SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Amdt. 38]

Size Determination Procedures

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The amendments set forth clarifying and procedural provisions applicable to SBA determinations of the maximum size a business can be and be eligible for SBA programs. The amendments are largely of an interpretive and technical nature reflecting existing SBA precedents and policies. The amendments also help implement size determination procedures relating to subcontracting assistance established by Pub. L. 95-507 and assistance to small business concerns pursuant to Section 8(a) of the Small Business Act.

These amendments (which refer to the present format of the size regulation), primarily relate to procedures for size protests and appeals in contrast to other recent proposed amendments to Part 121 (March 10, 1980; 45 FR 15442) which primarily involve basic changes in the size standards and in the economic theory of such standards. These amendments were published in proposed form in the Federal Register of April 22, 1980 [45 FR 26974]. For the most part, they are being adopted as proposed with some minor clarifications.

EFFECTIVE DATE: January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Stephen A. Klein, Office of General Law (202) 653-6762.

SUPPLEMENTARY INFORMATION: Particular areas covered in the proposed amendments include:

1. Joint venture definition and subcontracting affiliations.
2. Annual receipts applicable period regarding new concerns and affiliates.
3. Recertifications.
4. Size determinations to assist other agencies.
5. Multiple Award Schedule set asides.
6. Time as of which size status is determined for set aside procurements.
7. Time as of which size status is determined for Government property sale or lease purposes.
8. Subcontracting size determinations.
9. Formal size determinations on concerns for 8(a) assistance purposes.

Response to Comments

Comments were received from the National Aeronautics and Space Administration and from certain timber concerns. The NASA comments state that, to simplify size determinations and provide more certainty, the date of written self-certification of size eligibility by a bidder or offeror on Government procurements should be used in all cases as the determinative point in time regardless of when award is made. Conversely, the timber firm comments contend that it also is necessary to consider size status at time of award on Government set aside timber sales to prevent acquisition of a small bidder by a large firm between the time of bid and the time of award. (The SBA Size Regulations (121.3-2(a)(iv)) already treat merger agreements and options to acquire current control as constituting present power to control. Accordingly, evidence of any such arrangements at the time of bid and self-certification can be considered in an SBA size determination. The effect of these existing provisions would be significant in restraining the acquisitions envisaged by the timber firm comments.) The Regulation adopts the NASA recommendation and provides that for procurement and property sales purposes size is determined as of the date of written self-certification as part of a bid or offer.

A comment was received opposing the provision regarding timeliness of protests on multiple award schedule small business set asides. The comment contended it would result in repeated SBA size determinations on a concern over the life of a contract. The comment confuses the procedural question of timeliness of protest with the substantive question of the time as of when size eligibility is determined. Once a firm was determined by SBA to be small, the determination would be effective as to that award throughout the period under the contract.

Explanation of Amendments

These amendments relate to procedural, organizational and administrative matters in connection with SBA determinations on the small business size status of concerns under the various SBA size standards. They are largely of a clarifying and technical nature in areas where SBA experience on particular size determination cases indicates the desirability of general guidelines or modifications in existing rules. To a major extent these amendments reflect existing SBA policies or interpretations. A number of the amendments relate to size determinations in the Government procurement area.

SBA size determinations are made at the SBA field office in the region where the firm is located. Appeals of formal size determinations under Part 121 may be taken to the Size Appeals Board. The

SBA size standards are generally in terms of a number of employees or average annual receipts and include all concerns under common ownership or control in determining whether a company is within the particular size standard applicable to the size determination. Procurement size standards utilized may vary depending on the industry category which is the principal nature of a particular procurement for which the size determination is being made. Financial assistance size standards vary in terms of the primary industry of the concern and its affiliates.

The joint venture affiliate amendment indicates that, for SBA size determination purposes, joint ventures are temporary in nature (e.g., a single project) and may be in corporate or other legal form. Also, it is indicated that certain subcontracting relationships may give rise to a joint venture.

With respect to the annual receipts amendment, it should be noted that it indicates certain interpretive language which had been omitted from the Code of Federal Regulations. The matter covers inclusion of affiliate receipts and computation of average receipts of new concerns.

A provision is added noting that recertification is not required if an SBA adverse size determination is based solely on an ineligibility restricted to a particular procurement or sale. Also, it is noted that recertifications are generally appealable at that time to the Size Appeals Board only by the concern in question (i.e., in the case of an adverse size determination on an application for recertification).

The amendment on SBA size determinations to assist other agencies could have application to possible debarment proceedings by such other agencies when small business size status is an issue, and to small business size status under Government regulatory or assistance programs. It generally would apply if an agency utilizes the SBA size standards and requests an SBA size determination on the status of a particular concern. Agencies might refer to such SBA size standards in their regulations or written eligibility guidelines.

As respects size determinations on multiple award schedule small business set asides, the identity of offerors may not be disclosed until after award and the normal procedures on timeliness of protests would generally not be appropriate. Therefore, the amendment provides that a protest may be made at any time prior to the expiration of the contract period.

The amendment dealing with the time of size eligibility for procurement and property sales purposes is a codification of the present interpretation of the current regulations by the Size Appeals Board. It generally provides that size eligibility for award of a contract is determined as of bid/offer submission. This interpretation, adopted by the Board in a recent case, revised the Board's previous views in this area. Since this principle is currently being applied by the Board, it is preferable that this issue should be codified in the regulations.

The previous case law interpretation often determined size eligibility as of both the time of bid opening and the time of the Board's decision in cases where award had not yet been made. In such instances, size certifications by bidders and offerors could only be projections of intent. The present case law interpretation by the Board that the certification relates to the time it is made is codified in this final rule. Bidders/offerors will be able to accurately make this critical contractual certification and to make appropriate judgments in the operations of their business. The rule will assist SBA by facilitating a more equitable and expeditious handling of size protests and appeals.

The amendment for subcontracting size determinations is in response to the recommendation in the Conference Report on Pub. L. 95-507 (House of Representatives Report No. 95-1714) that SBA establish a procedure to review the eligibility of small subcontractors which have made written representations on their small business size status, when such written representations are challenged on those procurements which are required to have small business subcontracting plans. These size determinations relate to subcontracting under Section 8(d) of the Small Business Act (see Part 125 of the SBA Regulations, 13 CFR Part 125; see also Policy directive of the Office of Federal Procurement Policy, 45 FR 31028, May 9, 1980). Either the contracting officer or other affected party, including the concern making the written representation when its representation is rejected, can institute a size determination by SBA. When the subcontracting protest challenges the small business size of the concern, the SBA size determinations would be made under Part 121; if the protest challenges the firm as not owned and controlled by socially and economically disadvantaged individuals, the SBA determination regarding such status would be made under procedures to be adopted pursuant to Part 124 of the SBA Regulations.

The amendment relating to size determinations for the SBA 8(a) program indicates that Part 121 size procedures may be utilized when appropriate to assist the existing SBA 8(a) program eligibility determination procedures. The 8(a) regulations issued pursuant to Pub. L. 95-507 are set forth in Part 124 of the SBA Regulations (13 CFR Part 124). Also, special size treatment for divestiture agreements re 8(a) firms is deleted from the Size Regulation as no longer to be applicable under Pub. L. 95-507.

It is noted that Pub. L. 96-481, enacted October 21, 1980, prohibits SBA from rulemaking with respect to size standards until March 31, 1981. This prohibition relates to the general revision of its size standards which SBA proposed on March 10, 1980 (45 FR 15442). The legislative history (e.g., Senate Report No. 96-974, pp. 27-28; Congressional Record, September 26, 1980, p. S13691) indicates that the prohibition applies to the final promulgation of revised size standards and is designed to give the Congress and the SBA more time to study and review the size standards. Since the amendments herein are not size standards and set forth SBA procedures in size determinations on individual business concerns, it is SBA's view that the above-mentioned prohibition is not applicable to this rulemaking.

Dated: December 24, 1980.

William H. Mauk, Jr.,

Acting Administrator.

Therefore, pursuant to the authority of Section 5(b)(6) of the Small Business Act (15 U.S.C. 634), the Small Business Administration amends Part 121 of its Regulations (13 CFR Part 121) as follows:

§ 121.3-2 [Amended]

1. Section 121.3-2(a)(vii) (Control through contractual relationships) is amended by revising subparagraphs (A) and (C) to read as follows:

(a) * * *

(vii) Control through contractual relationships. (A) Definition of a joint venture for size determination purposes: A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business

generally. A joint venture is viewed as a business entity in determining power to control its management.

* * * * *

(C) Joint venture—procurement and property sale assistance. Concerns bidding on a particular procurement or property sale as joint venturers are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation as between the parties.

* * * * *

2. Section 121.3–2(b) (Definition of annual receipts) is amended by adding the following at the end thereof:

* * * * *

(b) * * * If a concern has been in business less than a year, its annual receipts for the purpose of a size standard based on 1 year's receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such a concern had been an affiliate during a portion of the applicable accounting period.

