities of the Mission in the Sinai and terminate all functions of the Mission not later than September 30, 1982.

"(h) The Secretary of State shall be responsible after September 30, 1982 for any residual actions which may be necessary to conclude matters initiated by the Sinai Support Mission.".

RONALD REAGAN

THE WHITE HOUSE,
April 6, 1982.

Executive Order 12358 of April 14, 1982

Presidential Commission on Drunk Driving

By the authority vested in me as President by the Constitution of the United States of America, and in order to aid the States in their fight against the epidemic of drunk driving on the Nation's roads, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the Presidential Commission on Drunk Driving. The Commission shall be composed of no more than 26 members appointed by the President. In addition, the Majority Leader of the Senate and the Speaker of the House of Representatives are invited to designate two Members of each House to participate. The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* The Commission shall undertake to:

(a) heighten public awareness of the seriousness of the drunk driving problem;

(b) persuade States and communities to attack the drunk driving problem in a more organized and systematic manner, including plans to eliminate bottlenecks in the arrest, trial and sentencing process that impair the effectiveness of many drunk driving laws;

(c) encourage State and local officials and organizations to accept and use the latest techniques and methods to solve the problem; and

(d) generate public support for increased enforcement of State and local drunk driving laws.

Sec. 3. *Administration.*

(a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission with such information on drunk driving and highway safety issues and such other support as it may request for the effective performance of its functions.

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(c) Contribution

Every person who becomes liable to make any payment under this section may recover contributions from any person who if sued separately, would have been liable to make the same payment.

(d) Amounts recoverable; defendant's attorneys' fees

The amounts recoverable under this section may include interest paid, reasonable attorneys' fees, independent engineer and appraisers' fees, and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

(Pub. L. 96-399, title VI, § 612, Oct. 8, 1980, 94 Stat. 1679.)

§ 3612. Concurrent State and Federal jusisdiction; venue; removal of cases

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction under this chapter and, concurrent with State courts, of actions at law or in equity brought under this chapter without regard to the amount in controversy. Any such action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, and process in such cases may be served in other districts of which the defendant is an inhabitant or wherever the defendant may be found. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where any officer or employee of the United States in his official capacity is a party.

(Pub. L. 96-399, title VI, § 613, Oct. 8, 1980, 94 Stat. 1679.)

§ 3613. Limitation of actions

No action shall be maintained to enforce any right or liability created by this chapter unless brought within six years after such cause of action accrued, except that an action pursuant to section 3608 of this title must be brought within four years after October 8, 1980.

(Pub. L. 96-399, title VI, § 614, Oct. 8, 1980, 94 Stat. 1680.)

§ 3614. Waiver of rights as void

Any condition, stipulation, or provision binding any person to waive compliance with any provisions of this chapter shall be void.

(Pub. L. 96-399, title VI, § 615, Oct. 8, 1980, 94 Stat. 1680.)

§ 3615. Nonexclusion of other statutory rights and remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist under Federal or State law.

(Pub. L. 96-399, title VI, § 616, Oct. 8, 1980, 94 Stat. 1680.)

§ 3616. Separability

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 96-399, title VI, § 617, Oct. 8, 1980, 94 Stat. 1680.)

CHAPTER 63—TECHNOLOGY INNOVATION

Sec.

§ 3701. Findings

The Congress finds and declares that:

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

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

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

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

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

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

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

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

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

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

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

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

SHORT TITLE

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

§ 3702. Purpose

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

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

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

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

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

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

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

§ 3703. Definitions

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

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

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

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

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

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

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

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

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

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

§ 3704. Commerce and technological innovation

(a) In general

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

(b) Director

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

(c) Duties

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

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

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

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

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

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

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

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

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

(d) Report

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3709 of this title.

§ 3705. Centers for Industrial Technology

(a) Establishment

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

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

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

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

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

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

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

(b) Activities

The activities of the Centers shall include, but need not be limited to—

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

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

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

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

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

(c) Requirements

Prior to establishing a Center, the Secretary shall find that—

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

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

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

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

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

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

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

(d) Planning grants

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

(e) Research and development utilization

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

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

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

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

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

(E) the Center make periodic reports to the supporting agency, and the supporting agency may treat information contained in such reports as privileged and confidential technical, commercial, and financial information and not subject to disclosures under the Freedom of Information Act [5 U.S.C. 552]; and

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

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

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

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

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

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

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

(f) Additional consideration

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

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

REFERENCES IN TEXT

The United States Court of Claims, referred to in subsec. (e)(3), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3704, 3707, 3708, 3709, 3713 of this title.

§ 3706. Grants and cooperative agreements

(a) In general

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

(b) Eligibility and procedure

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

(c) Terms and conditions

(1) Any grant made, or cooperative agreement entered into, under this section shall be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such

other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

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

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

§ 3707. National Science Foundation Centers for Industrial Technology

(a) Establishment and provisions

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

(b) Planning grants

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

(c) Terms and conditions

Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this chapter shall be governed by the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.] and other pertinent Acts.

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

References in Text

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

Section Referred to in Other Sections

This section is referred to in sections 3703, 3704, 3708, 3709 of this title.

§ 3708. Administrative arrangements

(a) Coordination

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

(b) Cooperation

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

(c) Administrative authorization

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

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

(d) Cooperative efforts

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

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

§ 3709. National Industrial Technology Board

(a) Establishment

There shall be established a committee to be known as the National Industrial Technology Board.

(b) Duties

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

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

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

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

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

The Director shall make available to the Board such information, personnel, and administative

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

(c) Membership, terms, and powers

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

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

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

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

(5) Voting members of the Board may receive compensation at a daily rate for GS-18 of the General Schedule under section 5332 of title 5, when actually engaged in the performance of duties for such Board, and may be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3703 of this title.

§ 3710. Utilization of Federal technology

(a) Policy

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

(b) Establishment of Research and Technology Applications Offices

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

(c) Functions of Research and Technology Applications Offices

It shall be the function of each Office of Research and Technology Applications—

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

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

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

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

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

(d) Center for the Utilization of Federal Technology

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

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

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

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

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

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

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

(e) Agency reporting

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3704 of this title.

§ 3711. National Technology Medal

(a) Establishment

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

(b) Award

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

(c) Presentation

The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3704 of this title.

§ 3712. Personnel exchanges

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3704, 3708 of this title.

§ 3713. Authorization of appropriations

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

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

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

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

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

§ 3714. Spending authority

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

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

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

CHAPTER 63—TECHNOLOGY INNOVATION

Sec.

Sec.

§ 3701. Findings

The Congress finds and declares that:

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

Library References

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

§ 3702. Purpose

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

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

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

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

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

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

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

Historical Note

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

Library References

Health and Environment ⇐25.5(2).
C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

§ 3703. Definitions

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

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

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

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

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

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

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

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

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

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

Historical Note

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

§ 3704. Commerce and technological innovation

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

Library References

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

§ 3705. Centers for Industrial Technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

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

Library References

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

§ 3706. Grants and cooperative agreements

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

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

(c) **Terms and conditions.**—

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

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

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

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

Historical Note

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

Library References

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

§ 3707. National Science Foundation Centers for Industrial Technology

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

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

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

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

Historical Note

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

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

§ 3708. Administrative arrangements

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

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

(c) Administrative authorization.—

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

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

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

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

Historical Note

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

Library References

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

§ 3709. National Industrial Technology Board

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

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

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

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

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

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

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

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

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

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

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

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

(5) Voting members of the Board may receive compensation at a daily rate for GS–18 of the General Schedule under section 5332 of Title 5, when actually engaged in the performance of duties for such Board, and may be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

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

Historical Note

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

Library References

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

§ 3710. Utilization of Federal technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

§ 3711. National Technology Medal

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

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

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

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

Historical Note

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

§ 3712. Personnel exchanges

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

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

Historical Note

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

§ 3713. Authorization of appropriations

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

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

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

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

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

Historical Note

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

§ 3714. Spending authority

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

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

Historical Note

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

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

§ 3801. Congressional statement of findings and declaration of policy

(a) The Congress finds and declares that—

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

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

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

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

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

CHAPTER 63—TECHNOLOGY INNOVATION

§ 3701. Findings

The Congress finds and declares that:

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

Library References

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

§ 3702. Purpose

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

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

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

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

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

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

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

Historical Note

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

Library References

Health and Environment ⇐25.5(2).

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

§ 3703. Definitions

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

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

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

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

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

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

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

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

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

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

Historical Note

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

§ 3704. Commerce and technological innovation

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

Library References

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

§ 3705. Centers for Industrial Technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

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

Library References

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

§ 3706. Grants and cooperative agreements

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

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

(c) Terms and conditions.—

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

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

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

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

Historical Note

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

Library References

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

§ 3707. National Science Foundation Centers for Industrial Technology

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

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

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

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

Historical Note

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

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

§ 3708. Administrative arrangements

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

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

(c) Administrative authorization.—

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

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

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

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

Historical Note

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

Library References

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

§ 3709. National Industrial Technology Board

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

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

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

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

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

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

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

(c) Membership, terms, and powers.—

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

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

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

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

(5) Voting members of the Board may receive compensation at a daily rate for GS–18 of the General Schedule under section 5332 of Title 5, when actually engaged in the performance of duties for such Board, and may be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

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

Historical Note

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

Library References

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

§ 3710. Utilization of Federal technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

§ 3711. National Technology Medal

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

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

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

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

Historical Note

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

§ 3712. Personnel exchanges

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

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

Historical Note

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

§ 3713. Authorization of appropriations

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

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

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

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

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

Historical Note

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

§ 3714. Spending authority

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

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

Historical Note

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

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

§ 3801. Congressional statement of findings and declaration of policy

(a) The Congress finds and declares that—

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

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

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

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

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

P.L. 96-517 as amended by P.L. 98-620

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CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

§ 200. Policy and objective

It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

§ 201. Definitions

As used in this chapter—

(a) The term "Federal agency" means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined by section 102 of title 5, United States Code.

(b) The term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(c) The term "contractor" means any person, small business firm, or nonprofit organization that is a party to a funding agreement.

(d) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under this title.

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.)

(e) The term "subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.

: *Provided*, That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d))) must also occur during the period of contract performance

(f) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(g) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(h) The term "small business firm" means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(i) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

§ 202. Disposition of rights

(a) Each nonprofit organization or small business firm may, within a reasonable time after disclosure as required by paragraph (c)(1) of this section, elect to retain title to any subject invention: *Provided*, *however*, That a funding agreement may provide otherwise (i) ~~when the funding agreement is for the operation of a Government-owned research or production facility~~,

when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government,

(ii) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of this chapter or (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any subject

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(d) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under this title.

