

Calendar No. 74

103D CONGRESS
1ST SESSION

H. R. 1313

AN ACT

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

MAY 25 (legislative day, APRIL 19), 1993
Committee on the Judiciary discharged; ordered placed
on the calendar

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IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, APRIL 19), 1993

Received; read twice and referred to the Committee on the Judiciary

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Committee on the Judiciary discharged; ordered placed on the calendar

AN ACT

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Cooperative Pro-
5 duction Amendments of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) technological innovation and its profitable
9 commercialization are critical components of the

1 ability of the United States to raise the living stand-
2 ards of Americans and to compete in world markets;

3 (2) cooperative arrangements among
4 nonaffiliated businesses in the private sector are
5 often essential for successful technological innova-
6 tion; and

7 (3) the antitrust laws may have been mistak-
8 enly perceived to inhibit procompetitive cooperative
9 innovation arrangements, and so clarification serves
10 a useful purpose in helping to promote such ar-
11 rangements.

12 (b) PURPOSE.—It is the purpose of this Act to pro-
13 mote innovation, facilitate trade, and strengthen the com-
14 petitiveness of the United States in world markets by
15 clarifying the applicability of the rule of reason standard
16 and establishing a procedure under which businesses may
17 notify the Department of Justice and Federal Trade Com-
18 mission of their cooperative ventures and thereby qualify
19 for a single-damages limitation on civil antitrust liability.

20 **SEC. 3. AMENDMENTS.**

21 (a) SHORT TITLE.—Section 1 of the National Coop-
22 erative Research Act of 1984 (15 U.S.C. 4301 note) is
23 amended by striking “National Cooperative Research Act
24 of 1984” and inserting “National Cooperative Research
25 and Production Act of 1993”.

1 (b) DEFINITION.—Section 2(a)(6) of the National
2 Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6))
3 is amended—

4 (1) in the matter preceding subparagraph (A)
5 by striking “research and development”;

6 (2) in subparagraph (D) by inserting “or pro-
7 duction” after “research”;

8 (3) in subparagraph (E) by striking “and (D)”
9 and inserting “(D), (E), and (F)”;

10 (4) by redesignating subparagraphs (D) and
11 (E) as subparagraphs (F) and (G), respectively;

12 (5) by inserting after subparagraph (C) the
13 following:

14 “(D) the production of a product, process,
15 or service,

16 “(E) the testing in connection with the
17 production of a product, process, or service by
18 such venture,”; and

19 (6) by striking “research” the last place it ap-
20 pears and inserting “such venture”.

21 (c) EXCLUSIONS.—Section 2(b) of the National Co-
22 operative Research Act of 1984 (15 U.S.C. 4301(b)) is
23 amended—

24 (1) in the matter preceding paragraph (1) by
25 striking “research and development”;

1 (2) in paragraph (1) by striking “that is not
2 reasonably required to conduct the research and de-
3 velopment that is” and inserting “if such informa-
4 tion is not reasonably required to carry out”;

5 (3) by amending paragraph (2) to read as
6 follows:

7 “(2) entering into any agreement or engaging
8 in any other conduct restricting, requiring, or other-
9 wise involving the marketing, distribution, or provi-
10 sion by any person who is a party to such venture
11 of any product, process, or service, other than—

12 “(A) the distribution among the parties to
13 such venture, in accordance with such venture,
14 of a product, process, or service produced by
15 such venture,

16 “(B) the marketing of proprietary informa-
17 tion, such as patents and trade secrets, devel-
18 oped through such venture formed under a
19 written agreement entered into before the date
20 of the enactment of the National Cooperative
21 Production Amendments of 1993, or

22 “(C) the licensing, conveying, or transfer-
23 ring of intellectual property, such as patents
24 and trade secrets, developed through such ven-
25 ture formed under a written agreement entered

1 into on or after the date of the enactment of
2 the National Cooperative Production Amend-
3 ments of 1993,”;

4 (4) in paragraph (3)—

5 (A) in subparagraph (A) by striking “or
6 developments not developed through” and in-
7 serting “, developments, products, processes, or
8 services not developed through, or produced
9 by,”;

10 (B) in subparagraph (B) by striking “such
11 party” and inserting “any person who is a
12 party to such venture”; and

13 (C) by striking the period at the end and
14 inserting a comma; and

15 (5) by adding at the end the following:

16 “(4) entering into any agreement or engaging
17 in any other conduct allocating a market with a
18 competitor,

19 “(5) exchanging information among competitors
20 relating to production (other than production by
21 such venture) of a product, process, or service if
22 such information is not reasonably required to carry
23 out the purpose of such venture,

24 “(6) entering into any agreement or engaging
25 in any other conduct restricting, requiring, or other-

1 wise involving the production (other than the pro-
2 duction by such venture) of a product, process, or
3 service,

4 “(7) using existing facilities for the production
5 of a product, process, or service by such venture un-
6 less such use involves the production of a new prod-
7 uct or technology, and

8 “(8) except as provided in paragraphs (2), (3),
9 and (6), entering into any agreement or engaging in
10 any other conduct to restrict or require participation
11 by any person who is a party to such venture, in any
12 unilateral or joint activity that is not reasonably re-
13 quired to carry out the purpose of such venture.”.

14 (d) RULE OF REASON STANDARD.—Section 3 of the
15 National Cooperative Research Act of 1984 (15 U.S.C.
16 4302) is amended—

17 (1) by striking “research and development” the
18 first place it appears;

19 (2) by striking “and development” the last
20 place it appears and inserting “, development, prod-
21 uct, process, and service”; and

22 (3) by adding at the end the following:

23 “For the purpose of determining a properly defined, rel-
24 evant market, worldwide capacity shall be considered to

1 the extent that it may be appropriate in the cir-
2 cumstances.”.