* * * * *

§ 121.3–4 [Amended]

3. Section 121.3–4(d) (regarding recertifications) is amended by adding the following new paragraphs at the end thereof:

* * * * *

(d) * * *

(1) Recertification shall not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based solely on an ineligible nonmanufacturer size determination on a particular Government procurement.

(2) If SBA makes a size determination denying an application for recertification, such adverse size determination may be appealed to the Size Appeals Board. Recertifications have future effect only and, except as to timber sales size determinations, are not appealable to the Board by other than the concern in question (however, the concern's later self-certification on subsequent set-aside procurements or property sales may be protested in the usual manner).

4. Section 121.3–4 (regarding size determinations) is amended by adding the following new paragraph (e) at the end thereof:

* * * * *

(e) Size determinations for compliance purposes. Upon request by other Government agencies, SBA size determinations under Part 121 may be made to assist in the enforcement or administration of regulations or contracts, as well as in connection with award of contracts or granting of assistance. SBA size determinations are findings on the size status of a concern (including its affiliates) as of a definite time and regarding a specific applicable SBA size standard, and do not rule on compliance, contractual or administrative matters which are handled by the other agencies.

§ 121.3–5 [Amended]

5. Section 121.3–5 (regarding protests) is amended by adding the following new paragraph (e) at the end thereof:

* * * * *

(e) Multiple Award Schedules. Protests will be deemed timely if received by SBA at any time prior to the expiration of the contract period (including renewals) on a multiple award schedule procurement set aside for small business.

§ 121.3–8 [Amended]

6. Section 121.3–8 (definition of small business for Government procurement) is amended by adding the following new sentence as the second sentence thereof:

* * * The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer.* * *

§ 121.3–9 [Amended]

7. Section 121.3–9 (definition of small business for sale or lease of Government property) is amended by adding the following new sentence as the second sentence thereof:

* * * The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer.* * *

§ 121.3–12 [Amended]

8. Section 121.3–12 (definition of small business Government subcontractors) is amended by adding a new paragraph (c) as follows:

* * * * *

(c) The contracting officer or other affected party in connection with small business subcontracting requirements, pursuant to section 8(d) of the Small Business Act, may protest a written representation of small business status, or the refusal to accept such written representation, of a concern offering as a subcontractor on a particular procurement. The protest and related information shall be referred to the SBA Regional Office in which the concern has its principal office and a size determination shall be made under this Part 121.

§ 121.3–2 [Amended]

9. (a) Sec. 121.3–2(a) is amended by deleting the third and fourth sentences thereof.

(b) A new § 121.3–17 is added to Part 121 of the SBA Regulations to read as follows:

§ 121.3–17 Formal size determinations on concerns for 8(a) assistance.

(a) As set forth in subsection (b) hereof, SBA may make formal size determinations under this Part 121 to assist in eligibility findings of concerns under Part 124 (8(a) assistance). Eligibility for 8(a) assistance is determined by the SBA Associate Administrator for Minority Small Business and Capital Ownership Development. Such eligibility is determined with reference to the 8(a) program in general and not with reference to award of particular 8(a) procurements. The size standards of Part 121 are utilized as related to the primary industry classification of the 8(a) concern.

(b) The Associate Administrator for Minority Small Business and Capital Ownership Development (AAMSB–COD) or a Regional Administrator may refer a case of 8(a) size eligibility to the regional office where the concern is located for a size determination under Part 121 (which is appealable by either party to the Size Appeals Board). Size determinations under Part 121 on initial

entry into the 8(a) program or on program completion or termination are advisory to the ASMSB–COD; and/or to the Administrative Law Judge in 8(a) proceedings under Part 124.

[FR Doc. 81–1035 Filed 1–9–81 8:45 am]
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or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions.

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

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

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

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

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

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

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

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

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

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

(8) by amending clause (B)-(D) of section 202(c)(7) to read as follows: "(B) a requirement that the contractor share royalties with the inventor; "(C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses; (including payments to inventors) incidental to the administration of subject inventions", be utilized for the support of scientific research; or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year, up to an amount equal to five 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 five percent of the annual budget of the facility, that 75 percent of such excess shall be payed to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D) and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility."

(9) By adding "(1.) before the word "With" in the first line of section 203, and by adding at the end of section 203 the following: "(2) A determination pursuant to this section or section 202(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. s. 601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the "appeal on the record and to affirm, reverse, remand or modify, ", as appropriate, the determination of the Federal agency. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.";

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

"§ 206. Uniform clauses and regulations

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

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

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

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

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

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

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

(13) By deleting from the first sentence of section 210(c), "August 23, 1971 (36 Fed. Reg. 16887)" and inserting in lieu there of "February 18, 1983", and by inserting the following before the period at the end of the first sentence of section 210(c) "except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title."

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

"Sec. 212. Disposition of rights in educational awards

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

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

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

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] is recognized for 1 hour.

□ 1310

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

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

Mr. KASTENMEIER. Mr. Speaker, let me state at the outset that I will yield for purposes of debate only.

Mr. Speaker, I rise in not only strong support of H.R. 6163, as amended by the Senate, but in urgent support of it.

H.R. 6163 is entitled a bill to amend title 28, United States Code, "with respect to the places where court shall be held in certain judicial districts." Looking at the length and complexity of the Senate amendment, however, the amended bill bears little resemblance to the bill that we passed unanimously under suspension of the rules of September 24, 1984. A clear and concise four-page bill has become a 65-page bill with five titles.

What has the Senate wrought? Is it trying to jam down the House's throat a long list of special interest projects? Is the Senate sending us the residue of certain ill-fated legislative projects? Or has the Senate simply used its finite time in the waning days of the 98th Congress to refashion into an omnibus package a number of House-passed initiatives that have broad-based support in the House and Senate or have become high priorities with the administration?

In all candor, there may have been a little bargaining in the other body; it nonetheless is my contention that the Senate has sent us a responsible package: a package that we should pass. In my capacity as chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, I feel qualified to make this statement. An examinaition of the Senate amendment shows that every section in it falls within my subcommittee's jurisdiction, either in the court reform area or as relates to copyright, patents and trademarks. I and my staff have reviewed the bill in its entirety. As to substance, the amendment's provisions satisfy the high standards necessary for enactment of a public law. There are no special interest provisions, no private patent or trademark bills, no water projects. There is not a single section in the bill that has not received the attention of my subcommittee.

The Federal budgetary implications for the package are minimal. It is estimated that the increased tax revenues, both corporate and employee, resulting from title III of the bill (semiconductor chip protection), standing alone, will more than offset the cost impact of title II (State Justice Institute).

With two exceptions, the Senate amendment to H.R. 6163 is a collection of bills passed unanimously by the House either under suspension of the rules or by consent. The two exceptions were both reported by House Committees: One of these—the State Justice bill—was given a strong majority vote on the House floor but failed on suspension. The other was reported by voice vote by the House Science and Technology Committee.

I should state at the outset that the package was not my idea. I did confer with several Senators, however, and made it abundantly clear that certain items—that previously had received no treatment or had substantial opposition in the House—should not be added to the bill. In addition, I worked very closly with my counterpart Senate subcommittee chairman, the senior Senator from Maryland [CHARLES MCC. MATHIAS, JR.] to reach agreement of the semiconductor chip and trademark improvement bills. I would like to single him out for his efforts.

I would also like to thank Senators THURMOND, DOLE, HATCH, LEAHY, and METZENBAUM for their cooperation and assistance. Senate staff is also recognized for its efforts. I additionally would like to express appreciation to the members of my subcommittee. [Mr. BROOKS, Mr. MAZZOLI, Mr. SYNAR, Mrs. SCHROEDER, Mr. GLICKMAN, Mr. FRANK, Mr. MORRISON of Connecticut, Mr. BERMAN, Mr. MOORHEAD, Mr. HYDE, Mr. DEWINE, Mr. KINDNESS, and Mr. SAWYER] for their unwavering support on this package. I have to admit that being chairman of a 14-member subcommittee is a bit of a burden. However, having 13 highly qualified and experienced lawyers as members certainly provides me the necessary ingredients for a great team effort.

Now, Mr. Speaker, I would like to inform the Members about the Senate amendment in some detail. Under my discussion of each title, I will highlight previous House action on the proposed legislation. At the end of my remarks, I will submit into the record further analysis of several changes to House bills made by the Senate amendment in order to supplement the legislative history. This latter analysis will primarily focus on the semiconductor chip legislation, the most important provision in the package, but may touch briefly on other elements in the package.

TITLE I: TRADEMARK IMPROVEMENTS

Title I of the Senate amendment clarifies the circumstances under which a trademark may be canceled or considered abandoned. Originally presented to the House as H.R. 6285, this title passed on October 1, 1984, unanimously by voice vote.

Title I of this bill includes provisions which clarify the circumstances under which a trademark can be found to have become generic. The language in the bill before us is derived from the version reported by the Senate Judiciary Committee in S. 1990, with an amendment. The House passed a bill with the identical purpose on October 1, 1984, as H.R. 6285. The substance of the two bills is identical. The only difference between the two bills related to the effective date section. The measure before us includes an effective date section which uses the language not found in the House-passed bill. The informal negotiations on this measure produced both the effective date amendment and the following statement of explanation.