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(g) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(h) The term "small business firm" means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

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when the contractor is not located in the United State does not have a place of business located in the United State is subject to the control of a foreign government,

(ii) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of this chapter or (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any subject

invention is necessary to protect the security of such activities.

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

The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (c) of this section and the other provisions of this chapter.

~~(b)(1) Any determination under (ii) of paragraph (a) of this section shall be in writing and accompanied by a written statement of facts justifying the determination. A copy of each such determination and justification shall be sent to the Comptroller General of the United States within thirty days after the award of the applicable funding agreement. In the case of determinations applicable to funding agreements with small business firms copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration.~~

~~(2) If the Comptroller General believes that any pattern of determinations by a Federal agency is contrary to the policy and objectives of this chapter or that an agency's policies or practices are otherwise not in conformance with this chapter, the Comptroller General shall so advise the head of the agency. The head of the agency shall advise the Comptroller General in writing within one hundred and twenty days of what action, if any, the agency has taken or plans to take with respect to the matters raised by the Comptroller General.~~

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

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

(3) At least once each year, the Comptroller General shall transmit a report to the Committees on the Judiciary of the Senate and House of Representatives on the manner in which this chapter is being implemented by the agencies and on such other aspects of Government patent policies and practices with respect to federally funded inventions as the Comptroller General believes appropriate.

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

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

(1) A requirement that the contractor disclose each subject invention to the Federal agency within a reasonable time after it is made and that the Federal Government may receive title to any subject invention not reported to it within such time.

(2) A requirement that the contractor make an election to retain title to any subject invention within a reasonable time after disclosure and that the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such time.

(3) A requirement that a contractor electing rights file patent applications within reasonable times and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world, and may, if provided in the funding agreement, have additional rights to sublicense any foreign government or international organization pursuant to any existing or future treaty or agreement.

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

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

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

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

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

(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: *Provided*, That any such information ~~may~~ as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(6) An obligation on the part of the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention.

(7) In the case of a nonprofit organization, (A) a prohibition upon the assignment of rights to a subject invention in the United States without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions ~~and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention~~ (provided that such assignee shall be subject to the same provisions as the contractor); ~~(B) a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance unless, on a case by case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention;~~ ~~(C)~~ (B) a requirement that the contractor share royalties with the inventor; ~~and (D) a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education.~~

(C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year up to an amount equal to 5 percent of the annual budget of the facility, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility; provided that if said balance exceeds 5 percent of the annual budget of the facility, that 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D); and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility."

Note - "(D)" to the left should have the words "a preferenc before the word "in." It is expect that this wi be corrected early in the next Congres

(8) The requirements of sections 203 and 204 of this chapter.

(d) If a contractor does not elect to retain title to a subject invention in cases subject to this section, the Federal agency may consider and after consultation with the contractor grant requests for retention of rights by the inventor subject to the provisions of this Act and regulations promulgated hereunder.

(e) In any case when a Federal employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm, the Federal agency employing such coinventor is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor subject to the conditions set forth in this chapter.

(f)(1) No funding agreement with a small business firm or nonprofit organization shall contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the head of the agency and a written justification has been signed by the head of the agency. Any such provision shall clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically, identified work object, or both. The head of the agency may not delegate the authority to approve provisions or sign justifications required by this paragraph.

(2) A Federal agency shall not require the licensing of third parties under any such provision unless the head of the agency determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination shall be on the record after an opportunity for an agency hearing. Any action commenced for judicial review of such determination shall be brought within sixty days after notification of such determination.

§ 203. March-in rights

(1) With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this chapter, the Federal agency under whose funding agreement the subject invention was made shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the Federal agency determines that such—

(a) action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(b) action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(c) action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(d) action is necessary because the agreement required by section 204 has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to section 204.

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

§ 204. Preference for United States industry

Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency under whose funding agreement the invention was made upon a showing by the small business firm, nonprofit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

§ 205. Confidentiality

Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office.

§ 206. Uniform clauses and regulations

~~The Office of Federal Procurement Policy, after receiving recommendations of the Office of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and the Office of Federal Procurement Policy shall establish standard funding agreement provisions required under this chapter.~~

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

§ 207. Domestic and foreign protection of federally owned inventions

(a) Each Federal agency is authorized to—

(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of this title as determined appropriate in the public interest;

(3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

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

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

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

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

§ 208. Regulations governing Federal licensing

The ~~Administrator of General Services~~ Secretary of Commerce is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

§ 209. Restrictions on licensing of federally owned inventions

(a) No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for development and/or marketing of the invention, except that any such plan may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(b) A Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c)(1) Each Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that—

(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public.

(2) A Federal agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

(3) First preference in the exclusive or partially exclusive licensing of federally owned inventions shall go to small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(d) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, any Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(e) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.'

(f) Any grant of a license shall contain such terms and conditions as the Federal agency determines appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

(1) periodic reporting on the utilization or efforts at obtaining utilization that are being made by the licensee with particular reference to the plan submitted: *Provided*, That any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code;

(2) the right of the Federal agency to terminate such license in whole or in part if it determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(3) the right of the Federal agency to terminate such license in whole or in part if the licensee is in breach of an agreement obtained pursuant to paragraph (b) of this section; and

(4) the right of the Federal agency to terminate the license in whole or in part if the agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee.

§ 210. Precedence of chapter

(a) This chapter shall take precedence over any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with

this chapter, including but not necessarily limited to the following:

(1) section 10(a) of the Act of June 29, 1935, as added by title I of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);

(4) section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721);

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);

(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

(8) section 6 of the Coal Research Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

(11) subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5);

(12) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901; 88 Stat. 1878);

(13) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

(14) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);

(15) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

(16) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

(17) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

(18) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);

(19) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

(20) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

(21) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178(j); 92 Stat. 2533); and

(22) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1350).

The Act creating this chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

(b) Nothing in this chapter is intended to alter the effect of the laws cited in paragraph (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on ~~August 23, 1971, (36 Fed. Reg. 16887),~~ February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to allow such persons to retain ownership of inventions. Any disposition of rights in inventions made in accordance with the Statement or implementing regulations, including any disposition occurring before enactment of this section, are hereby authorized, except that all funding agreements, including those with oth than small business firms and nonprofit organizations, sh include the requirements established in paragraph 202(c)(4) a section 203 of this title."

(d) Nothing in this chapter shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods.

§ 211. Relationship to antitrust laws

Nothing in this chapter shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law.

§ 212. Disposition of rights in educational awards

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

"AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

"SEC. 721. (a) INVESTIGATIONS.—The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

"(b) CONFIDENTIALITY OF INFORMATION.—Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

"(c) ACTION BY THE PRESIDENT.—Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

"(d) FINDINGS OF THE PRESIDENT.—The President may exercise the authority conferred by subsection (c) only if the President finds that—

"(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

"(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review.

"(e) FACTORS TO BE CONSIDERED.—For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

"(1) domestic production needed for projected national defense requirements,

"(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services, and

"(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

"(f) REPORT TO THE CONGRESS.—If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the President intends to take, including a detailed explanation of the findings made under subsection (d).

"(g) REGULATIONS.—The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

"(h) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.".

Subtitle B—Technology

PART I—TECHNOLOGY COMPETITIVENESS

SEC. 5101. SHORT TITLE.

This part may be cited as the "Technology Competitiveness Act".

Subpart A—National Institute of Standards and Technology

SEC. 5111. FINDINGS AND PURPOSES.

Section 1 of the Act of March 3, 1901 (15 U.S.C. 271) is amended to read as follows:

"FINDINGS AND PURPOSES

"SECTION 1. (a) The Congress finds and declares the following:

"(1) The future well-being of the United States economy depends on a strong manufacturing base and requires continual improvements in manufacturing technology, quality control, and techniques for ensuring product reliability and cost-effectiveness.

"(2) Precise measurements, calibrations, and standards help United States industry and manufacturing concerns compete strongly in world markets.

"(3) Improvements in manufacturing and product technology depend on fundamental scientific and engineering research to develop (A) the precise and accurate measurement methods and

measurement standards needed to improve quality and reliability, and (B) new technological processes by which such improved methods may be used in practice to improve manufacturing and to assist industry to transfer important laboratory discoveries into commercial products.

"(4) Scientific progress, public safety, and product compatibility and standardization also depend on the development of precise measurement methods, standards, and related basic technologies.

"(5) The National Bureau of Standards since its establishment has served as the Federal focal point in developing basic measurement standards and related technologies, has taken a lead role in stimulating cooperative work among private industrial organizations in efforts to surmount technological hurdles, and otherwise has been responsible for assisting in the improvement of industrial technology.

"(6) The Federal Government should maintain a national science, engineering, and technology laboratory which provides measurement methods, standards, and associated technologies and which aids United States companies in using new technologies to improve products and manufacturing processes.

"(7) Such national laboratory also should serve industry, trade associations, State technology programs, labor organizations, professional societies, and educational institutions by disseminating information on new basic technologies including automated manufacturing processes.

"(b) It is the purpose of this Act—

"(1) to rename the National Bureau of Standards as the National Institute of Standards and Technology and to modernize and restructure that agency to augment its unique ability to enhance the competitiveness of American industry while maintaining its traditional function as lead national laboratory for providing the measurements, calibrations, and quality assurance techniques which underpin United States commerce, technological progress, improved product reliability and manufacturing processes, and public safety;

"(2) to assist private sector initiatives to capitalize on advanced technology;

"(3) to advance, through cooperative efforts among industries, universities, and government laboratories, promising research and development projects, which can be optimized by the private sector for commercial and industrial applications; and

"(4) to promote shared risks, accelerated development, and pooling of skills which will be necessary to strengthen America's manufacturing industries.".

SEC. 5112. ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES.

(a) ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES OF THE INSTITUTE.—Section 2 of the Act of March 3, 1901 (15 U.S.C. 272) is amended to read as follows:

"ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES

"SEC. 2. (a) There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this Act referred to as the 'Institute'.)

"(b) The Secretary of Commerce (hereafter in this Act referred to as the 'Secretary') acting through the Director of the Institute (hereafter in this Act referred to as the 'Director') and, if appropriate, through other officials, is authorized to take all actions necessary and appropriate to accomplish the purposes of this Act, including the following functions of the Institute—

"(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies;

"(2) to develop, maintain, and retain custody of the national standards of measurement, and provide the means and methods for making measurements consistent with those standards, including comparing standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government;

"(3) to enter into contracts, including cooperative research and development arrangements, in furtherance of the purposes of this Act;

"(4) to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;

"(5) to assist industry in the development of measurements, measurement methods, and basic measurement technology;

"(6) to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;

"(7) to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government;

"(8) to assure the compatibility of United States national measurement standards with those of other nations;

"(9) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

"(10) to advise government and industry on scientific and technical problems; and

"(11) to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs.

