

**Calendar No. 294**

104TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
104-194

TECHNOLOGY TRANSFER IMPROVEMENTS  
ACT OF 1995

---

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1164



DECEMBER 20, 1995.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 1995

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

LARRY PRESSLER, *South Dakota, Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
JOHN McCAIN, Arizona	DANIEL K. INOUE, Hawaii
CONRAD BURNS, Montana	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	J. JAMES EXON, Nebraska
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA SNOWE, Maine	JOHN B. BREAUX, Louisiana
JOHN ASHCROFT, Missouri	RICHARD H. BRYAN, Nevada
BILL FRIST, Tennessee	BYRON L. DORGAN, North Dakota

PATRIC G. LINK, *Chief of Staff*

KEVIN G. CURTIN, *Democratic Chief Counsel and Staff Director*

## Calendar No. 294

104TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 104-194

---

---

### TECHNOLOGY TRANSFER IMPROVEMENTS ACT OF 1995

DECEMBER 20, 1995.—Ordered to be printed

Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, submitted the following

### REPORT

[To accompany S. 1164]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1164) “A Bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 with respect to inventions made under cooperative research and development agreements, and for other purposes”, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE LEGISLATION

The purpose of the reported bill is to promote greater transfer and commercialization of the technology from our system of 700 Federal laboratories and to increase joint research between the Federal laboratories and the private sector by increasing the incentives for private companies to enter into cooperative research and development agreements (sometimes called CRADAs) with Federal laboratories pursuant to the Stevenson-Wydler Technology Innovation Act of 1980, as amended. The reported bill seeks to achieve that purpose by guaranteeing that industry partners to such agreements be entitled to certain intellectual property rights to inventions generated by the joint research conducted under the agreements and by enhancing the financial incentives and rewards given to Federal laboratory scientists for technology that results in marketable products.

#### BACKGROUND AND NEEDS

FEDERAL LABORATORY TECHNOLOGY TRANSFER.—Federal departments and agencies operate several hundred laboratories, ranging from small research units to a few large laboratories with annual

budgets of \$1 billion or more each. These laboratories provide research and development (R&D) support for a wide range of Government missions, including defense, space, aeronautics, agriculture, health, energy, and measurements and standards. While the main purpose of these laboratories remains support of their Government mission activities, they also possess expertise, technology, and facilities that can be useful to private industry, state governments, and others.

In order to get the most national value from these laboratories, Congress has passed legislation to encourage agencies to transfer, when appropriate, unclassified technology and expertise to the private sector and the states.

The key law in this area is the Stevenson-Wydler Technology Innovation Act of 1980, as amended. The original 1980 law (P.L. 96-480) required Federal laboratories to take an active role in technical transfer and established technology transfer offices, called Offices of Research and Technology Applications, at all major Federal laboratories. These offices proved useful, but it soon became apparent that effective technology transfer often requires more than simply transferring technical reports or licensing existing Government patents. Few ideas or inventions in Federal laboratories are sufficiently developed to be immediately useful to the private sector. Some may require further research while others may be overdeveloped or too expensive to the private sector.

In the mid-1980s, a bipartisan consensus opinion developed that it was in the public interest to permit companies to work directly with the Federal scientists and engineers who developed the idea or invention in the first place. This was deemed necessary in order to refine laboratory innovations and inventions to the point where they have a chance to succeed in the commercial marketplace. This consensus led the Reagan Administration to propose legislation during the 99th Congress to create a new way in which companies, state governments, and others could conduct joint research projects with Federal laboratories. These projects could refine existing patented inventions, lead to new inventions, or give companies access to unique Federal facilities and expertise. Members of Congress from both parties introduced related legislation. Ensuing deliberations in Congress led to the Federal Technology Transfer Act of 1986 (P.L. 99-502), which consisted of a series of amendments to the Stevenson-Wydler Act.

The 1986 law authorizes Federal agencies to permit their Government-owned, Government-operated laboratories (that is, civil service-operated laboratories) to enter into cooperative research and development agreements (CRADAs) for joint research projects with companies and other "collaborating parties." Under a CRADA Federal laboratories may contribute personnel, intellectual property, and facilities to a joint research project, while the collaborating party may contribute funding as well as personnel, services, and property. The law expressly prohibits the laboratory from providing direct funding to its private sector partner.

The CRADA specifies the main terms and conditions of the joint research project, including the allocation of intellectual property rights to technology arising from the joint research. This patent protection provides an incentive for companies to invest in

CRADAs and later invest additional corporate funds to commercialize CRADA-generated technology. As part of a CRADA, a laboratory may negotiate royalties, with the Government retaining a paid-up license to use CRADA-developed inventions for Government purposes.