This act does not overrule the Anti-Monopoly decision as to the parties in that case. *Anti-Monopoly, Inc.* v. *General Mills Fun Group, Inc.*, 684 F.2d 1316 (9th Cir. 1982), cert. denied, 103 S.Ct. 1234 (1983). The bill merely overturns certain elements in the reasoning in that case. In addition, this act also does not say whether or not monopoly is a valid trademark. This Congress is not in a position to make a decision on the validity of that mark.

Section 104 does not forbid the reopening of judgments on grounds other than the passage of this legislation, such as on the basis of newly discovered evidence. It does, however, clearly forbid the reopening of any judgment entered prior to the date of enactment of this act based on the provisions of this legislation.

By virtue of this act, Congress does not intend to alter accepted principles of collateral estoppel and res judicata. These are judicial doctrines of continuing validity, and should be applied by the courts in accordance with all appropriate equitable considerations.

In section 104, the phrase "final judgment" is used in the same sense as "judgment" is used in the Federal Rules of Civil and Appellate Procedure to include a decree and any order from which an appeal lies. (See rule 54, Fed. R. Civ.P.)

Any student interested in the legislative history of section 104 will note that my explanatory language is virtually identical to that presented on the Senate floor by my counterpart subcommittee chair Senator CHARLES MCC. MATHIAS, JR. Our joint language, in the absence of a conference report, represents the official legislative history of section 104.

In construing the meaning of this provision the courts should, of course, be guided by the plain language of the statute. To the extent that there is any ambiguity, the courts will primarily look to the floor statements of the bill's sponsors. Any other remarks by other members should be viewed with suspicion. See *Turpin* v. *Burgess*, 117 U.S. 504, 505-506 (1886); *National Small Shipments Conference* v. *Civil Aeronautics Board*, 618 F.2d 819, 828 (D.C. Cir. 1980).

I insert in the RECORD a letter to me from Senator MATHIAS that clarifies our understanding:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 9, 1984.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN KASTENMEIER: I am writing in my capacity as Chairman of the Senate Subcommittee on Patents, Copyrights, and Trademarks, to clarify the legislative intent of the Trademark Clarification Act of 1984, which passed the Senate on October 3, 1984 as Title I of H.R. 6163. As you know, this bill is a compromise between S. 1990, a bill reported out of the Subcommittee on Patents, Copyrights, and Trademarks, and H.R. 6285, a bill reported out of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

I want to confirm at this time our mutual understanding about section 4 of this Act, which is adapted from section 4 of H.R. 6285. As you know, it is possible that there might be future litigation about trademarks whose validity has previously been adjudicated under the test of the *Anti-Monopoly* case. Should such litigation arise, the courts should apply accepted principles of *res judicata* and collateral estoppel. These are complex, multi-factor doctrines developed by the courts, and there is a large body of decisions applying these doctrines. The citation of any particular court decisions in any of the legislative history of this measure should not be construed as an indication

that such cases are to be given any greater weight than other cases applying these complex doctrines.

With best wishes,

Sincerely,

CHARLES McC. MATHIAS, Jr.,
U.S. Senator.

TITLE II: STATE JUSTICE INSTITUTE

Title II of the Senate amendment is designed to aid State and local governments in strengthening their judicial systems and improving the fight against crime through the creation of a State Justice Institute. This title was brought to the House in the form of H.R. 4145 on May 22, 1984. It had over 40 cosponsors from both sides of the aisle. Although H.R. 4145 received a strong majority vote of 243 to 176, it failed to achieve the necessary two-thirds for passage on the suspension calendar. Parenthetically, I should note that the Senate amendment changed the funding of the Institute from $20,000,000 (fiscal year 1985), $25,000,000 (fiscal year 1986), and $25,000,000 (fiscal year 1987) to $13,000,000 (fiscal 1986), $15,000,000 (fiscal 1987), and $15,000,000 (fiscal 1988). This reduction represents a total saving to the Federal Government of $28,000,000. In addition, the Senate amendment increases the State matching grant requirement from 25 to 50 percent. Last, the amendment gives the Attorney General of the United States responsibility to report to Congress on whether the Institute is being cost effective, is meeting its statutory purposes, and is respecting the limitations and restrictions placed on it by the Congress. Thus, from an opponent's perspective, the bill before us today is a better bill than we voted on several months ago.

In all other respects, the Senate passed bill is the same as H.R. 4145.

Mr. Speaker, since we last considered the issue of a State Justice Institute, one issue has arisen that I want to clarify for the legislative history. Fear has been expressed that the statutory provision relating to "grants and contracts" may be construed to exclude, on a noncompetitive basis, entities other than those listed in section 206(b)(1) of the Senate amendment to H.R. 6163.

I would like to emphasize that what is contemplated is that research and experimentation will be conducted by a diversity of institutions. The proposed institute is specifically designed to be administered in keeping with the doctrines of federalism and separation of powers. This means that the State Chief Justices and the State courts themselves will play a key role in determining the nature and recipient of the institute's funds. Further, the institute is designed to be a small developmental and coordinating agency rather than a large operating agency with a centralized bureaucracy. This is to ensure that different kinds of research could be carried out by those institutions best equipped to do research, without wasteful duplication of facilities. The same holds true for judicial education.

In order to achieve the legislation's research mandate, which admittedly is only one aspect of the instutute's overall charge, it will be necessary to call upon the strengths of our academic centers as well as the research operations of our judicial institutions.

I, therefore, contemplate a mix of research by institutions connected to the judiciary and by independent academic centers with a proven capacity for high quality research of this Nation's justice system. I also envision the possibility of major law schools working together with their State supreme court on an experiment designed to improve the judiciary of their respective State.

My own State of Wisconsin has a highly respected law school; members of the faculty has commented on and assisted in the drafting of this legislation. The University of Wisconsin Law School, through its legal assistance to inmates program and its disputes processing research program, has established itself as a center for high quality work in both the civil and criminal justice areas. Other law schools have similar fine programs. There certainly is every intention of utilizing in the public interest the resources of law schools such as my own.

In short, the priority treatment accorded State courts in section 206 of the Senate amendment will not serve to preclude law schools from engaging in any endeavor designed to improve the functioning of our State judicial systems. On the contrary, this Nation's legal institutions are encouraged to come forward and to engage in a mutually stimulating exchange between academic centers, research institutions attached to the judiciary, and State judges and court administrators.

TYPE III: SEMICONDUCTOR CHIP PROTECTION

Without question, title III of the Senate amendment is the most important section in the bill. It amends the Copyright Act to protect semiconductor chip products in such a manner as to reward creativity, encourage innovation, research, and investment in the semiconductor industry, and prevent piracy. The Senate amendment is a 95 percent recession to the measure that was brought before the House on June 11, 1984 (see H.R. 5525) and that passed by a recorded vote of 388 to 0. Title III is an opportunity to create the first new form of intellectual property since passage of the Lanham Act in the 1870's. I know that the administration places a great deal of emphasis on passage of the semiconductor chip legislation.

Before discussing the next title, I would like to pause and note the efforts of two respected colleagues from California, Mr. EDWARDS and Mr. MINETA, who as chief sponsors of the semiconductor chip legislation, have worked without fatigue over the past 6 years to achieve what we are voting on today: intellectual property protection for semiconductor chip products.

Title III of H.R. 6163 is the culmination of extensive negotiations between my subcommittee, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights. Lengthy negotiations were necessary for several reasons. First, there was a fundamental difference in the drafting of the House and Senate bills: the Senate accorded protection for chip products under copyright law and the House established a new sui generis form of protection. In addition, the truly technical characteristics of the property deserving of protection—mask works to semiconductor chip products; the chip, of course, being smaller than a thumbnail—made statutory drafting almost as difficult as understanding the property itself. Last, the House and Senate had different positions on the initial date for commercial exploitation of chip products to be set legislatively in order to qualify for protection under the act. The Senate used January 1, 1980 as the qualifying date and the House set January 1, 1984 as the date.

In any event, we have resolved these and other issues.

In addition to recognizing the efforts of Mr. EDWARDS and Mr. MINETA I again thank my Senate counterparts, the Senator from Maryland, CHARLES McC. MATHIAS, Jr., and the the Senator from Vermont, PAT LEAHY, ranking minority member, and their staffs for their hard work. I would be remiss if I did not mention the unwavering cooperation and support that I have received from my own subcommittee members and especially my ranking minority member [Mr. MOORHEAD] on title III.

The measure that I bring before the House today is good legislation. It is a better measure than the one we passed in June by a unanimous vote, and that was a well drafted bill.

The measure before us today is essentially the House-passed version. The Senate amendment contains clarifying and drafting changes which are discussed at length in an "Explanatory Memorandum of the Senate Amendment to S. 1201 (as Considered by the House of Representatives)" which I will insert in the hearing record at the end of my statement, thereby making it part of the legislative history of the act.