3 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
4 The National Cooperative Research Act of 1984 (15
5 U.S.C. 4301 et seq.) is amended—

6 (1) in section 4—

7 (A) in subsections (a)(1), (b)(1), (c)(1),
8 and (e) by striking “research and development”
9 each place it appears;

10 (B) in subsections (a), (b), and (c) by in-
11 sserting “of this section” after “subsection (d)”
12 each place it appears; and

13 (C) in subsection (e) by striking “the effec-
14 tive date of this Act” and inserting “October
15 11, 1984,”; and

16 (2) in section 5(a) in the matter preceding
17 paragraph (1) by striking “research and develop-
18 ment”.

19 (f) DISCLOSURE.—Section 6 of the National Cooper-
20 ative Research Act of 1984 (15 U.S.C. 4305) is amend-
21 ed—

22 (1) in the heading by striking “RESEARCH AND
23 DEVELOPMENT”;

24 (2) in subsection (a)—

1 (A) by striking “the date of the enactment
2 of this Act” and inserting “October 11, 1984”;

3 (B) in paragraph (1) by striking “and” at
4 the end;

5 (C) in paragraph (2) by striking the period
6 at the end and inserting “, and”;

7 (D) by inserting the following after para-
8 graph (2):

9 “(3) if a purpose of such venture is the produc-
10 tion of a product, process, or service, as referred to
11 in section 2(a)(6)(D), the identity and nationality of
12 any person who is a party to such venture, or who
13 controls any party to such venture whether sepa-
14 rately or with one or more other persons acting as
15 a group for the purpose of controlling such party.”;
16 and

17 (3) in subsections (a), (d)(2), and (e) by strik-
18 ing “research and development” each place it ap-
19 pears.

20 (g) LIMITATION.—The National Cooperative Re-
21 search Act of 1984 (15 U.S.C. 4301 et seq.) is amended
22 by adding at the end the following:

23 “APPLICATION OF SECTION 4 PROTECTIONS TO
24 PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

25 “SEC. 7. Notwithstanding sections 4 and 6, the pro-
26 tections of section 4 shall not apply with respect to a joint

1 venture’s production of a product, process, or service, as
2 referred to in section 2(a)(6)(D), unless—

3 “(1) the principal facilities for such production
4 are located in the United States or its territories,
5 and

6 “(2) each person who controls any party to
7 such venture (including such party itself) is a United
8 States person, or a foreign person from a country
9 whose law accords antitrust treatment no less favor-
10 able to United States persons than to such country’s
11 domestic persons with respect to participation in
12 joint ventures for production.”.

13 **SEC. 4. REPORTS ON JOINT VENTURES AND UNITED**
14 **STATES COMPETITIVENESS.**

15 (a) **PURPOSE.**—The purpose of the reports required
16 by this section is to inform Congress and the American
17 people of the effect of the National Cooperative Research
18 and Production Act of 1993 on the competitiveness of the
19 United States in key technological areas of research, devel-
20 opment, and production.

21 (b) **ANNUAL REPORT BY THE ATTORNEY GEN-**
22 **ERAL.**—In the 30-day period beginning at each 1-year in-
23 terval in the 6-year period beginning on the date of the
24 enactment of this Act, the Attorney General shall submit
25 to the Committee on the Judiciary of the House of Rep-

1 representatives and the Committee on the Judiciary of the
2 Senate—

3 (1) a list of joint ventures for which notice was
4 filed under section 6(a) of the National Cooperative
5 Research and Production Act of 1993 during the 12-
6 month period for which such report is made, includ-
7 ing—

8 (A) the purpose of each joint venture;

9 (B) the identity of each party described in
10 section 6(a)(1) of such Act; and

11 (C) the identity and nationality of each
12 person described in section 6(a)(3) of such Act;
13 and

14 (2) a list of cases and proceedings, if any,
15 brought during such period under the antitrust laws
16 by the Department of Justice, and by the Federal
17 Trade Commission, with respect to joint ventures for
18 which notice was filed under such section at any
19 time.

20 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-
21 ERAL.—In the 30-day period beginning at each 3-year in-
22 terval in the 6-year period beginning on the date of the
23 enactment of this Act, the Attorney General, after con-
24 sultation with such other agencies as the Attorney General
25 considers to be appropriate, shall submit to the Committee

1 on the Judiciary of the House of Representatives and the
2 Committee on the Judiciary of the Senate a description
3 of the technological areas most commonly pursued by joint
4 ventures for production for which notice was filed under
5 section 6(a) of the National Cooperative Research and
6 Production Act of 1993 during the 3-year period for which
7 such report is made, and an analysis of the trends in the
8 competitiveness of United States industry in such areas.

9 (d) REVIEW OF ANTITRUST TREATMENT UNDER
10 FOREIGN LAWS.—In the three 30-day periods beginning
11 1 year, 3 years, and 6 years after the date of the enact-
12 ment of this Act, the Attorney General, after consultation
13 with such other agencies as the Attorney General consid-
14 ers to be appropriate, shall submit to the Committee on
15 the Judiciary of the House of Representatives and the
16 Committee on the Judiciary of the Senate a report on the
17 antitrust treatment of United States businesses with re-
18 spect to participation in joint ventures for production,
19 under the law of each foreign nation any of whose domes-
20 tic businesses disclosed its nationality under section
21 6(a)(3) of the National Cooperative Research and Produc-
22 tion Act of 1993 at any time.

Passed the House of Representatives May 18, 1993.

Attest: DONNALD K. ANDERSON,
Clerk.