"(c) In carrying out the functions specified in subsection (b), the Secretary, acting through the Director and, if appropriate, through other appropriate officials, may, among other things—

"(1) construct physical standards;

"(2) test, calibrate, and certify standards and standard measuring apparatus;

"(3) study and improve instruments, measurement methods, and industrial process control and quality assurance techniques;

"(4) cooperate with the States in securing uniformity in weights and measures laws and methods of inspection;

"(5) cooperate with foreign scientific and technical institutions to understand technological developments in other countries better;

"(6) prepare, certify, and sell standard reference materials for use in ensuring the accuracy of chemical analyses and measurements of physical and other properties of materials;

"(7) in furtherance of the purposes of this Act, accept research associates, cash donations, and donated equipment from industry, and also engage with industry in research to develop new basic and generic technologies for traditional and new products and for improved production and manufacturing;

"(8) study and develop fundamental scientific understanding and improved measurement, analysis, synthesis, processing, and fabrication methods for chemical substances and compounds, ferrous and nonferrous metals, and all traditional and advanced materials, including processes of degradation;

"(9) investigate ionizing and nonionizing radiation and radioactive substances, their uses, and ways to protect people, structures, and equipment from their harmful effects;

"(10) determine the atomic and molecular structure of matter, through analysis of spectra and other methods, to provide a basis for predicting chemical and physical structures and reactions and for designing new materials and chemical substances, including biologically active macromolecules;

"(11) perform research on electromagnetic waves, including optical waves, and on properties and performance of electrical, electronic, and electromagnetic devices and systems and their essential materials, develop and maintain related standards, and disseminate standard signals through broadcast and other means;

"(12) develop and test standard interfaces, communication protocols, and data structures for computer and related telecommunications systems;

"(13) study computer systems (as that term is defined in section 20(d) of this Act) and their use to control machinery and processes;

"(14) perform research to develop standards and test methods to advance the effective use of computers and related systems and to protect the information stored, processed, and transmitted by such systems and to provide advice in support of policies affecting Federal computer and related telecommunications systems;

"(15) determine properties of building materials and structural elements, and encourage their standardization and most effective use, including investigation of fire-resisting properties of building materials and conditions under which they may be most efficiently used, and the standardization of types of appliances for fire prevention;

"(16) undertake such research in engineering, pure and applied mathematics, statistics, computer science, materials science, and the physical sciences as may be necessary to carry out and support the functions specified in this section;

"(17) compile, evaluate, publish, and otherwise disseminate general specific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere;

"(18) collect, create, analyze, and maintain specimens of scientific value;

"(19) operate national user facilities;

"(20) evaluate promising inventions and other novel technical concepts submitted by inventors and small companies and work with other Federal agencies, States, and localities to provide appropriate technical assistance and support for those inventions which are found in the evaluation process to have commercial promise;

"(21) demonstrate the results of the Institute's activities by exhibits or other methods of technology transfer, including the use of scientific or technical personnel of the Institute for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties; and

"(22) undertake such other activities similar to those specified in this subsection as the Director determines appropriate.".

(b) OTHER FUNCTIONS OF SECRETARY.—The Secretary of Commerce is authorized to—

(1) conduct research on all of the telecommunications sciences, including wave propagation and reception, the conditions which affect electromagnetic wave propagation and reception, electromagnetic noise and interference, radio system characteristics, operating techniques affecting the use of the electromagnetic spectrum, and methods for improving the use of the electromagnetic spectrum for telecommunications purposes;

(2) prepare and issue predictions of electromagnetic wave propagation conditions and warnings of disturbances in such conditions;

(3) investigate conditions which affect the transmission of radio waves from their source to a receiver and the compilation and distribution of information on such transmission of radio waves as a basis for choice of frequencies to be used in radio operations;

(4) conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies;

(5) investigate nonionizing electromagnetic radiation and its uses, as well as methods and procedures for measuring and assessing electromagnetic environments, for the purpose of developing and coordinating policies and procedures affecting Federal Government use of the electromagnetic spectrum for telecommunications purposes;

(6) compile, evaluate, publish, and otherwise disseminate general scientific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere; and

(7) undertake such other activities similar to those specified in this subsection as the Secretary of Commerce determines appropriate.

(c) DIRECTOR OF INSTITUTE.—(1) Section 5 of the Act of March 3, 1901 (15 U.S.C. 274) is amended to read as follows:

"SEC. 5. The Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have the general supervision of the Institute, its equipment, and the exercise of its functions. The Director shall make an annual report to the Secretary of Commerce. The Director may issue, when necessary, bulletins for public distribution, containing such information as may be of value to the public or facilitate the exercise of the functions of the Institute. The Director shall be compensated at the rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director.".

(2) Section 5315 of title 5, United States Code, is amended by striking "National Bureau of Standards" and inserting in lieu thereof "National Institute of Standards and Technology".

(d) ORGANIZATION PLAN.—(1) At least 60 days before its effective date and within 120 days after the date of the enactment of this Act, an initial organization plan for the National Institute of Standards and Technology (hereafter in this part referred to as the "Institute") shall be submitted by the Director of the Institute (hereafter in this part referred to as the "Director") after consultation with the Visiting Committee on Advanced Technology, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such plan shall—

(A) establish the major operating units of the Institute;

(B) assign each of the activities listed in section 2(c) of the Act of March 3, 1901, and all other functions and activities of the Institute, to at least one of the major operating units established under subparagraph (A);

(C) provide details of a 2-year program for the Institute, including the Advanced Technology Program;

(D) provide details regarding how the Institute will expand and fund the Inventions program in accordance with section 27 of the Act of March 3, 1901; and

(E) make no changes in the Center for Building Technology or the Center for Fire Research.

(2) The Director may revise the organization plan. Any revision of the organization plan submitted under paragraph (1) shall be submitted to the appropriate committees of the House of Representatives and the Senate at least 60 days before the effective date of such revision.

(3) Until the effective date of the organization plan, the major operating units of the Institute shall be the major operating units of the National Bureau of Standards that were in existence on the date of the enactment of this Act and the Advanced Technology Program.

SEC. 5113. REPEAL OF PROVISIONS.

The second paragraph of the material relating to the Bureau of Standards in the first section of the Act of July 16, 1914 (15 U.S.C. 280), the last paragraph of the material relating to Contingent and Miscellaneous Expenses in the first section of the Act of March 4, 1913 (15 U.S.C. 281), and the first section of the Act of May 14, 1930 (15 U.S.C. 282) are repealed.

SEC. 5114. REPORTS TO CONGRESS; STUDIES BY THE NATIONAL ACADEMIES OF ENGINEERING AND SCIENCES.

The Act of March 3, 1901 (15 U.S.C. 271 et seq.) is amended—

(1) by redesignating section 23 as section 31; and

(2) by adding after section 22 the following new sections:

"REPORTS TO CONGRESS

"SEC. 23. (a) The Director shall keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with regard to all of the activities of the Institute.

"(b) The Director shall justify in writing all changes in policies regarding fees for standard reference materials and calibration services occurring after June 30, 1987, including a description of the anticipated impact of any proposed changes on demand for and anticipated revenues from the materials and services. Changes in policy and fees shall not be effective unless and until the Director has submitted the proposed schedule and justification to the Congress and 30 days on which both Houses of Congress are in session have elapsed since such submission, except that the requirement of this sentence shall not apply with respect to adjustments which are based solely on changes in the costs of raw materials or of producing and delivering standard reference materials or calibration services.

"STUDIES BY THE NATIONAL RESEARCH COUNCIL

"SEC. 24. The Director may periodically contract with the National Research Council for advice and studies to assist the Institute to serve United States industry and science. The subjects of such advice and studies may include—

"(1) the competitive position of the United States in key areas of manufacturing and emerging technologies and research activities which would enhance that competitiveness;

"(2) potential activities of the Institute, in cooperation with industry and the States, to assist in the transfer and dissemina-

tion of new technologies for manufacturing and quality assurance; and

"(3) identification and assessment of likely barriers to widespread use of advanced manufacturing technology by the United States workforce, including training and other initiatives which could lead to a higher percentage of manufacturing jobs of United States companies being located within the borders of our country.".

SEC. 5115. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO ORGANIC ACT.—(1) Except as provided in paragraph (2), the Act of March 3, 1901 (15 U.S.C. 271 et seq.) is amended by striking "National Bureau of Standards", "Bureau" and "bureau" wherever they appear and inserting in lieu thereof "Institute".

(2) Section 31 of such Act, as so redesignated by section 5114(1) of this part, is amended by striking "National Bureau of Standards" and inserting in lieu thereof "National Institute of Standards and Technology".

(b) AMENDMENTS TO STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—(1) Section 8(b) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122 of this part, is amended by striking "Director" and inserting in lieu thereof "Assistant Secretary".

(2) Sections 11(e) and 17(d) and (e) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, are amended—

(A) by striking "National Bureau of Standards" wherever it appears and inserting in lieu thereof "National Institute of Standards and Technology"; and

(B) by striking "Bureau" wherever it appears and inserting in lieu thereof "Institute".

(c) AMENDMENTS TO OTHER LAWS.—References in any other Federal law to the National Bureau of Standards shall be deemed to refer to the National Institute of Standards and Technology.

Subpart B—Technology Extension Activities and Clearinghouse on State and Local Initiatives

SEC. 5121. TECHNOLOGY EXTENSION ACTIVITIES.

(a) TECHNOLOGY CENTERS AND TECHNICAL ASSISTANCE.—The Act of March 3, 1901, as amended by this part, is further amended by adding after section 24 the following new sections:

"REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

"SEC. 25. (a) The Secretary, through the Director and, if appropriate, through other officials, shall provide assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology (hereafter in this Act referred to as the 'Centers'). Such centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance under this section in accordance with

the description published by the Secretary in the Federal Register under subsection (c)(2). Individual awards shall be decided on the basis of merit review. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through—

"(1) the transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

"(2) the participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

"(3) efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

"(4) the active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

"(5) the utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

"(b) The activities of the Centers shall include—

"(1) the establishment of automated manufacturing systems and other advanced production technologies, based on research by the Institute, for the purpose of demonstrations and technology transfer;

"(2) the active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

"(3) loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

"(c)(1) The Secretary may provide financial support to any Center created under subsection (a) for a period not to exceed six years. The Secretary may not provide to a Center more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such Center.