Mr. Speaker, this legislation is the first new intellectual property law—as opposed to recodifications—passed by Congress in nearly 100 years. The fundamental import of title III is that it recognizes industrial property as a right.

I am very pleased to report that the House prevailed on the sui generis approach, as opposed to copyright, for protection of semiconductor chip products. The approach that was incorpo-

rated in H.R. 5525, and that now has been accepted by the Senate, is that a free-standing form of protection is uniquely suited to the protection of mask works, which represent a unique form of industrial intellectual property.

This new form of industrial property should be contrasted with so-called author's copyright in literary and artistic works protected under traditional copyright principles.

Quite clearly, a mask work is not a book. The measure before us today, therefore, does not engage in the fatal flaw of treating books and mask works similarly.

By not suffering from a "fallacy of analogy"—the words of Judge Stephen Breyer—the act will do no harm to the integrity and substance of copyright law. To the contrary, it may even strengthen traditional copyright principles.

Establishment of general principles of law and consistent application of the law are matters of great import. As observed by Prof. Lyman Patterson, Emory University Law School, before my subcommittee,

> While consistency for its own sake is a virtue of small consequence, consistent principles for a body of law are essential for integrity in the interpretation and administration of that law.

The House therefore prevailed on what I considered to be the most important difference between the House and Senate bills.

I have to admit, however, that the compromise before us incorporates several changes that probably led the Senate at the outset to choose a copyright solution to the problem of chip piracy. Senators MATHIAS and LEAHY have so stated in their floor statements, and I can summarize their thoughts by observing that the compromise before us today is stronger in three regards. First, the House report and the explanatory memoranda introduced during this and Senate floor debate assuage fears of uncertainty in the law, leading possibly to years of litigation while a new body of judicial precedent is established. Without question, litigation will result; but no more or less than arises from any legislative enactment.

Second, the effective date provisions of the act have been strengthened. The Senate amendment provides that the act become effective on the date of enactment, thereby allowing and encouraging commercial exploitation of several chips that have been held off the market awaiting passage of this act. The Copyright Office will have 60 days to prepare for administration. Last, chips commercially exploited on or after July 1, 1983, will receive protection under the act, subject to a 2-year compulsory license that allows infringers to continue to sell and distribute their inventory of chip products in existence on the date of enactment if they agree to pay reasonable royalties. I am not aware of any infringing chips that presently fall within the category—July 1, 1983 to the present—covered by the act.

Third, I have agreed to clarify that the House-Senate amendment is based on an understanding that Congress does not take a position on the legality, under current law, of chip copying prior to the effective date of this act. There is some language to this effect in the House report. Whether under Federal law—including copyright law—State law, or common law, this act is not intended to affect any legal rights available to chip products commercially exploited prior to July 1, 1983.

An element in the Senate amendment that the House can take some credit for is an international transition provision. Under H.R. 5525 it was possible for foreign concerns to obtain mask work protection in the United States by transferring all rights under the proposed legislation to a U.S. national or domiciliary before the mask work is commercially exploited, or alternatively by first commercially exploiting the mask work in the United States. The Senate bill (S. 1201)—based of course on copyright—was somewhat ambiguous on what protection was to be accorded foreign chips.

The Senate amendment is a dramatic improvement over both bills. It preserves the option contained in the House bill, but also creates a transition period during which multilateral and bilateral cooperation directed toward creation an international order of chip protection is encouraged. The Secretary of Commerce is authorized to extend the right to obtain chip protection under the act to nationals of foreign countries if three conditions are met: That country is making progress in the direction of mask work protection; nationals of that country or persons controlled by them are not pirating or have not in the recent past been engaged in the piracy of semiconductor chip products or the sale of pirated chips; and the entry of an interim order would promote the purposes of the act and achieve international comity with respect to the protection of mask works.

The Secretary's authority is sunset after 3 years. Two years after the date of enactment of this act he will report, after having consulted with the Register of Copyrights, to the House and Senate Judiciary Committees.

Among the stimuli that led to creation of an international transition period was a letter that I, along with Senator MATHIAS, received from the Honorable Akio Morita, president of the Electronics Industries Association of Japan [EIAJ] and chairman and chief executive officer of the Sony Corp. Mr. Morita referred to the joint recommendations of the United States-Japan Work Group on High Technology Industries, made in November 1983:

> Both governments should recognize that some form of protection to semiconductor producers for their intellectual property is desirable to provide the necessary incentives for them to develop new semiconductor products. And both governments should take their own appropriate steps to discourage the unfair copying of semiconductor products and the manufacturing and distribution of the unfairly copied semiconductor products.

Mr. Morita further observed that passage of legislation is "* * * highly desirable, both of itself and as an indication of the proper direction for the international protection of such intellectual property." He concluded by stating that EIAJ will ask the Government of Japan to provide a form of semiconductor protection, as expeditiously as possible, through a legislative framework.

Other countries have also expressed interest in the legislation before us today.

So, in the spirit of international comity and mutual respect among nations, the Senate amendment allows foreign countries with domiciliaries that produce semiconductor chips to benefit from the protection of our laws during a 3-year window and only if they respect the rights of American chip companies.

I am excited about this innovative provision of law; I hope it works, because it may serve as a useful precedent in other areas of law; and I look forward to working with the Secretary of Commerce, and the Register of Copyrights, on the international aspects of the act.

The Senate receded to the House approach of not having criminal penalties in the act. It seems that every day we are creating a new panel statute of some sort with little thought given to investigative and evidentiary problems, to the burdens on judges and juries, and to the goals of and pressures on the correctional system. I am pleased to state that we have not so erred in this act. I am confident that the strong civil penalty section in the act will serve as adequate deterrence to theft of industrial property.

With these thoughts in mind, I commend title III of the Senate amendment to H.R. 6163 to the House of Representatives.

TITLE IV: FEDERAL COURTS IMPROVEMENTS

Title IV of the Senate amendment is composed of three subtitles, each improves the functioning of the Federal judicial branch of Government. Title IV is supported by the administration and the Judicial Conference.

SUBTITLE A: CIVIL PRIORITIES

Subtitle A permits the courts of the United States to establish the order of hearing for certain civil matters. It attains this objective by repealing the 80 or so calendar priorities and by creating a general rule that expedited treatment can be obtained for good cause shown or cases involving temporary or preliminary injunctions. A virtually identical measure passed the House unanimously by voice vote on September 11, 1984, as H.R. 5645.

Title IV (subtitle A) of the bill, relating to civil priorities, was amended by the Senate to strike out the repeal of certain expediting provisions relating to civil rights cases. In my view this change was unnecessary. In all cases involving applications for temporary or preliminary injunctions, such cases would receive a priority status anyway under the provisions of proposed section 1657 of title 28, United States Code. Moreover, any other civil rights cases involving money damages alone can, in appropriate cases, be granted expedited treatment under the good cause provisions.

It should also be noted that the amendment adopted by the Senate and before us today technically does not accomplish its alleged purpose. Proposed section 1657 provides that notwithstanding any other provision of law there are no civil priorities except the general rules set forth in section 1657 of title 28.

SUBTITLE B: PLACES OF HOLDING COURT

Subtitle B amends the judicial code to create four new places of holding court, to realign the boundaries of divisions in three judicial districts, and to change the place of holding court in one judicial district. This subtitle passed the House unanimously by voice vote on September 24, 1984 (see H.R. 6163).

The Senate amendment in this regard is identical to H.R. 6163.

For pertinent legislative history, see House Report 98-1062 and the House debate that occurs at 129 CONGRESSIONAL RECORD (daily edition September 24, 1984).

SUBTITLE C: TECHNICAL AMENDMENTS TO PUBLIC LAW 97-164

Subtitle C makes technical amendments with respect to the Federal Courts Improvement Act of 1982 (see Public Law 97-164). These technical amendments passed the House on the Consent Calendar on August 6, 1984.

Subtitle C of title IV contains identical language to that found in H.R. 4222, the House-passed bill.

The Senate amendment, however, adds two further technical amendments, both relating to the U.S. Claims Court. The first change authorizes the Claims Court to utilize facilities and hold court not only in Washington, DC, but also in four locations outside of the Washington, DC, metropolitan area. The Claims Court must use these facilities for the purpose of holding trials and for such other proceedings as are appropriate to execute the court's functions. The Director of the Administrative Office of the U.S. Courts, with direction from the Judicial Conference of the United States, shall designate such locations and provide for such facilities. The second change allows the chief judge of the Claims Court to appoint special masters to assist the court in carrying out its functions. Special masters shall carry out such duties as are assigned; they are to be compensated in accordance with procedures set forth by the rules of the Claims Court. It was not necessary to state in statutory language that the Federal Rules of Civil Procedure apply to special masters serving the Claims Courts.

Both additions made by the Senate qualify as technical amendments to Public Law 97-164. Furthermore, the need for both changes is found in Senate hearings relating to oversight of the Claims Court.