In 1989, the National Competitiveness Technology Transfer Act was enacted as part of the Department of Defense Authorization Act for Fiscal Year 1990 (P.L. 101-189). This 1989 law further amended Stevenson-Wydler by authorizing Federal agencies to allow CRADAs at Government-owned, contractor-operated laboratories, such as the contractor-operated laboratories of the Department of Energy.

The 1986 and 1989 amendments to Stevenson-Wydler have been successful in achieving their intended purposes. Federal laboratories have now entered into over 2,000 CRADAs with companies and others. As a result, companies get access to technology and expertise they can use to create new products or improve manufacturing processes for the benefit of the Nation. Moreover, Federal laboratories are provided with valuable insights into industry's needs as well as industrial expertise that enhances the ability of the laboratories to accomplish their Government missions. Agencies ensure that the number of CRADAs does not become so large that it interferes with the regular Government activities of these laboratories.

However, one significant problem has arisen with the CRADA process that appears to be a barrier to some private companies entering into a CRADA. In its effort to provide flexibility to both the private sector partners and the Federal laboratories, the CRADA process currently provides little guidance on the intellectual property rights a collaborating partner should routinely receive under a CRADA.

Giving agencies such broad discretion in the determination of intellectual property rights has often resulted in laborious negotiations each time a laboratory and company discuss a new CRADA. In the case of CRADA inventions developed in whole or in part by laboratory employees, current negotiation options range all the way from assigning the company full patent rights to providing the company with only a nonexclusive license for a single narrow application area ("field of use"). In addition, current law is vague about who owns inventions developed under a CRADA but made solely by the collaborating party's employees. Overall, current law gives both sides little guidance on these intellectual property matters in developing an appropriate CRADA.

This situation has led to concerns about the current CRADA process. Time is money in the private sector. For Federal research or inventions to be useful to U.S. companies, CRADA agreements must be simple to craft and easy to implement. The intense time pressures companies now face require a just-in-time sensibility in all of a firm's research partners, whether private or public. Unfortunately, under current law, CRADA negotiations can become protracted when a laboratory and its parent agency must decide intellectual property rights on a case-by-case basis. Furthermore, a company may be reluctant to enter into a CRADA and commit the long-term resources necessary to fund the CRADA and then sup-

port R&D by the company to refine the technology, if that company lacks clear assurances from the beginning that it will get clear rights to inventions it helps develop.

These uncertainties concerning intellectual property rights, as well as the time and effort required for negotiations, appear to hinder collaboration between the private sector and Federal laboratories. Consequently, these circumstances have, in effect, become barriers to technology transfer and cooperation.

In his October 26, 1993, testimony on this subject before the Subcommittee on Science, Technology, and Space, Dr. Alexander MacLachlan of DuPont expressed these concerns:

[We] have been looking for collaborative efforts to better leverage our resources. Substantive partnerships with Government laboratories through CRADAs could be a major source of such leverage. But the establishment of CRADAs is, from our point of view, often difficult. In many cases it has taken well over a year to negotiate a successful CRADA. \* \* \* There is no doubt that complications over intellectual property rights are often the main sticking point during CRADA negotiations. \* \* \* [Also,] we simply cannot make the required investment without some assurance that we will have freer commercialization rights in any resulting technology developments.

Clearly, the CRADA process would be improved if the law provided both agencies and companies with clearer guidelines on how to allocate intellectual property rights.

In addition to the matter of the intellectual property rights allocation, two other concerns regarding the current CRADA process have arisen. One deals with the royalties that are shared with Federal inventors. The authors of the Federal Technology Transfer Act of 1986 recognized that it takes considerable work by a laboratory inventor to upgrade an idea to the point where it is useful to a company, to go through the patenting and licensing process, and to answer the licensee's questions as the commercialization process moves forward. In 1986, 20,000 Government patents were not being used or developed, partly because laboratory employees were not rewarded for making their inventions more commercially useful. To address this problem, the 1986 Act provides an economic incentive to these laboratory employees. Under the 1986 law, agencies must share at least 15 percent of royalties received each year from an invention with the Federal inventor or inventors. This is a reward, a type of bonus, for contributing to technology transfer, as well as an incentive to laboratory employees to report new inventions and participate in CRADA projects. However, few Federal inventions generate large annual royalties, and, as a result, few inventors receive much of a bonus. Changing the law to give these inventors the first thousand or two thousand dollars earned each year by an invention, and then at least 15 percent of the remainder, would provide a better reward and incentive.