"(2) The Secretary shall publish in the Federal Register, within 90 days after the date of the enactment of this section, a draft description of a program for establishing Centers, including—

"(A) a description of the program;

"(B) procedures to be followed by applicants;

"(C) criteria for determining qualified applicants;

"(D) criteria, including those listed under paragraph (4), for choosing recipients of financial assistance under this section from among the qualified applicants; and

"(E) maximum support levels expected to be available to Centers under the program in the fourth through sixth years of assistance under this section.

The Secretary shall publish a final description under this paragraph after the expiration of a 30-day comment period.

"(3) Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on the date of the enactment of this section, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2). In order to receive assistance under this section, an applicant shall provide adequate assurances that it will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the last three years. Each applicant shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities.

"(4) The Secretary shall subject each such application to merit review. In making a decision whether to approve such application and provide financial support under this subsection, the Secretary shall consider at a minimum (A) the merits of the application, particularly those portions of the application regarding technology transfer, training and education, and adaptation of manufacturing technologies to the needs of particular industrial sectors, (B) the quality of service to be provided, (C) geographical diversity and extent of service area, and (D) the percentage of funding and amount of in-kind commitment from other sources.

"(5) Each Center which receives financial assistance under this section shall be evaluated during its third year of operation by an evaluation panel appointed by the Secretary. Each such evaluation panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of the Institute shall chair the panel. Each evaluation panel shall measure the involved Center's performance against the objectives specified in this section. The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive. If the evaluation is positive, the Secretary may provide continued funding through the sixth year at declining levels, which are designed to ensure that the Center no longer needs financial support from the Institute by the seventh year. In no event shall funding for a Center be provided by the Department of Commerce after the sixth year of the operation of a Center.

"(6) The provisions of chapter 18 of title 35, United States Code, shall (to the extent not inconsistent with this section) apply to the promotion of technology from research by Centers under this section.

"(d) There are authorized to be appropriated for the purposes of carrying out this section, a combined total of not to exceed $40,000,000 for fiscal years 1989 and 1990. Such sums shall remain available until expended.

"ASSISTANCE TO STATE TECHNOLOGY PROGRAMS

"SEC. 26. (a) In addition to the Centers program created under section 25, the Secretary, through the Director and, if appropriate, through other officials, shall provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-

sized businesses, to enhance their competitiveness through the application of science and technology.

"(b) Such assistance from the Institute to State technology programs shall include, but not be limited to—

"(1) technical information and advice from Institute personnel;

"(2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and

"(3) entering into cooperative agreements when authorized to do so under this or any other Act.".

(b) TECHNOLOGY EXTENSION SERVICES.—(1) The Secretary shall conduct a nationwide study of current State technology extension services. The study shall include—

(A) a thorough description of each State program, including its duration, its annual budget, and the number and types of businesses it has aided;

(B) a description of any anticipated expansion of each State program and its associated costs;

(C) an evaluation of the success of the services in transferring technology, modernizing manufacturing processes, and improving the productivity and profitability of businesses;

(D) an assessment of the degree to which State services make use of Federal programs, including the Small Business Innovative Research program and the programs of the Federal Laboratory Consortium, the National Technical Information Service, the National Science Foundation, the Office of Productivity, Technology, and Innovation, and the Small Business Administration;

(E) a survey of what additional Federal information and ~~technical assistance the services could utilize; and~~

(F) an assessment of how the services could be more effective agents for the transfer of Federal scientific and technical information, including the results and application of Federal and ~~federally funded research.~~

~~The Secretary shall submit to the Committee on Science, Space, and~~ Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, at the time of submission of the organization plan for the Institute under section 5112(d)(1), the results of the study and an initial implementation plan for the programs under section 26 of the Act of March 3, 1901, and under this section. The implementation plan shall include methods of providing technical assistance to States and criteria for awarding financial assisuance under this section. The Secretary may make use of contractors and experts for any or all of the studies and findings called for in this section.

(2)(A) The Institute shall enter into cooperative agreements with State technology extension services to—

(i) demonstrate methods by which the States can, in cooperation with Federal agencies, increase the use of Federal technology by businesses within their States to improve industrial competitiveness; or

(ii) help businesses in their States take advantage of the services and information offered by the Regional Centers for the

Transfer of Manufacturing Technology created under section 25 of the Act of March 3, 1901.

(B) Any State, for itself or for a consortium of States, may submit to the Secretary an application for a cooperative agreement under this subsection, in accordance with procedures established by the Secretary. To qualify for a cooperative agreement under this subsection, a State shall provide adequate assurances that it will increase its spending on technology extension services by an amount at least equal to the amount of Federal assistance.

(C) In evaluating each application, the Secretary shall consider—

(i) the number and types of additional businesses that will be assisted under the cooperative agreement;

(ii) the extent to which the State extension service will demonstrate new methods to increase the use of Federal technology;

(iii) geographic diversity; and

(iv) the ability of the State to maintain the extension service after the cooperative agreement has expired.

(D) States which are party to cooperative agreements under this subsection may provide services directly or may arrange for the provision of any or all of such services by institutions of higher education or other non-profit institutions or organizations.

(3) In carrying out section 26 of the Act of March 3, 1901, and this subsection, the Secretary shall coordinate the activities with the Federal Laboratory Consortium; the National Technical Information Service; the National Science Foundation; the Office of Productivity, Technology, and Innovation; the Small Business Administration; and other appropriate Federal agencies.

(4) There are authorized to be appropriated for the purposes of this subsection $2,000,000 for each of the fiscal years 1989, 1990, and 1991.

(5) Cooperative agreements entered into under paragraph (2) shall terminate no later than September 30, 1991.

(c) FEDERAL TECHNOLOGY TRANSFER ACT OF 1986.—Nothing in sections 25 or 26 of the Act of March 3, 1901, or in subsection (b) of this section shall be construed as limiting the authorities contained in the Federal Technology Transfer Act of 1986 (Public Law 99–502).

(d) NON-ENERGY INVENTIONS PROGRAM.—The Act of March 3, 1901, as amended by this part, is further amended by adding after section 26 the following new section:

"NON-ENERGY INVENTIONS PROGRAM

"SEC. 27. In conjunction with the initial organization of the Institute, the Director shall establish a program for the evaluation of inventions that are not energy-related to complement but not replace the Energy-Related Inventions Program established under section 14 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93–577). The Director shall submit an initial implementation plan for this program to accompany the organization plan for the Institute. The implementation plan shall include specific cost estimates, implementation schedules, and mechanisms to help finance the development of technologies the program has determined to have potential. In the preparation of the plan, the Director

shall consult with appropriate Federal agencies, including the Small Business Administration and the Department of Energy, State and local government organizations, university officials, and private sector organizations in order to obtain advice on how those agencies and organizations might cooperate with the expansion of this program of the Institute.".

SEC. 5122. CLEARINGHOUSE ON STATE AND LOCAL INITIATIVES.

(a) CLEARINGHOUSE.—The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended—

(1) by redesignating sections 6 through 19 as sections 7 through 20, respectively; and

(2) by inserting after section 5 the following new section:

"SEC. 6. CLEARINGHOUSE FOR STATE AND LOCAL INITIATIVES ON PRODUCTIVITY, TECHNOLOGY, AND INNOVATION.

"(a) ESTABLISHMENT.—There is established within the Office of Productivity, Technology, and Innovation a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation. The Clearinghouse shall serve as a central repository of information on initiatives by State and local governments to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation and Federal efforts to assist State and local governments to enhance competitiveness.

"(b) RESPONSIBILITIES.—The Clearinghouse may—

"(1) establish relationships with State and local governments, and regional and multi- state organizations of such governments, which carry out such initiatives;

"(2) collect information on the nature, extent, and effects of such initiatives, particularly information useful to the Congress, Federal agencies, State and local governments, regional and multistate organizations of such governments, businesses, and the public throughout the United States;

"(3) disseminate information collected under paragraph (2) through reports, directories, handbooks, conferences, and seminars;

"(4) provide technical assistance and advice to such governments with respect to such initiatives, including assistance in determining sources of assistance from Federal agencies which may be available to support such initiatives;

"(5) study ways in which Federal agencies, including Federal laboratories, are able to use their existing policies and programs to assist State and local governments, and regional and multistate organizations of such governments, to enhance the competitiveness of American business;

"(6) make periodic recommendations to the Secretary, and to other Federal agencies upon their request, concerning modifications in Federal policies and programs which would improve Federal assistance to State and local technology and business assistance programs;

"(7) develop methodologies to evaluate State and local programs, and, when requested, advise State and local governments, and regional and multistate organizations of such governments, as to which programs are most effective in enhancing

the competitiveness of American business through the stimulation of productivity, technology, and innovation; and

"(8) make use of, and disseminate, the nationwide study of State industrial extension programs conducted by the Secretary.

"(c) CONTRACTS.—In carrying out subsection (b), the Secretary may enter into contracts for the purpose of collecting information on the nature, extent, and effects of initiatives.

"(d) TRIENNIAL REPORT.—The Secretary shall prepare and transmit to the Congress once each 3 years a report on initiatives by State and local governments to enhance the competitiveness of American businesses through the stimulation of productivity, technology, and innovation. The report shall include recommendations to the President, the Congress, and to Federal agencies on the appropriate Federal role in stimulating State and local efforts in this area. The first of these reports shall be transmitted to the Congress before January 1, 1989.".

(b) DEFINITION.—Section 4 of such Act is amended by adding at the end thereof the following new paragraph:

"(13) 'Clearinghouse' means the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation established by section 6.".

(c) CONFORMING AMENDMENT.—Section 10(d) of such Act, as so redesignated by section 5122(a)(1) of this part, is amended by striking "6, 8, 10, 14, 16, or 17" and inserting in lieu thereof "7, 9, 11, 15, 17, or 18".

Subpart C—Advanced Technology Program

SEC. 5131. ADVANCED TECHNOLOGY.

(a) ADVANCED TECHNOLOGY PROGRAM.—The Act of March 3, 1901, as amended by this part, is further amended by adding after section 27 the following new section:

"ADVANCED TECHNOLOGY PROGRAM

"SEC. 28. (a) There is established in the Institute an Advanced Technology Program (hereafter in this Act referred to as the 'Program') for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to—

"(1) commercialize significant new scientific discoveries and technologies rapidly; and

"(2) refine manufacturing technologies.

The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoids providing undue advantage to specific companies.

"(b) Under the Program established in subsection (a), and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d), may—

"(1) aid United States joint research and development ventures (hereafter in this section referred to as 'joint ventures')

(which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through—

"(A) provision of organizational and technical advice; and

"(B) participation in such joint ventures, if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial start-up funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel,

provided that emphasis is placed on areas where the Institute has scientific or technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;

"(2) enter into contracts and cooperative agreements with United States businesses, especially small businesses, and with independent research organizations, provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;

"(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and

"(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

"(c) The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including—

"(1) publishing in the Federal Register draft criteria and, no later than six months after the date of the enactment of this section, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b)(1) and (2);

"(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

"(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program.