TITLE V: GOVERNMENT RESEARCH AND DEVELOPMENT PATENT POLICY

Title V of the Senate amendment relates to Government research and development policy. This provision had its origin in an executive communication from the U.S. Department of Commerce that took the form of H.R. 5003 and S. 2171. Hearings were held in the House Committee on Science and Technology and the Senate Judiciary Committee. The House committee reported H.R. 5003; the Senate Judiciary Committee reported an extremely diluted version of the original bill—a version that only amended Public Law 96-517, thereby only affecting universities and small businesses. As chief sponsor of the legislation that led to enactment of Public Law 96-517, I greatly appreciate the efforts of the Science and Technology Committee not only in the oversight area but also as relates to processing legislation necessary to effectuate the act's original purposes. In this regard, I shortly will yield time to Chairman FUQUA and Subcommittee Chairman WALGREN to discuss in further detail title V of the Senate amendment. These two Members will generally speak to their ongoing attempts to achieve a more uniform Government patent policy. They, I am sure, will indicate that title V of the Senate amendment is a watered down version of what started out as an administration effort to assist big business. Title V, which now only applies to universities and small businesses, still has substantial merit.

Mr. Speaker, I would like my colleagues to be aware of three points which relate to title V. First, my subcommittee held no hearings this Congess on its contents. Second, I have agreed to hold hearings next Congress on not only title V, but also on the broader issue of Government patent policy. I therefore have assured Members that the Judiciary Committee will review the bill that we are voting on today and reopen it for amendment if it is defective in policy implications or drafting. I do note that there are several drafting problems in the bill. For example, in section 501(4) the reference to "clause (i) through (iii)" should read "clause (i) through (iv)." Today we are only in a position of deferring to Senate judgment. Early next year we will assess the merits of the Senate's decisions and reverse or modify them, as is necessary. I have received assurances from Senator DOLE, author of title V, that he will assist in this process. Third, and last, I would like to make it clear that nothing in title V extends the authority of the Secretary of Commerce beyond the provisions of Public Law 96-517, as we are amending it today. We are not extending the authority of the Secretary of Commerce to make systemwide pronouncements and decisions, binding on other agencies, that relate to Government patent policy.

This concludes my discussion of the five titles of H.R. 6163, as amended by the Senate.

I can confidently state that on balance the package is a very dood deal for the House. Five unanimously approved House bills are in the Senate amendment. A title of the bill received a 70-vote majority in the House. The final title was approved in part by the House Science and Technology Committee.

More importantly, the contents of H.R. 6163 are sound public policy; they are legislative ideas whose time has come to the fore; we should vote for them and send them on to the President for his signature. Not only will the semiconductor industry, trademark owners, the Federal and State courts, all benefit form this legislation, but citizens across this country will be better off as a result of its enactment.

In conclusion, I ask for an aye vote on H.R. 6163, as amended by the U.S. Senate.

□ 1320

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

Mr. Speaker, I rise in support of H.R. 6163, and the Senate amendments thereto. H.R. 6163 represents a compromise package of Judiciary Committee initiatives dealing with copyright, patent, trademark, and court reform measures.

Title I of H.R. 6163 embodies the Trademark Amendments Act of 1984 which passed the House unanimously by voice vote on October 1, 1984, as H.R. 6285. This proposal would clarify the standard courts use to determine when a trademark may be canceled or considered abandoned because the term has become generic. It does to propose a new standard for genericness, but reiterates the basic test for maintaining a trademark, which is whether the public recognizes the name as a trademark.

Title II of H.R. 6163 contains the State Justice Institute Act of 1983 which, although rejected by the House on the Suspension Calendar on May 22, 1984, did receive a strong majority vote of 243 to 176. Members who have had reservations about this proposal in the past should note that the current version of State Justice Institute, incorporated in the package, contains authorized funding levels that are substantially reduced from earlier versions of the bill acted upon by the House. In addition, the Department of

Justice is given a stronger oversight role, and the State matching fund requirement has been increased from 25 to 50 percent.

The Semiconductor Chip Protection Act of 1984 which passed the House by a recorded vote of 388 to 0 on June 11, 1984, As H.R. 5525 comprises title III of H.R. 6163. Recently, the Cabinet Council on Commerce and Trade directed its Working Group on Intellectual Property which is chaired by the Commissioner of Patents and Trademarks, Jerry Mossinghoff, to consider the need to protect semiconductor chip designs. It found that while the United States dominates this important market, it faces a serious challenge from foreign competition. It also found that the R&D costs for a single complex chip could reach $4 million, while the costs of copying such a chip could be less than $100,000. The Semiconductor Chip Protection Act addresses this situation by providing significant and needed protection for the semiconductor industry in a manner that will allow it to retain its competitive edge in this important field of high technology.

Title IV of H.R. 6163, is comprised of three parts, all dealing with the Federal courts system. The first part of title IV is the Civil Priorities Act of 1984 which passed the House unanimously by voice vote on September 11, 1984, as H.R. 5645. This important court reform initiative eliminates most of the existing civil priorities with certain narrow exceptions, thereby allowing the courts to establish the order of hearing for certain civil matters. While I am happy that the other body saw fit to include this proposal as part of H.R. 6163, I am disappointed at their lack of action on the Supreme Court Mandatory Appellate Jurisdiction Act of 1984, which passed the House unanimously by voice vote on September 11, 1984. I hope that the other body will see fit to consider this important legislation in a timely manner next Congress.

Part 2 of title IV is the Federal District Court Organization Act of 1984 which passed the House unanimously by voice vote as H.R. 6163 on September 24, 1984. This proposal creates three new places of holding court, realigns the boundaries of divisions of three districts and changes the place of holding court in one district. All of these changes, which will help keep the Federal judicial system up to date with demographic, economic, and societal changes in several of its districts, have been approved by the Judicial Conference of the United States and U.S. Department of Justice.

The third part of title IV is the Technical Amendments to the Federal Courts Improvements Act which passed the House on the consent calendar on August 6, 1984, as H.R. 4222. This amendment makes technical amendments with respect to the Court of Appeals for the Federal circuit.

Finally, title V of H.R. 6163 is comprised of the Uniform Science and Technology Research Development Utilization Act which was reported by the House Science and Technology Committee by voice vote as H.R. 5003. This amendment improves upon the principles of the law passed in 1980, which allowed universities and small businesses to retain ownership of inventions made under Government grants and contracts. The bill before us creates even greater flexibility in university licensing practices by improving the ability of the university to license its technology. In addition these improvements assure university ownership of inventions made while functioning as the contractor for a Government-owned laboratory subject to certain exceptions. This provision is strongly supported by the administration.

On balance this package contains major and for the most part noncontroversial legislation. I would like to commend Mr. KASTENMEIER, the chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, as well as my colleagues on the subcommittee, Messrs. BROOKS, MAZZOLI, SYNAR, Mrs. SCHROEDER, Messrs. GLICKMAN, FRANK, MORRISON of Connecticut, BERMAN, HYDE, DEWINE, KINDNESS, and SAWYER, who were responsible for processing six of the seven proposals contained in this package, five of which the House has overwhelmingly endorsed on previous occasions. Accordingly, I urge my colleagues' strong support for the passage of H.R. 6163.

□ 1330

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

Mr. MOORHEAD. I yield to the gentleman from New York.

Mr. FISH. Mr. Speaker, I rise in support of the package, as has my colleague, the gentleman from California.

Most of these matters have been overwhelmingly adoted by this body before this. I appreciate my colleague stressing the importance of the semiconductor chip title to this package, and also I underscore his remarks with respect to the State Justice Institute.

Whatever reservations Members on our side might have had previously, this is a scaled-down version that is before us today that I think everybody in this House can accept.

Mr. KASTENMEIER. Mr. Speaker, I yield 2 minutes, for the purpose of debate only, to the author of the bill on semiconductor chips, the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I rise in strong support of H.R. 6163 and I heartily commend the chairman, Congressman KASTENMEIER, Mr. MOORHEAD, the distinguished members of the Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and the staff, for bringing this package to us today. They have worked long and hard to bring these important measures to fruition and I congratulate them on their successful endeavors to date.

While I support passage of the entire package, in the interest of time I will limit my remarks to a few particularly addressed to title III of the bill, which is the Semiconductor Chip Protection Act of 1984. Back in 1978, I and my colleague from the South Bay, Congressman NORMAN MINETA, introduced our first bill on this issue. It's been a long haul and much work that brings us here today for this final vote; and this vote occurs not a moment too soon. The piracy of the creative work of innovating semiconductor chip firms threatens the economic health of our semiconductor industry and it has only worsened over time. With this measure, innovating firms finally will be able to combat the unfair chip piracy that is sapping their strength and destroying their incentive to continue to invest in the crucial, but very expensive, creative endeavors necessary to maintain American leadership in this field.

I urge my colleagues to support this final report on the Semiconductor Chip Protection Act of 1984 today, as they did on June 11, 1984, when the House passed the bill 388 to 0. I urge my colleagues to support the entire package contained in H.R. 6163 which is before us today.