"(4) assuring that the advice of the Committee established under section 10 is considered routinely in carrying out the responsibilities of the Institute; and

"(5) providing for appropriate dissemination of Program research results.

"(d) When entering into contracts or making awards under subsection (b), the following shall apply:

"(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

"(2) In the case of joint ventures, the Program shall not make an award unless, in the judgment of the Secretary, acting through the Director, Federal aid is needed if the industry in question is to form a joint venture quickly.

"(3) No Federal contract or cooperative agreement under subsection (b)(2) shall exceed $2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made available under subsection (b)(2) shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.

"(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

"(5) Section 552 of title 5, United States Code, shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program—

"(A) information on the business operation of any member of the business or joint venture; and

"(B) trade secrets possessed by any business or any member of the joint venture.

"(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

"(7) The Federal Government shall be entitled to a share of the licensing fees and royalty payments made to and retained by any business or joint venture to which it contributes under this section in an amount proportional to the Federal share of the costs incurred by the business or joint venture as determined by independent audit.

"(8) If a business or joint venture fails before the completion of the period for which a contract or award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

"(9) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

"(e) As used in this section, the term 'joint research and development venture' has the meaning given to such term in section 2(a)(6) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6)).".

(b) VISITING COMMITTEE ON ADVANCED TECHNOLOGY.—Section 10 of the Act of March 3, 1901, is amended to read as follows:

"VISITING COMMITTEE ON ADVANCED TECHNOLOGY

"SEC. 10. (a) There is established within the Institute a Visiting Committee on Advanced Technology (hereafter in this Act referred to as the 'Committee'). The Committee shall consist of nine members appointed by the Director, at least five of whom shall be from United States industry. The Director shall appoint as original members of the Committee any final members of the National Bureau of Standards Visiting Committee who wish to serve in such capacity. In addition to any powers and functions otherwise granted to it by this Act, the Committee shall review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

"(b) The persons appointed as members of the Committee—

"(1) shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations;

"(2) shall be selected solely on the basis of established records of distinguished service;

"(3) shall not be employees of the Federal Government; and

"(4) shall be so selected as to provide representation of a cross-section of the traditional and emerging United States industries.

The Director is requested, in making appointments of persons as members of the Committee, to give due consideration to any recommendations which may be submitted to the Director by the National Academies, professional societies, business associations, labor associations, and other appropriate organizations.

"(c)(1) The term of office of each member of the Committee, other than the original members, shall be 3 years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person who has completed two consecutive full terms of service on the Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

"(2) The original members of the Committee shall be elected to three classes of three members each; one class shall have a term of

one year, one a term of two years, and the other a term of three years.

"(d) The Committee shall meet at least quarterly at the call of the Chairman or whenever one-third of the members so request in writing. A majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee shall constitute a quorum. Each member shall be given appropriate notice, whenever possible, not less than 15 days prior to any meeting, of the call of such meeting.

"(e) The Committee shall have an executive committee, and may delegate to it or to the Secretary such of the powers and functions granted to the Committee by this Act as it deems appropriate. The Committee is authorized to appoint from among its members such other committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Committee deems appropriate to assist it in exercising its powers and functions under this Act.

"(f) The election of the Chairman and Vice Chairman of the Committee shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Committee shall elect a member to fill such vacancy.

"(g) The Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Director, after consultation with the Chairman of the Committee, and assigned at the direction of the Committee. The professional members of such staff may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and the provisions of chapter 51 of title 5 of such Code relating to classification, and compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS–18 of the General Schedule under section 5332 of title 5 of such Code, as may be necessary to provide for the performance of such duties as may be prescribed by the Committee in connection with the exercise of its powers and functions under this Act.

"(h)(1) The Committee shall render an annual report to the Secretary for submission to the Congress on or before January 31 in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, including the Program established under section 28, or with which the Committee in its official role as the private sector policy advisor of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possesses special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures.

"(2) The Committee shall render to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.".

(c) NATIONAL ACADEMIES OF SCIENCES AND ENGINEERING STUDY OF GOVERNMENT-INDUSTRY COOPERATION IN CIVILIAN TECHNOLOGY.—(1) Within 90 days after the date of enactment of this Act, the Secretary of Commerce shall enter into contracts with the National Academies of Sciences and Engineering for a thorough review of the various types of arrangements under which the private sector in the United States and the Federal Government cooperate in civilian research and technology transfer, including activities to create or apply generic, nonproprietary technologies. The purpose of the review is to provide the Secretary and Congress with objective information regarding the uses, strengths, and limitations of the various types of cooperative technology arrangements that have been used in the United States. The review is to provide both an analysis of the ways in which these arrangements can help improve the technological performance and international competitiveness of United States industry, and also to provide the Academies' recommendations regarding ways to improve the effectiveness and efficiency of these types of cooperative arrangements. A special emphasis shall be placed on discussions of these subjects among industry leaders, labor leaders, and officials of the executive branch and Congress. The Secretary is authorized to seek and accept funding for this study from both Federal agencies and private industry.

(2) The members of the review panel shall be drawn from among industry and labor leaders, entrepreneurs, former government officials with great experience in civilian research and technology, and scientific and technical experts, including experts with experience with Federal laboratories.

(3) The review shall analyze the strengths and weaknesses of different types of Federal-industry cooperative arrangements in civilian technology, including but not limited to—

(A) Federal programs which provide technical services and information to United States companies;

(B) cooperation between Federal laboratories and United States companies, including activities under the Technology Share Program created by Executive Order 12591;

(C) Federal research and technology transfer arrangements with selected business sectors;

(D) Federal encouragement of, and assistance to, private joint research and development ventures; and

(E) such other mechanisms of Federal-industry cooperation as may be identified by the Secretary.

(4) A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contracts with the National Academies of Sciences and Engineering.

Subpart D—Technology Reviews

SEC. 5141. REPORT OF PRESIDENT.

The President shall, at the time of submission of the budget request for fiscal year 1990 to Congress, also submit to the Congress a report on—

(1) the President's policies and budget proposals regarding Federal research in semiconductors and semiconductor manufacturing technology, including a discussion of the respective roles of the various Federal departments and agencies in such research;

(2) the President's policies and budget proposals regarding Federal research and acquisition policies for fiber optics and optical-electronic technologies generally;

(3) the President's policies and budget proposals, identified by agency, regarding superconducting materials, including descriptions of research priorities, the scientific and technical barriers to commercialization which such research is designed to overcome, steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to consult with private United States industry and to ensure that no unnecessary duplication of research exists and that all important scientific and technical barriers to the commercialization of superconducting materials will be addressed; and

(4) the President's policies and budget proposals, identified by agency, regarding Federal research to assist United States industry to develop and apply advanced manufacturing technologies for the production of durable and nondurable goods.

SEC. 5142. SEMICONDUCTOR RESEARCH AND DEVELOPMENT.

(a) SHORT TITLE.—This section may be cited as the "National Advisory Committee on Semiconductor Research and Development Act of 1988".

(b) FINDINGS AND PURPOSES.—(1) The Congress finds and declares that—

(A) semiconductor technology is playing an ever-increasing role in United States industrial and commercial products and processes, making secure domestic sources of state-of-the-art semiconductors highly desirable;

(B) modern weapons systems are highly dependent on leading edge semiconductor devices, and it is counter to the national security interest to be heavily dependent upon foreign sources for this technology;

(C) governmental responsibilities related to the semiconductor industry are divided among many Federal departments and agencies; and

(D) joint industry-government consideration of semiconductor industry problems is needed at this time.

(2) The purposes of this section are—

(A) to establish the National Advisory Committee on Semiconductors; and

(B) to assign to such Committee the responsibility for devising and promulgating a national semiconductor strategy, including research and development, the implementation of which will assure the continued leadership of the United States in semiconductor technology.

(c) CREATION OF COMMITTEE.—There is hereby created in the executive branch of the Government an independent advisory body to be

known as the National Advisory Committee on Semiconductors (hereafter in this section referred to as the "Committee").

(d) FUNCTIONS.—(1) The Committee shall—

(A) collect and analyze information on the needs and capabilities of industry, the Federal Government, and the scientific and research communities related to semiconductor technology;

(B) identify the components of a successful national semiconductor strategy in accordance with subsection (b)(2)(B);

(C) analyze options, establish priorities, and recommend roles for participants in the national strategy;

(D) assess the roles for government and national laboratories and other laboratories supported largely for government purposes in contributing to the semiconductor technology base of the Nation, as well as to access the effective use of the resources of United States private industry, United States universities, and private-public research and development efforts; and

(E) provide results and recommendations to agencies of the Federal Government involved in legislative, policymaking, administrative, management, planning, and technology activities that affect or are part of a national semiconductor strategy, and to the industry and other nongovernmental groups or organizations affected by or contributing to that strategy.

(2) In fulfilling this responsibility, the Committee shall—

(A) monitor the competitiveness of the United States semiconductor technology base;

(B) determine technical areas where United States semiconductor technology is deficient relative to international competition;

(C) identify new or emerging semiconductor technologies that will impact the national defense or United States competitiveness or both;

(D) develop research and development strategies, tactics, and plans whose execution will assure United States semiconductor competitiveness; and

(E) recommend appropriate actions that support the national semiconductor strategy.

(e) MEMBERSHIP AND PROCEDURES.—(1)(A) The Committee shall be composed of 13 members, 7 of whom shall constitute a quorum.

(B) The Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Director of the Office of Science and Technology Policy, and the Director of the National Science Foundation, or their designees, shall serve as members of the Committee.

(C) The President, acting through the Director of the Office of Science and Technology Policy, shall appoint, as additional members of the Committee, 4 members from outside the Federal Government who are eminent in the semiconductor industry, and 4 members from outside the Federal Government who are eminent in the fields of technology, defense, and economic development.

(D) One of the members appointed under subparagraph (C), as designated by the President at the time of appointment, shall be chairman of the Committee.

(2) Funding and administrative support for the Committee shall be provided to the Office of Science and Technology Policy through an arrangement with an appropriate agency or organization desig-

nated by the Committee, in accordance with a memorandum of understanding entered into between them.

(3) Members of the Committee, other than full-time employees of the Federal Government, while attending meetings of the Committee or otherwise performing duties at the request of the Chairman while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(4) The Chairman shall call the first meeting of the Committee not later than 90 days after the date of the enactment of this Act.