Mr. KASTENMEIER. Mr. Speaker, before I yield to the gentleman from California [Mr. MINETA] I will say that the semiconductor chip intellectual property protection is the most important part of the bill. Over the past 6 years there has been no industry that has had a greater champion than the gentleman from California [Mr. EDWARDS] and the gentleman from California [Mr. MINETA] in support of what we are able ultimately to pass here today, and I compliment them both.

Mr. Speaker, I now yield 2 minutes, for purposes of debate only to the gentleman from California [Mr. MINETA].

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

Mr. MINETA. I thank the gentleman for yielding time.

Mr. Speaker, I rise to express my support for the Federal District Court Organization Act. It is my firm belief that all aspects of this legislation are worthy of favorable consideration by my colleagues. I do, however, wish to speak in particular about the Semiconductor Chip Protection Act which is embodied in this package.

The Semiconductor Protection Act is a bill that my outstanding colleague, Mr. EDWARDS, and I have been working on since 1978. I am very gratified that our efforts have come to fruition and I wish to thank my colleagues, Mr. KASTENMEIER, Mr. EDWARDS, and Mr. MOORHEAD and the many fine mem-

bers of the Judiciary Committee for producing such an outstanding bill.

This legislation is indeed a solution to a problem—how best to make copyright protection responsive to technological change. After wrestling for some time about the best way to approach this problem, we have ultimately come up with a means to protect designers and producers of semiconductor chips from unauthorized copying and pirating of semiconductor chip designs. Like books and records and any other product of individual design, the financial and creative investment in a new semiconductor chip design are enormous and the product is worthy of protection from any infringements.

To semiconductor manufacturers, millions of dollars and thousands of man-hours are at stake. Therefore, in these closing hours of this Congress, I am particularly proud that we are extending protections to this industry that are much needed and, I can promise you, will be much welcomed by one of this country's most outstanding and promising industries.

Again, I thank my colleagues and urge a favorable vote on this very worthy legislation.

Mr. KASTENMEIER. Mr. Speaker, I have one further request. I yield 4 minutes to the gentleman from Florida [Mr. FUQUA], the distinguished chairman of the Science and Technology Committee, who has made really an enormous contribution, particularly to the last title of this bill.

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

Mr. FUQUA. Mr. Speaker, I rise in support of title V, Government Research and Development Patent Policy, much of which originated in H.R. 5003 as reported from the Committee on Science and Technology to the House, on August 8 with bipartisan support. I would like to assure my colleagues that almost every provision contained in this title was considered and favorably approved by the committee I chair. I would refer my colleagues to House Report 98-983, Part 1 for an explanation of these provisions. Those provisions, added by the Senate, tend to be minor in comparison and clarifying in nature.

I am certain the gentleman from Wisconsin [Mr. KASTENMEIER] recalls our colloquy of November 21, 1980, upon the passage of Public Law 96-517 where we agreed to try to achieve a more uniform Government patent policy. I consider this bill to be another major step forward towards that objective.

Title V is a series of amendments to Public Law 96-517 which established a uniform government patent policy for inventions arising under contracts between the Government and small business and nonprofit organizations including universities. Public Law 96-517 which was passed because of the leadership of BOB KASTENMEIER was a landmark bill replacing a wide variety of agency practices with a uniform Government-wide policy of giving those rights to the contractor except in specified situations. This approach has worked well and has contributed to the explosion of new products and companies at and around university communities. We now have the benefit of over 3 years of experience using these provisions and the desirability of certain improvements has become obvious. I would like to point out to my colleagues that with the exception of Government-owned, contractor-operated [GO-CO] facilities this legislation does not extend beyond the limits of Public Law 96-517. Clearly, there is much remaining work to be done on the broader public policy considerations of Government-wide patent policy, but such deliberations will have to wait until the 99th Congress. Since there is a qualitative difference between major Government contracts with larger businesses and smaller grants and cooperative agreements with universities and nonprofit organizations, it should not be assumed that the specific provsions of Public Law 96-517 will be those that are applies to larger businesses in next Congress' legislation. The section by section analysis which follows compares the pertinent provisions of H.R. 5003 with the Senate-passed language.

I would like to thank the gentleman from Wisconsin, [Mr. KASTENMEIER] for his critical leadership in working with me to assure that the House provisions which assist the university research community were added to the Senate bill. These provisions involving disposition of intellectual property rights in eductional awards and of royalties from inventions under university and nonprofit CO-CO contracts solve a number of long-standing problems in the university community.

In closing, I would like to commend the gentleman from Pennsylvania [Mr. WALGREN] and the gentleman from New Hampshire [Mr. GREGG] for their hard work in developing this legislation at the subcommittee level. Without their bipartisan efforts, it is unlikely that we would be able to vote on this legislation today.

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

Mr. FUQUA. I yield to my friend, the gentleman from New Mexico.

Mr. LUJAN. Mr. Speaker, I want to congratulate the gentleman and join him in support of this legislation, but I do have some questions that I would like to refer to the gentleman, if I possibly could.

Is my understanding correct that this bill will not prevent the Department of Energy from determining that exceptional circumstances exist for other technologies than those listed in the new section 202(a)(iv)?

Mr. FUQUA. Yes. That Department can still request exceptional circumstances treatment when appropriate. Several such circumstances are mentioned on page 18 of House Report 98-983 part 1 which the Committee on Science and Technology filed on the bill H.R. 5003.

Mr. LUJAN. Will the gentleman give further examples of exceptional circumstances where this section may be appropriate?

Mr. FUQUA. Yes, appropriate circumstances may occur regarding technologies related to intelligence and national security, classified technologies, and defense programs work not covered by section 202(a)(iv). The fact that a facility falls within section 202(a)(iv) does not preclude the exceptional circumstances provisions applying to other work done at that facility. Technologies that are under or may be under agreements with foreign interests may also need exceptional circumstances coverage to permit the U.S. Government to protect these technologies for U.S. industry. Various agencies are also involved extensively in international collaborative agreements in which patent and data rights are at issue. This bill is not intended to impair the ability of these agencies to enter into and carry out existing or future international agreements.

Mr. LUJAN. Regarding the provision which modifies section 203, must a party adversely affected by a decision under section 203 or section 202(b)(4) exhaust all remedies under the administrative appeals procedure to be established under this act prior to initiating a petition for review by the U.S. Claims Court?

Mr. FUQUA. Yes, a party adversely affected must exhaust his administrative remedies prior to seeking judicial review by the U.S. Claims Court. Further, the determination to be issued under this section prior to a U.S. Claims Court appeal is to be a final determination on the administrative record.

Mr. LUJAN. Would the gentleman please clarify the provision under proposed section 202(b)(2) that permits the Office of Federal Procurement Policy [OFPP] to issue regulations describing classes of situations in which agencies may not exercise the authorities under section 202?

Mr. FUQUA. It is envisioned that the OFPP would confer with and work with the affected agencies to ensure that any regulations or guidelines issued in accordance with this section do not impair these agencies' ability to accomplish agency missions.

Mr. LUJAN. Would the gentleman please clarify the regulation drafting procedures under section 206 and the effect that these new regulations will have on funding agreements excepted from the act under section 202(a)(i) through (iv)?

Mr. FUQUA. The Department of Commerce is expected to consider the views and special circumstances of the various affected agencies because of their long experience in their respective high-technology fields both in the

drafting of these regulations and in their interpretation. For agencies that have patent policies prescribed by statute such as the DOE and NASA, these agencies are not precluded from using provisions required by such statutes and regulations promulgated pursuant to these statutes to govern inventions falling within section 202(a) (i) through (iv).

Mr. OBERSTAR. Mr. Speaker, I support the trademark law provisions of H.R. 6163 because it provides us the opportunity to reaffirm the long-established, effective test for determining whether a registered trademark has remained a trademark or whether it has become merely a generic term, without significant market value.

Prior to a 1982 decision by the Ninth Circuit Court of Appeals, the test was whether the public considered a trademark something special—unique—or only a general term. If the latter, then the name was no longer a trademark.

The ninth circuit decision added the further requirement that the consumer also know the name of the producer. Such a test is unrealistic. It will make it far more difficult for a business to retain its trademark. Trademarks, which have served to guide consumers in their purchases of long known, reliable goods and services, will no longer serve such a function.

Imitators will use the former trademarks to sell their inferior goods. They will use the trademarks of the best American products and services. Moreover, the manufacturers and providers of the best products and services will suffer the most as the result of attempts to unload shoddy, less desirable goods and services on an unsuspecting public.

We should be particularly concerned about foreign manufacturers who would attempt to unload imitation goods on the market to compete with higher quality, higher cost, American goods no longer uniquely labeled by the trademarks so carefully developed over the years, and which are developed at considerable capital investment by the manufacturer.

The legislation now before the House will provide incentives for quality producers to continue to offer the level of quality associated with their trademarked goods. If we do not pass this legislation, those producers will be hurt financially, and ultimately, so will be the consumers who have relied upon trademarks to guide their purchases.

The legislation before the House will insure consumers more and better information than they would receive as the result of the ninth circuit decision. It will also protect American jobs against unfair, predatory competition from cheap, imitation foreign imports taking a free ride on American ingenuity, investment, worker productivity, and consumer trust in a trademark, trust founded upon years of experience with a particular product.

The House passed title I of H.R. 6163 as separate legislation last week. I urge the House to approve it again as part of the larger legislative package of H.R. 6163 because the trademark standard contained in the legislation is long-established, sensible, and straightforward. If we act today, we can send this legislation to the White House for prompt action by the President. American consumers and businesses will be better for it.

● Mr. FRENZEL. Mr. Speaker, I support the conference report on H.R. 6163. It was good when it left the House and is better now.

The other body has improved our original H.R. 6285, the Trademark Clarification Act of 1984, by the addition of some worthy hitchhikers, notably the semiconductor title. All of them, especially the semiconductor bill, are important and necessary.

But the original Trademark Act is also important and necessary to overturn a regrettable decision of the Ninth Circuit Court. Title I of H.R. 6163 does, in my judgment overturn this unusual decision, and restores the traditional Lanham Act protection of trademarks that has been the standard for a half a century.

Passage of this conference report will restore needed certainty to our trademark laws.●

● Mr. WALGREN. Mr. Speaker, I rise in support of title V of H.R. 6163, which is entitled "Government Research and Development Patent Policy." As chairman of the Committee on Science and Technology's Science, Research and Technology Subcommittee where most of the provisions of this title originated, I want to recommend these provisions to the House. These provisions were developed over a period of several months in a bipartisan effort involving discussions with all affected parties.

Title V contains a variety of amendments to Public Law 96-517, more commonly known as the Bayh-Dole Act, a law that for a first time established a uniform policy for allocation of intellectual property rights arising under contracts between the Government and nonprofit organizations or small businesses. This law is generally credited with beginning the commercialization of a much higher percentage of inventions occurring under Government contract. The amendments to the Bayh-Dole Act we have before us today reflect our experience under that act.

The first two amendments deal with the definition of "invention" and "subject invention" as used in the act and borrow the definition of "plant" as used in the Plant Variety Protection Act. That act is not amended by this title and the record should clearly state that there is no intention of attempting to do so.

These amendments also change the treatment of Government-owned, contractor-operated [GO-CO] facilities under the Bayh-Dole Act. Currently an agency has the right to exempt Government-owned, contractor-operated facilities from operation of the Act. After enactment of this legislation, an exmpetion for the Department of Energy's defense programs and naval reactors programs will remain covering such work done by these programs at DOE labs, but a new GO-CO provision will apply to other GO-CO laboratories and programs. The contractors who operate these labs will be able to retain title to inventions occuring under their operating contracts in order to handle the licensing of the inventions.

Royalties from this licensing activity will be divided in the following manner. First, they will be used to cover licensing costs and payments to inventors. Second, an amount equal to 5 percent of the lab's annual budget may be retained by the contractor for use in research and development or educational programs in furtherance of the mission of the laboratory. Finally, funds in excess of the 5 percent level will be split between the lab and the U.S. Treasury on a 25/75 percent basis with the Treasury getting the larger share. This should give everyone concerned the incentive to get the inventions of these laboratories into the commerical marketplace. This approach has been endorsed by the Department of Energy and by many of the other affected parties.

Other amendments contained in this title include codification of regulations promulgated under the Bayh-Dole Act, clarification of invention rights under financial aid agreements, and a variety of other provisions clarifying responsibilities among executive branch agencies and clarifying ambiguities in the present text of the Bayh-Dole Act.

The changes have a wide base of support in the university community and elsewhere. I therefore, urge my colleagues to support this package because it is a major step forward in Government patent policy.●

● Mr. MOAKLEY. Mr. Speaker, as manager for the Committee on Rules on the resolution providing for the consideration of this matter, I have previously discussed the procedure under which we are operating.

However, I would like to take the opportunity to discuss one aspect of this legislation in more detail and, again, to commend the bipartisan leadership of the Committee on the Judiciary for their handling of this matter. The able subcommittee chairman, the gentleman from Wisconsin [Mr. KASTENMEIER], and his distinguished ranking minority member, the gentleman from California [Mr. MOORHEAD], have done an outstanding job in handling this matter.

The Senate amendments constitute a comprehensive package of patent, trademark, and court bill attached to a technical court bill. This measure incorporates a number of matters, most

of which are noncontroversial, and almost all of which have passed the House in other forms:

Mr. Speaker, title I of the Senate amendment is very similar to the bill (H.R. 6285) to clarify the circumstances under which a trademark may be canceled or considered abandoned, which was passed by the House on a voice vote on October 1, 1984. I would commend the gentleman for his prompt action to defend our legislative prerogatives and to reassert existing law over the one aberrant court decision that prompted this legislation.

Under the pending motion, Mr. Speaker, the House recedes to the minor changes of the Senate, which are entirely consistent with the legislative intent of the House, as ably explained by the gentleman from Wisconsin here last week.

Mr. Speaker, I want to take a few moments to address some new language that appears in section 104 of H.R. 6163, which is quite different in form from its counterpart section 4 of H.R. 6285, approved by the House on October 1 of this year. Section 104 says that "Nothing in this title shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title." In light of some of the controversies we have seen when Congress has endeavored to enact retroactive legislation, this section deserves some elaboration.

First, the Trademark Clarification Act of 1984 is not retroactive in application to any cases completed before the enactment of that act. Therefore, where any final judgment has been entered—and I use "final judgment" in the sense that the Federal Rules of Civil Procedure uses it—the parties to that litigation may not reopen the case on the basis of this new legislation. Rule 54 defines "judgment" as including a decree or order from which an appeal lies; rule 60(b) refers to "final judgment" in such a way as to make clear that it is a judgment from which no appeal lies. That is obviously what section 104 is referring to.

Thus the statement of the law of trademark genericism set out in the legislation will, and is intended to, apply to ongoing cases. That is not a form of retroactivity, since the entire legislative history of the legislation emphasizes that it is intended to clarify and clearly restate the law of trademark genericism as it stands throughout most of the country, as it has stood for almost 40 years, and as it should stand in every Federal court in the land.

Second, the new law quite plainly will not let General Mills reopen its litigation with Anti-Monopoly, Inc. Even though that litigation gave rise to the ninth circuit opinions, the reasoning of which this legislation is intended to overturn, it also gave rise to a final judgment entered by the district court in the northern district of California in August 1983. That final judgment will not be disturbed by this new act, just as section 104 states.

Third, and finally, it is important to note that this legislation will in no way interfere with the ability and right of General Mills to litigate the validity of its valuable "Monopoly" trademark in Federal courts in the future. The district court in the Anti-Monopoly litigation did not rule on the validity of the "Monopoly" mark, so the language of the court of appeals could well have been challenged even without this legislation. Since title I of H.R. 6163 speaks to the errors in the ninth circuit's opinion, I would not at all be surprised to see that opinion challenged in that circuit and in others after this bill is signed into law.

That point is entirely consistent with the various statements in the Senate that this title is not intended to alter established principles of collateral estoppel. Under those principles, judicial holdings in one case may be used to estop relitigation of the same issues in later cases involving a party to the earlier litigation. That assuredly does not mean that the second court must reach the same result as the first when the first court applied erroneous principles of law. So, even without this legislation, General Mills would be perfectly free to litigate the validity of its "Monopoly" mark in 11 other circuits, and could even try to persuade the ninth circuit that its trademark was valid as against some party other than Anti-Monopoly, Inc. (whose judgment would be protected by the doctrine of res judicata). With this legislation—which essentially declares that the ninth circuit's reasoning in the General Mills litigation was erroneous on a number of distinct grounds—application of the "principles" of collateral estoppel will facilitate, rather than hinder, that company's ability to establish the validity of its "Monopoly" trademark. For the courts have long recognized that a modification of the controlling legal principles of a case, such as this legislation brings about, gives rise to a recognized exception to the doctrine of collateral estoppel.

Mr. Speaker, Judge Helen Nies, who testified before the House subcommittee considering an earlier version of this bill, wrote a Customs and Patent Appeals Court decision in which she observed that General Mills "has built up an enormous goodwill in the mark MONOPOLY, which has been used since 1935 for a board game" and that "MONOPOLY may properly be termed a 'famous' mark." (*Tuxedo Monopoly, Inc.* v. *General Mills Fun Group, Inc.*, 648 F.2d 1335, 1336 (CCPA 1981).) While the decision whether "Monopoly" remains a valid trademark in the ninth circuit and elsewhere is one for the courts, and not the Congress, this legislation will make sure that the courthouse doors remain open to determine that question. And it will make sure that the rational of the ninth circuit's 1982 decision will not be applied at that time.●

□ 1340

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

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 606, the previous question is considered as ordered on the motion.