(5) At the close of each fiscal year the Committee shall submit to the President and the Congress a report on its activities conducted during such year and its planned activities for the coming year, including specific findings and recommendations with respect to the national semiconductor strategy devised and promulgated under subsection (b)(2)(B). The first report shall include an analysis of those technical areas, including manufacturing, which are of importance to the United States semiconductor industry, and shall make specific recommendations regarding the appropriate Federal role in correcting any deficiencies identified by the analysis. Each report shall include an estimate of the length of time the Committee must continue before the achievement of its purposes and the issuance of its final report.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section such sums as may be necessary for the fiscal years 1988, 1989, and 1990.

SEC. 5143. REVIEW OF RESEARCH AND DEVELOPMENT PRIORITIES IN SUPERCONDUCTORS.

(a) NATIONAL COMMISSION ON SUPERCONDUCTIVITY.—The President shall appoint a National Commission on Superconductivity to review all major policy issues regarding United States applications of recent research advances in superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies.

(b) MEMBERSHIP.—The membership of the National Commission on Superconductivity shall include representatives of—

(1) the National Critical Materials Council, the National Academy of Sciences, the National Academy of Engineering, the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Justice, the Department of Commerce (including the National Institute of Standards and Technology), the Department of Transportation, the Department of the Treasury, and the Department of Defense;

(2) organizations whose membership is comprised of physicists, engineers, chemical scientists, or material scientists; and

(3) industries, universities, and national laboratories engaged in superconductivity research.

(c) CHAIRMAN.—A representative of the private sector shall be designated as chairman of the Commission.

(d) COORDINATION.—The National Critical Materials Council shall be the coordinating body of the National Commission on Superconductivity and shall provide staff support for the Commission.

(e) REPORT.—Within 6 months after the date of the enactment of this Act, the National Commission on Superconductivity shall submit a report to the President and the Congress with recommendations regarding methods of enhancing the research, development, and implementation of improved superconductor technologies in all major applications.

(f) SCOPE OF REVIEW.—In preparing the report required by subsection (e), the Commission shall consider addressing, but need not limit, its review to—

(1) the state of United States competitiveness in the development of improved superconductors;

(2) methods to improve and coordinate the collection and dissemination of research data relating to superconductivity;

(3) methods to improve and coordinate funding of research and development of improved superconductors;

(4) methods to improve and coordinate the development of viable commercial and military applications of improved superconductors;

(5) foreign government activities designed to promote research, development, and commercial application of improved superconductors;

(6) the need to provide increased Federal funding of research and development of improved superconductors;

(7) the impact on the United States national security if the United States must rely on foreign producers of superconductors;

(8) the benefit, if any, of granting private companies partial exemptions from United States antitrust laws to allow them to coordinate research, development, and products containing improved superconductors;

(9) options for providing income tax incentives for encouraging research, development, and production in the United States of products containing improved superconductors; and

(10) methods to strengthen domestic patent and trademark laws to ensure that qualified superconductivity discoveries receive the fullest protection from infringement.

(g) SUNSET.—The Commission shall disband within a year of its establishment. Thereafter the National Critical Materials Council may review and update the report required by subsection (e) and make further recommendations as it deems appropriate.

Subpart E—Authorization of Appropriations

SEC. 5151. AUTHORIZATION OF APPROPRIATIONS FOR TECHNOLOGY ACTIVITIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1988 to the Secretary of Commerce to carry out activities performed by the Institute the sums set forth in the following line items:

(1) Measurement Research and Technology: $41,939,000.

(2) Engineering Measurements and Manufacturing: $40,287,000.

(3) Materials Science and Engineering: $23,521,000.

(4) Computer Science and Technology: $7,941,000.

(5) Research Support Activities: $19,595,000.

(6) Cold Neutron Source Facility: $6,500,000 (for a total authorization of $13,000,000).

(7) Programs established under sections 25, 26, and 27 of the Act of March 3, 1901 and section 5121 of this part: $5,000,000.

(b) LIMITATIONS.—Notwithstanding any other provision of this or any other Act—

(1) of the total of the amounts authorized under subsection (a), $2,000,000 is authorized only for steel technology;

(2) of the amount authorized under paragraph (1) of subsection (a) of this section, $3,550,000 is authorized only for the purpose of research in process and quality control;

(3) of the amount authorized under paragraph (2) of subsection (a) of this section, $3,710,000 is authorized only for the Center for Building Technology, $5,662,000 is authorized only for the Center for Fire Research, and the two Centers shall not be merged;

(4) of the amount authorized under paragraph (3) of subsection (a) of this section, $1,500,000 is authorized only for the purpose of research to improve high-performance composites; and

(5) of the amount authorized under paragraph (5) of subsection (a) of this section, $7,371,000 is authorized only for technical competence fund projects in new areas of high technical importance, and $1,091,000 is authorized only for the Postdoctoral Research Associates Program and related new personnel.

(c) TRANSFER.—(1) Funds may be transferred among the line items listed in subsection (a) of this section so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such subsection and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(2) In addition, the Secretary of Commerce may propose transfers to or from any line item exceeding 10 percent of the amount authorized for the line item in subsection (a) of this section, but a full and complete explanation of any such proposed transfer and the reason for such transfer must be transmitted in writing to the President of the Senate, the Speaker of the House of Representatives, and the appropriate authorizing committees of the Senate and House of Representatives. The proposed transfer may be made only when 30 calendar days have passed after the transmission of such written explanation.

(d) COLD NEUTRON SOURCE FACILITY.—In addition to any sums otherwise authorized by this part, there are authorized to be appropriated to the Secretary of Commerce for fiscal years 1988, 1989, and 1990 such sums as were authorized but not appropriated for the Cold Neutron Source Facility for fiscal year 1987. Furthermore, the Secretary may accept contributions for funds, to remain available until expended, for the design, construction, and equipment of the

Cold Neutron Source Facility, notwithstanding the limitations of section 14 of the Act of March 3, 1901 (15 U.S.C. 278d).

(e) EMPLOYEE BENEFIT ADJUSTMENTS.—In addition to any sums otherwise authorized by this part, there are authorized to be appropriated to the Secretary of Commerce for fiscal year 1988 such additional sums as may be necessary to make any adjustments in salary, pay, retirement, and other employee benefits which may be provided for by law.

(f) AVAILABILITY.—Appropriations made under the authority provided in this section shall remain available for obligation, for expenditure, or for obligations and expenditure for periods specified in the Acts making such appropriations.

SEC. 5152. STEVENSON-WYDLER ACT AUTHORIZATIONS.

Section 19(a) and (b) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, is amended to read as follows:

"(a)(1) There is authorized to be appropriated to the Secretary for the purposes of carrying out sections 5, 11(g), and 16 of this Act not to exceed $3,400,000 for the fiscal year ending September 30, 1988.

"(2) Of the amount authorized under paragraph (1) of this subsection, $2,400,000 is authorized only for the Office of Productivity, Technology, and Innovation; $500,000 is authorized only for the purpose of carrying out the requirements of the Japanese technical literature program established under section 5(d) of this Act; and $500,000 is authorized only for the patent licensing activities of the National Technical Information Service.

"(b) In addition to the authorization of appropriations provided under subsection (a) of this section, there is authorized to be appropriated to the Secretary for the purposes of carrying out section 6 of this Act not to exceed $500,000 for the fiscal year ending September 30, 1988, $1,000,000 for the fiscal year ending September 30, 1989, and $1,500,000 for the fiscal year ending September 30, 1990.".

Subpart F—Miscellaneous Technology and Commerce Provisions

SEC. 5161. SAVINGS PROVISION AND USER FEES.

The Act of March 3, 1901 (15 U.S.C. 271 et seq.), as amended by this part, is further amended by adding after section 28 the following new sections:

"SAVINGS PROVISION

"SEC. 29. All rules and regulations, determinations, standards, contracts, certifications, authorizations, delegations, results and findings of investigations, or other actions duly issued, made, or taken by or pursuant to this Act, or under the authority of any other statutes which resulted in the assignment of functions or activities to the Secretary, the Department, the Director, or the Institute, as are in effect immediately before the date of enactment of this section, and not suspended by the Secretary, the Director, the Institute or the courts, shall continue in full force and effect after the date of enactment of this section until modified or rescinded.

"USER FEES

"SEC. 30. The Institute shall not implement a policy of charging fees with respect to the use of Institute research facilities by research associates in the absence of express statutory authority to charge such fees.".

SEC. 5162. MISCELLANEOUS AMENDMENTS TO THE STEVENSON-WYDLER ACT.

(a) INVENTION MANAGEMENT SERVICES.—The first sentence of section 14(a)(4) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part (15 U.S.C. 3710c) is amended by striking out "shall" and inserting in lieu thereof "may", and by striking out "such invention performed at the request of the other agency or laboratory" and inserting in lieu thereof "any invention of the other agency".

(b) FEDERAL LABORATORY CONSORTIUM.—Section 11(e)(7)(A) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part (15 U.S.C. 3710) is amended by striking out "0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by" and inserting in lieu thereof "0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of".

SEC. 5163. MISCELLANEOUS TECHNOLOGY AND COMMERCE PROVISIONS.

(a) ASSESSMENT OF EMERGING TECHNOLOGIES.—The Board of Assessment of the National Institute of Standards and Technology shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Institute abreast of its mission, including process and quality control, engineering databases, advanced materials, electronics and fiber optics, bioprocess engineering, and advanced computing concepts. Such review shall include estimates of the cost of the required effort, required staffing levels, appropriate interaction with industry, including technology transfer, and the period over which the research will be required.

(b) SMALL BUSINESS PLAN.—The Director of the National Institute of Standards and Technology shall prepare a plan detailing the manner in which the Institute will make small businesses more aware of the Institute's activities and research, and the manner in which the Institute will seek to increase the application by small businesses of the Institute's research, particularly in manufacturing. The plan shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 120 days after the date of the enactment of this Act.

(c) NATIONAL TECHNICAL INFORMATION SERVICE.—(1) Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, is amended by inserting at the end the following new subsection:

"(h) None of the activities or functions of the National Technical Information Service which are not performed by contractors as of September 30, 1987, shall be contracted out or otherwise transferred from the Federal Government unless such transfer is expressly authorized by statute, or unless the value of all work performed under the contract and related contracts in each fiscal year does not exceed $250,000.".

(2) The Secretary of Commerce shall report the Secretary's recommendations for improvements in the National Technical Information Service (including methods for automating document distribution and inventory control), and any statutory changes required to make such improvements, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives by January 31, 1989.

(3) Section 11(d) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, is amended—

(A) by striking "and" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information.".