The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. 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.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 363, nays 0, not voting 69, as follows:

[Roll No. 451]

YEAS—363

Ackerman	Conte	Gonzalez
Addabbo	Conyers	Goodling
Akaka	Cooper	Gore
Albosta	Corcoran	Gradison
Anderson	Coughlin	Green
Andrews (NC)	Courter	Gregg
Andrews (TX)	Coyne	Gunderson
Annunzio	Craig	Hall (OH)
Anthony	Crane, Philip	Hall, Ralph
Applegate	Daniel	Hall, Sam
Archer	Dannemeyer	Hamilton
AuCoin	Darden	Hammerschmidt
Badham	Daschle	Hance
Barnard	Daub	Hansen (UT)
Barnes	de la Garza	Harrison
Bartlett	Dellums	Hartnett
Bateman	Derrick	Hawkins
Bates	DeWine	Hayes
Bedell	Dicks	Hertel
Bellenson	Donnelly	Hightower
Bennett	Dorgan	Hillis
Bereuter	Dowdy	Holt
Berman	Downey	Hopkins
Bevill	Dreier	Horton
Biaggi	Duncan	Hoyer
Bilirakis	Durbin	Hubbard
Bliley	Dwyer	Huckaby
Boehlert	Dyson	Hunter
Boggs	Early	Hutto
Boland	Eckart	Hyde
Bonior	Edwards (AL)	Ireland
Bonker	Edwards (CA)	Jacobs
Borski	Edwards (OK)	Jeffords
Bosco	Emerson	Johnson
Boucher	English	Jones (NC)
Boxer	Erdreich	Jones (OK)
Breaux	Erlenborn	Jones (TN)
Britt	Evans (IA)	Kantur
Brooks	Fascell	Kasich
Brown (CA)	Fazio	Kastenmeier
Brown (CO)	Fiedler	Kazen
Broyhill	Fish	Kemp
Burton (CA)	Flippo	Kennelly
Burton (IN)	Florio	Kildee
Campbell	Foglietta	Kindness
Carney	Foley	Kleczka
Carper	Ford (TN)	Kolter
Carr	Fowler	Kostmayer
Chandler	Frenzel	Kramer
Chappell	Frost	Lagomarsino
Chappie	Fuqua	Lantos
Clarke	Gaydos	Leach
Clay	Gejdenson	Leath
Coats	Gekas	Lehman (CA)
Coelho	Gephardt	Lehman (FL)
Coleman (MO)	Gibbons	Leland
Coleman (TX)	Gilman	Lent
Collins	Gingrich	Levin
Conable	Glickman	Levine

Lewis (CA)	O'Brien	Skelton
Lewis (FL)	Oakar	Slattery
Lipinski	Oberstar	Smith (FL)
Livingston	Olin	Smith (IA)
Lloyd	Owens	Smith (NE)
Loeffler	Oxley	Smith (NJ)
Long (LA)	Packard	Smith, Denny
Long (MD)	Panetta	Smith, Robert
Lott	Parris	Snowe
Lowry (WA)	Pashayan	Snyder
Lujan	Patterson	Spence
Luken	Pease	Spratt
Lungren	Penny	St Germain
Mack	Pepper	Staggers
MacKay	Petri	Stangeland
Madigan	Pickle	Stark
Markey	Porter	Stokes
Marlenee	Price	Stratton
Martin (IL)	Pritchard	Studds
Martin (NY)	Quillen	Stump
Martinez	Rahall	Sundquist
Matsui	Rangel	Swift
Mavroules	Ratchford	Synar
Mazzoli	Ray	Tallon
McCain	Regula	Tauzin
McCandless	Reid	Taylor
McCloskey	Richardson	Thomas (CA)
McCollum	Ridge	Thomas (GA)
McCurdy	Rinaldo	Torres
McDade	Ritter	Towns
McGrath	Roberts	Traxler
McHugh	Robinson	Udall
McKernan	Rodino	Valentine
McKinney	Roe	Vander Jagt
McNulty	Roemer	Vandergriff
Mica	Rogers	Vento
Michel	Rose	Volkmer
Mikulski	Rostenkowski	Vucanovich
Miller (CA)	Roukema	Walgren
Miller (OH)	Rowland	Walker
Mineta	Roybal	Watkins
Minish	Rudd	Waxman
Mitchell	Russo	Weiss
Moakley	Sabo	Wheat
Molinari	Sawyer	Whitehurst
Mollohan	Schaefer	Whitley
Montgomery	Scheuer	Whittaker
Moody	Schneider	Whitten
Moore	Schroeder	Wirth
Moorhead	Schulze	Wise
Morrison (CT)	Schumer	Wolf
Morrison (WA)	Seiberling	Wolpe
Mrazek	Shannon	Wortley
Murphy	Sharp	Wright
Murtha	Shaw	Wyden
Myers	Shelby	Wylie
Natcher	Shumway	Yates
Neal	Shuster	Yatron
Nelson	Sikorski	Young (AK)
Nichols	Siljander	Young (FL)
Nielson	Sisisky	Young (MO)
Nowak	Skeen	Zschau

NAYS—0

NOT VOTING—69

Alexander	Frank	Martin (NC)
Aspin	Franklin	McEwen
Bethune	Garcia	Obey
Boner	Gramm	Ortiz
Broomfield	Gray	Ottinger
Bryant	Guarini	Patman
Byron	Hall (IN)	Paul
Cheney	Hansen (ID)	Pursell
Clinger	Harkin	Roth
Crane, Daniel	Hatcher	Savage
Crockett	Hefner	Sensenbrenner
D'Amours	Heftel	Simon
Davis	Hiler	Solarz
Dickinson	Howard	Solomon
Dingell	Hughes	Stenholm
Dixon	Jenkins	Tauke
Dymally	Kogovsek	Torricelli
Edgar	LaFalce	Weaver
Evans (IL)	Latta	Weber
Feighan	Levitas	Williams (MT)
Ferraro	Lowery (CA)	Williams (OH)
Fields	Lundine	Wilson
Ford (MI)	Marriott	Winn

□ 1400

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on H.R. 6163, the bill just passed.

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

There was no objection.

COLORADO RIVER BASIN SALINITY CONTROL ACT AMENDMENTS

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2790) to amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objective of title II of such Act, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 10, after line 12, insert:

"(F) in entering into contracts or agreements pursuant to section 202(c)(2)(C), require a minimum of 30 per centum cost-sharing contribution from individuals or groups of owners and operators of farms, ranches, and other lands as well as from local governmental and nongovernmental entities such as irrigation districts and canal companies, unless the Secretary finds in his discretion that such cost-sharing requirement would result in a failure to proceed with needed on-farm measures.".

Page 13, strike out lines 6 to 12, inclusive, and insert:

(b) Section 205(a)(1) of such act is amended by inserting before "shall be nonreimbursable." the words "authorized by section 202(a) (1), (2), and (3), including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a) (4) and (5), including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c), including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone,". Section 205(a)(1) of such act is further amended by adding at the end thereof "The total costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5), of section 205(a)".

(c) Section 205(a)(2) of such act is amended by striking "Twenty-five per centum" and inserting in lieu thereof "The reimbursable portion".

Page 13, line 13, strike out "(c)" and insert "(d)".

Page 14, line 2, strike out "(d)" and insert "(e)".

Page 16, line 13, strike out "(e)" and insert "(f)".

Page 16, line 24, strike out "(f)" and insert "(g)".

Page 17, line 5, strike out "(g)" and insert "(h)".

Page 17, line 10, strike out "(h)" and insert "(i)".

Mr. SEIBERLING (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

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

There was no objection.

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

Mr. LUJAN. Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from Ohio [Mr. SEIBERLING] if he would explain the contents of the legislation to us.

Mr. SEIBERLING. Mr. Speaker, if the gentleman would yield, this is a bill which Chairman UDALL was going to handle, but he had to step out for a few minutes because of a prior commitment.

Mr. Speaker, early last week the House passed H.R. 2790, the Colorado River Salinity Control Act. Last Friday the Senate took up that legislation and passed it with two amendments. Those amendments go to the cost-sharing requirements for the Bureau of Reclamation salinity control units and the on-farm salinity control measures to be instituted by the Department of Agriculture.

Mr. Speaker, I see that Chairman UDALL is here, so perhaps he would like to explain the Senate amendments.

Mr. LUJAN. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. I thank the gentleman for yielding.

Mr. Speaker, the first amendment increases the cost-sharing requirement for the Bureau of Reclamation units from 25 to 30 percent. Those costs to be paid by the Upper Basin States will be repaid over time, with interest. Those costs to be paid by the Lower Basin States will be paid up front, as the construction costs are incurred.

The second amendment directs the Secretary of Agriculture to require a minimum of 30 percent cost sharing from farmers, irrigation districts or other non-Federal entities for the costs of on-farm salinity control measures. The Secretary may, in his discretion, adjust the requirement if he finds that it would result in a failure to proceed with needed on-farm measures.

These amendments were worked out by the Colorado River Salinity Control Forum with Senator METZENBAUM. Although they impose a tougher cost sharing requirement on the seven Basin States, I believe the Salinity Control Program is essential to the