(d) FELLOWSHIP PROGRAM.—There is established within the Department of Commerce a Commerce, Science, and Technology Fellowship Program with the stated purpose of providing a select group of employees of the executive branch of the Government with the opportunity of learning how the legislative branch and other parts of the executive branch function through work experiences of up to one year. The Secretary of Commerce shall report to the Congress within six months after the date of enactment of this Act on the Department of Commerce's plans for implementing such Program by March 31, 1989.

SEC. 5164. METRIC USAGE.

(a) FINDINGS.—Section 2 of the Metric Conversion Act of 1975 is amended by adding at the end thereof the following new paragraphs:

"(3) World trade is increasingly geared towards the metric system of measurement.

"(4) Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and is sometimes excluded when it is unable to deliver goods which are measured in metric terms.

"(5) The inherent simplicity of the metric system of measurement and standardization of weights and measures has led to major cost savings in certain industries which have converted to that system.

"(6) The Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement.

"(7) The metric system of measurement can provide substantial advantages to the Federal Government in its own operations.".

(b) POLICY.—Section 3 of the Metric Conversion Act of 1975 is amended to read as follows:

"SEC. 3. It is therefore the declared policy of the United States—

"(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce;

"(2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units;

"(3) to seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications; and

"(4) to permit the continued use of traditional systems of weights and measures in nonbusiness activities.".

(c) IMPLEMENTATION.—The Metric Conversion Act of 1975 is further amended by redesignating section 12 as section 13, and by inserting after section 11 the following new section:

"SEC. 12. (a) As soon as possible after the date of the enactment of this section, each agency of the Federal Government shall establish guidelines to carry out the policy set forth in section 3 (with particular emphasis upon the policy set forth in paragraph (2) of that section), and as part of its annual budget submission for each fiscal year beginning after such date shall report to the Congress on the actions which it has taken during the previous fiscal year, as well as the actions which it plans for the fiscal year involved, to implement fully the metric system of measurement in accordance with that policy. Such reporting shall cease for an agency in the fiscal year after it has fully implemented its efforts under section 3(2). As used in this section, the term 'agency of the Federal Government' means an Executive agency or military department as those terms as defined in chapter 1 of title 5, United States Code.

"(b) At the end of the fiscal year 1992, the Comptroller General shall review the implementation of this Act, and upon completion of such review shall report his findings to the Congress along with any legislative recommendations he may have.".

PART II—SYMMETRICAL ACCESS TO TECHNOLOGICAL RESEARCH

SEC. 5171. SYMMETRICAL ACCESS TO TECHNOLOGICAL RESEARCH.

(a) Section 502 of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656b) is amended by adding at the end the following new paragraph:

"(5) Federally supported international science and technology agreements should be negotiated to ensure that—

"(A) intellectual property rights are properly protected; and

"(B) access to research and development opportunities and facilities, and the flow of scientific and technological information, are, to the maximum extent practicable, equitable and reciprocal.".

(b) Section 503(b) of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656c(b)) is amended—

(1) by striking "Congress" and inserting in lieu thereof "the Speaker of the House of Representatives and the Committees on Foreign Relations and Governmental Affairs of the Senate";

(2) by inserting "information and" before "recommendations";

(3) by striking "and" at the end of paragraph (1);

(4) by striking the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(5) by adding at the end the following new paragraph:

"(3) equity of access by United States public and private entities to public (and publicly supported private) research and development opportunities and facilities in each country which is a major trading partner of the United States.".

(c) Section 503 of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656c) is amended by adding at the end the following new subsection:

"(d)(1) The information and recommendations developed under subsection (b)(3) shall be made available to the United States Trade Representative for use in his consultations with Federal agencies pursuant to Executive orders pertaining to the transfer of science and technology.

"(2) In providing such information and recommendations, the President shall utilize information developed by any Federal departments, agencies, or interagency committees as he may consider necessary.".

(d) Section 504(a) of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656d(a)) is amended to read as follows:

"(a)(1) In order to implement the policies set forth in section 502 of this title, the Secretary of State (hereafter in this section referred to as the "Secretary") shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries, international organizations, or commissions of which the United States and one or more foreign countries are members.

"(2) In coordinating and overseeing such agreements and activities, the Secretary shall consider (A) scientific merit; (B) equity of access as described in section 503(b); (C) possible commercial or trade linkages with the United States which may flow from the agreement or activity; (D) national security concerns; and (E) any other factors deemed appropriate.

"(3) Prior to entering into negotiations on such an agreement or activity, the Secretary shall provide Federal agencies which have primary responsibility for, or substantial interest in, the subject matter of the agreement or activity, including those agencies responsible for—

"(A) Federal technology management policies set forth by Public Law 96-517 and the Stevenson-Wydler Technology Innovation Act of 1980;

"(B) national security policies;
"(C) United States trade policies; and
"(D) relevant Executive orders,
with an opportunity to review the proposed agreement or activity to ensure its consistency with such policies and Executive orders, and to ensure effective interagency coordination.".

PART III—NATIONAL CRITICAL MATERIALS COUNCIL

SEC. 5181. THE NATIONAL FEDERAL PROGRAM PLAN FOR ADVANCED MATERIALS RESEARCH AND DEVELOPMENT.

The National Critical Materials Council shall prepare the national Federal program plan for advanced materials research and development under section 205(a)(1)(A) of the National Critical Materials Act of 1984 (Public Law 98–373; 98 Stat. 1251) and shall submit such plan to Congress not later than 180 days after the date of the enactment of this Act. The plan shall be submitted to the Committee on Science, Space, and Technology, as well as other appropriate committees, of the House of Representatives, and to the Committee on Governmental Affairs, as well as other appropriate committees, of the Senate.

SEC. 5182. PERSONNEL MATTERS.

(a) REQUIREMENT TO INCREASE STAFF.—Not later than 30 days after the date of the enactment of this Act, the Executive Director of the National Critical Materials Council shall increase the number of employees of the Council by the equivalent of 5 full-time employees over the number of employees of the Council on the date of the enactment of this Act.

(b) QUALIFICATIONS OF STAFF.—Not less than the equivalent of 4 full-time employees appointed pursuant to subsection (a) shall be permanent professional employees who have expertise in technical fields that are relevant to the responsibilities of the National Critical Materials Council, such as materials science and engineering, environmental matters, minerals and natural resources, ceramic or composite engineering, metallurgy, and geology.

SEC. 5183. AUTHORITY TO ACCEPT SERVICES AND PERSONNEL FROM OTHER FEDERAL AGENCIES.

Section 210(4) of the National Critical Materials Act of 1984 (Public Law 98–373; 98 Stat. 1254) is amended by striking out "reimbursable" and inserting in lieu thereof "nonreimbursable".

SEC. 5184. AUTHORIZATION OF APPROPRIATIONS.

Section 211 of the National Critical Materials Act of 1984 (Public Law 98–373; 98 Stat. 1254) is amended by striking out "1990" and inserting in lieu thereof "1992".

Subtitle C—Competitiveness Policy Council Act

SEC. 5201. SHORT TITLE.

This subtitle may be cited as the "Competitiveness Policy Council Act".

SEC. 5202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) efforts to reverse the decline of United States industry has been hindered by—

(A) a serious erosion in the institutions and policies which foster United States competitiveness including a lack of high quality domestic and international economic and scientific data needed to—

(i) reveal sectoral strengths and weaknesses;

(ii) identify potential new markets and future technological and economic trends; and

(iii) provide necessary information regarding the competitive strategies of foreign competitors;

(B) the lack of a coherent and consistent government competitiveness policy, including policies with respect to—

(i) international trade, finance, and investment,

(ii) research, science, and technology,

(iii) education, labor retraining, and adjustment,

(iv) macroeconomic and budgetary issues,

(v) antitrust and regulation, and

(vi) government procurement;

(2) the United States economy benefits when business, labor, government, academia, and public interest groups work together cooperatively;

(3) the decline of United States economic competitiveness endangers the ability of the United States to maintain the defense industrial base which is necessary to the national security of the United States;

(4) the world is moving rapidly toward the creation of an integrated and interdependent economy, a world economy in which the policies of one nation have a major impact on other nations;

(5) integrated solutions to such issues as trade and investment research, science, and technology, education, and labor retraining and adjustments help the United States compete more effectively in the world economy;

(6) government, business, labor, academia, and public interest groups shall cooperate to develop and coordinate long-range strategies to help assure the international competitiveness of the United States economy.

(b) PURPOSE.—It is the purpose of this subtitle—

(1) to develop recommendations for long-range strategies for promoting the international competitiveness of the United States industries; and

(2) to establish the Competitiveness Policy Council which shall—

(A) analyze information regarding the competitiveness of United States industries and business and trade policy;

(B) create an institutional forum where national leaders with experience and background in business, labor, government, academia, and public interest activities shall—

(i) identify economic problems inhibiting the competitiveness of United States agriculture, business, and industry;

(ii) develop long-term strategies to address such problem; and

(C) make recommendations on issues crucial to the development of coordinated competitiveness strategies;

(D) publish analysis in the form of periodic reports and recommendations concerning the United States business and trade policy.

SEC. 5203. COUNCIL ESTABLISHED.

There is established the Competitiveness Policy Council (hereafter in this subtitle referred to as the "Council"), an advisory committee under the provisions of the Federal Advisory Committee Act (5 U.S.C App.).

SEC. 5204. DUTIES OF THE COUNCIL.

The Council shall—

(1) develop recommendations for national strategies and on specific policies intended to enhance the productivity and international competitiveness of United States industries;

(2) provide comments, when appropriate, and through any existing comment procedure, on—

(A) private sector requests for governmental assistance or relief, specifically as to whether the applicant is likely, by receiving the assistance or relief, to become internationally competitive; and

(B) what actions should be taken by the applicant as a condition of such assistance or relief to ensure that the applicant is likely to become internationally competitive;

(3) analyze information concerning current and future United States economic competitiveness useful to decision making in government and industry;

(4) create a forum where national leaders with experience and background in business, labor, academia, public interest activities, and government shall identify and develop recommendations to address problems affecting the economic competitiveness of the United States;

(5) evaluate Federal policies, regulations, and unclassified international agreement on trade, science, and technology to which the United States is a party with respect to the impact on United States competitiveness;

(6) provide policy recommendations to the Congress, the President, and the Federal departments and agencies regarding specific issues concerning competitiveness strategies;

(7) monitor the changing nature of research, science, and technology in the United States and the changing nature of the United States economy and its capacity—

(A) to provide marketable, high quality goods and services in domestic and international markets; and

(B) to respond to international competition;

(8) identify—

(A) Federal and private sector resources devoted to increased competitiveness; and

(B) State and local government programs devised to enhance competitiveness, including joint ventures between universities and corporations;

(9) establish, when appropriate, subcouncils of public and private leaders to develop recommendations on long-term strategies for sectors of the economy and for specific competitiveness issues;

(10) review policy recommendations developed by the subcouncils and transmit such recommendations to the Federal agencies responsible for the implementation of such recommendations;

(11) prepare, publish, and distribute reports containing the recommendations of the Council; and

(12) publish their analysis and recommendations in the form of an annual report to the President and the Congress which also comments on the overall competitiveness of the American economy.

SEC. 5205. MEMBERSHIP.

(a) COMPOSITION AND REPRESENTATION.—

(1) The Council shall consist of 12 members, of whom—

(A) four members shall be appointed by the President, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader who has been active in public interest activities; and

(iv) one shall be a head of a Federal department or agency;

(B) four members shall be appointed by the majority leader and the minority leader of the Senate, acting jointly, of whom—

(i) one shall be a national leader with experience or background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government; and

(C) four members shall be appointed by the Speaker, the minority leader of the House of Representatives, acting jointly, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government.

(2) In addition to the head of a Federal department or agency appointed in accordance with subsection (a)(1)(A)(iv), other Federal officials may participate on an ex-officio basis as requested by the Council.

(3) All members of the Council shall be individuals who have a broad understanding of the United States economy and the United States competitive position internationally.

(4) Not more than 6 members of the Council shall be members of the same political party.

(b) INITIAL APPOINTMENTS.—The initial members of the Council shall be appointed within 30 days after January 21, 1989.

(c) VACANCIES.—

(1) A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Any member appointed to fill a vacancy on the Council occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(3) A member of the Council may serve after the expiration of the term of such member until the successor of such member has taken office.

(d) REMOVAL.—Members of the Council may be removed only for malfeasance in office.

(e) CONFLICT OF INTEREST.—

(1) A member of the Council may not serve as an agent for a foreign principal.

(2) Members of the Council shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (Public Law 95–521), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

(3) Members of the Council shall be deemed to be special Government employees, as defined in section 202 of title 18, United States Code, for purposes of sections 201, 202, 203, 205, and 208 of such title.

(f) COMPENSATION.—

(1) Each member of the Council who is not employed by the Federal Government or any State or local government—

(A) shall be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule pursuant to section 5332 of title 5, United States Code, for each day such member is engaged in duties as a member of the Council; and

(B) shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with section 5703 of such title.

(2) Each member of the Council who is employed by the Federal Government or any State or local government shall serve on the Council without additional compensation, but while engaged in duties as a member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(g) QUORUM.—

(1) IN GENERAL.—Seven members of the Council constitute a quorum, except that a lesser number may hold hearings if such action is approved by a two-thirds vote of the entire Council.

(2) INITIAL ORGANIZATION.—The Council shall not commence its duties until all the nongovernmental members have been appointed and have qualified.

(h) CHAIRPERSON.—The Council shall elect, by a two-thirds vote of the entire Council, a chairperson from among the nongovernmental members.

(i) MEETINGS.—The Council shall meet at the call of the chairperson or a majority of the members.

(j) POLICY ACTIONS.—Except as provided in subsection (g), no action establishing policy shall be taken by the Council unless approved by two-thirds of the entire membership of the Council.

(k) ALTERNATE MEMBERS.—

(1) Each member of the Council shall designate one alternate representative to attend any meeting that such member is unable to attend.

(2) In the course of attending any such meeting, an alternate representative shall be considered a member of the Council for all purposes, except for voting.

(l) EXPERTS AND CONSULTANTS.—The Council may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule.

(m) DETAILS.—Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subtitle.

SEC. 5206. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) The principal administrative officer of the Council shall be an Executive Director, who shall be appointed by the Council and who shall be paid at a rate not to exceed GS–18 of the General Schedule.

(2) The Executive Director shall serve on a full-time basis.

(b) STAFF.—(1) Within the limitations of appropriations to the Council, the Executive Director may appoint a staff for the Council in accordance with the Federal civil service and classification laws.

(2) The staff of the Council shall be deemed to be special government employees as defined in section 202 of title 18, United States Code, for purposes of title II of the Ethics in Government Act of 1978 and sections 201, 202, 203, 205, 207, and 208 of title 18, United States Code.

SEC. 5207. POWERS OF THE COUNCIL.

(a) HEARINGS.—The Council may, for the purpose of carrying out the provisions of this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate. The Council may administer oaths or affirmations to witnesses appearing before the Council.

(b) INFORMATION.—

(1)(A) Except as provided in subparagraph (B), the Council may secure directly from any Federal agency information necessary to enable the Council to carry out the provisions of this subtitle. Upon request of the chairman of the Council, the head of such agency shall promptly furnish such information to the Council.

(B) Subparagraph (A) does not apply to matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) In any case in which the Council receives any information from a Federal agency, the Council shall not disclose such information to the public unless such agency is authorized to disclose such information pursuant to Federal law.

(d) CONSULTATION WITH THE PRESIDENT AND THE CONGRESS.—No later than 60 days after the initial members are appointed to the Council, the Council shall submit a report to the President, the Senate Governmental Affairs Committee, and the appropriate committees of the House of Representatives and of the Senate, that proposes the type and scope of activities the Council shall undertake, including the extent to which the Council will coordinate activities with other advisory committees relating to trade and competitiveness in order to maximize the effectiveness of the Council.

(e) GIFTS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(f) USE OF THE MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(g) ADMINISTRATIVE AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative and support services as the Council may request.

(h) SUBCOUNCILS.—

(1) The Council may establish, for such period of time as the Council determines appropriate, subcouncils of public and private leaders to analyze specific competitive issues.

(2) Any such subcouncil shall include representatives of business, labor, government, and other individuals or representatives of groups whose participation is considered by the Council to be important to developing a full understanding of the subject with which the subcouncil is concerned.

(3) Any such subcouncil shall include a representative of the Federal Government.

(4) Any such subcouncil shall assess the actual or potential competitiveness problems facing the industry or the specific policy issues with which the subcouncil is concerned and shall formulate specific recommendations for responses by business, government, and labor—

(A) to encourage adjustment and modernization of the industry involved;

(B) to monitor and facilitate industry responsiveness to opportunities identified under section 5208(b)(1)(B);

(C) to encourage the ability of the industry involved to compete in markets identified under section 5208(b)(1)(C); or

(D) to alleviate the problems in a specific policy area facing more than one industry.

(5) Any discussion held by any subcouncil shall not be considered to violate any Federal or State antitrust law.

(6) Any discussion held by any subcouncil shall not be subject to the provisions of the Federal Advisory Committee Act, except that a Federal representative shall attend all subcouncil meetings.

(7) Any subcouncil shall terminate 30 days after making recommendations, unless the Council specifically requests that the subcouncil continue in operation.

(i) APPLICABILITY OF ADVISORY COMMITTEE ACT.—The provisions of subsections (e) and (f) of section 10, of the Federal Advisory Committee Act shall not apply to the Council.

SEC. 5208. ANNUAL REPORT.

(a) SUBMISSION OF REPORT.—The Council shall annually prepare and submit to the President, the Senate Governmental Affairs Committee, and the appropriate Committees of the House of Representatives and the Senate a report setting forth—

(1) the goals to achieve a more competitive United States economy;

(2) the policies needed to meet such goals;

(3) a summary of existing policies of the Federal Government or State and local governments significantly affecting the competitiveness of the United States economy; and

(4) a summary of significant economic and technological developments, in the United States and abroad, affecting the competitive position of United States industries.

(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall—

(1) identify and describe actual or foreseeable developments, in the United States and abroad, which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry;

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets, or to expand the position of such industries in established markets; or

(C) create a significant risk that United States industries shall be unable to compete successfully in significant markets;

(2) specify the industry sectors affected by the developments described in the report under paragraph (1); and

(3) contain a statement of the findings and recommendations of the Council during the previous fiscal year, including any recommendations of the Council for (a) such legislative or administrative actions as the Council considers appropriate, and (B) including the elimination, consolidation, reorganization of government agencies especially such agencies that specifically deal with research, science, technology, and international trade.

(c) REPORT BY CONGRESSIONAL COMMITTEES.—The Council shall consult with each committee to which a report is submitted under this section and after such consultation, each such committee shall submit to its respective House a report setting forth the views and recommendations of such committee with respect to the report of the Council.

SEC. 5209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of the fiscal years 1989 and 1990 such sums as may be necessary not to exceed $5,000,000 to carry out the provisions of this subtitle.

SEC. 5210. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Council" means the Competitiveness Policy Council established under section 5203;

(2) the term "member" means a member of the Competitiveness Policy Council;

(3) the term "United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States; and

(4) the term "agent of a foreign principal" is defined as such term is defined under subsection (d) of the first section of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611) subject to the provisions of section 3 of such Act (22 U.S.C. 613).

Subtitle D—Federal Budget Competitiveness Impact Statement

SEC. 5301. PRESIDENT'S ANNUAL BUDGET SUBMISSION.

Subsection (a) of section 1105 of title 31, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(26) an analysis, prepared by the Office of Management and Budget after consultation with the chairman of the Council of Economic Advisers, of the budget's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year for which the budget is submitted—

"(A) the amount of borrowing by the Government in private credit markets;

"(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

"(C) net private domestic investment;

"(D) the merchandise trade and current accounts;

"(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

"(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.".

SEC. 5302. ANNUAL CONCURRENT RESOLUTION ON THE BUDGET.

Subsection (e) of section 301 of the Congressional Budget Act of 1974 (2 U.S.C. 632(e)) is amended by "and" at the end of paragraph (8), by striking out the period and by inserting "; and" at the end of paragraph (9), and by inserting at the end thereof the following new paragraph:

"(10) an analysis, prepared after consultation with the Director of the Congressional Budget Office, of the concurrent resolution's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year covered by the concurrent resolution—

"(A) the amount of borrowing by the Government in private credit markets;

"(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

"(C) net private domestic investment;

"(D) the merchandise trade and current accounts;

"(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

"(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.".

SEC. 5303. EFFECTIVE DATE.

The amendment made by section 5301 shall be effective for fiscal years 1989, 1990, 1991, and 1992, and shall be fully reflected in the budgets submitted by the President as required by section 1105(a) of title 31, United States Code, for each such fiscal year, and the amendment made by section 5302 shall be effective for fiscal years 1989, 1990, 1991, and 1992.

Subtitle E—Trade Data and Studies

PART I—NATIONAL TRADE DATA BANK

SEC. 5401. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Committee" means the Interagency Trade Data Advisory Committee;

(2) the term "Data Bank" means the National Trade Data Bank;

(3) the term "Executive agency" has the same meaning as in section 105 of title 5, United States Code;

(4) the term "export promotion data system" means the data system known as the Commercial Information Management System which is maintained and operated by the United States