A second concern deals with the need to maintain existing laboratory support for the Federal Laboratory Consortium for Technology Transfer (FLC), an interagency group which trains tech-

nology transfer officials and helps companies identify which laboratories might best help them.

FASTENER QUALITY ACT (P.L. 101-592).—The Fastener Quality Act requires that fasteners used in critical industrial applications (e.g., airplanes, bridges, etc.) be tested in accredited labs to insure they meet specifications. To facilitate the traceability of substandard fasteners, the Act also prohibits manufacturers and distributors from commingling fasteners from more than two different lots in the same container. In 1992, after five two-day hearings, the Fastener Advisory Committee created under the Act determined that the legislation was unworkable because it would impose prohibitive costs and administrative costs on the industry. The Fastener Advisory Committee recommended changes in the Act that would (a) allow a manufacturer to establish the chemistry of a finished lot of fasteners through a certification provided by the provider of the raw material, (b) allow the sale of fasteners having minor non-conformances which do not affect performance if the purchaser agrees to accept them, and (c) permit commingling of fasteners from different lots under some circumstances.

In August 1992, NIST published proposed regulations for notice and comment to implement the Act. However, NIST has yet to promulgate final rules because of the pending deliberations in Congress. During the 103rd Congress, the Subcommittee on Science, Technology, and Space held a hearing on the proposed changes in the Fastener Quality Act. The Senate subsequently approved those changes as part of a larger bill, S.4/H.R. 820 (the National Competitiveness Act); however, the 103rd Congress adjourned without the Senate-House conference on S.4/H.R. 820 resolving the differences between the House and Senate versions of the bill.

#### LEGISLATIVE HISTORY

No Committee hearings on S. 1164 have been held during the 104th Congress. However, during the 103rd Congress, on October 26, 1993, the Subcommittee on Science, Technology, and Space of the Committee held a hearing on S. 1537, the Technology Commercialization Act of 1993, a bill similar to S. 1164. Like S. 1164, S. 1537 sought to encourage greater transfer and commercialization of Federal laboratory technology by guaranteeing the intellectual property rights of industry partners to inventions generated under cooperative research and development agreements and by increasing financial incentives to Federal lab scientists conducting the research. At its hearing, the Subcommittee heard testimony from Dr. Mary Good, Under Secretary for Technology, Department of Commerce; Dr. Alexander MacLachlan, Senior Vice President, the DuPont Company; Mr. David Ostfeld, Career Activities Council, Institute of Electrical and Electronics Engineers; and Mr. James E. Wells, Jr., Associate Director for Energy and Science Issues, General Accounting Office. All of these witnesses expressed support for S. 1537 as an effective mechanism for stimulating more commercialization of the research being performed by the Federal laboratories.

On August 10, 1995, Senator Rockefeller introduced S. 1164, the Technology Transfer Improvements Act of 1995, with the cosponsorship of Senator Burns. On November 3, the Committee met in

open executive session, and, without objection, ordered the bill favorably reported with one amendment. That amendment, offered by Senator Burns, makes changes in the Fastener Quality Act that were recommended by the Fastener Advisory Committee in order to clarify and correct certain provisions in the current law.

#### SUMMARY OF MAJOR PROVISIONS

1. TITLE TO INTELLECTUAL PROPERTY UNDER CRADAs.—The bill guarantees to the industry partner in a CRADA the option to choose an exclusive license for a field of use for any sole or joint invention made by laboratory employees under the CRADA. Such license is subject to several conditions:

(a) The Federal Government retains a non-exclusive, non-transferable, irrevocable, paid-up license to use the invention.

(b) If the laboratory assigns title, or grants an exclusive license, to an invention to an industry partner, the Government may either require the partner to grant a license (or grant the license itself) to a responsible applicant if the industry partner fails to meet health or safety needs, meet public use requirements, or comply with an agreement stipulating that products resulting from the invention be substantially manufactured in the United States.

Under current law, the Federal laboratory decides what intellectual property rights to inventions are to be granted to the private sector partner in a CRADA.

2. INTELLECTUAL PROPERTY RIGHTS OF PRIVATE SECTOR PARTY.—The bill also assures a private sector collaborating party of the right to own inventions made by its own employees under a CRADA. Current law is vague in this regard. The Government would normally retain a license for research or other Government purposes, but the exact Government rights could be negotiable.

3. DISTRIBUTION OF INCOME RECEIVED BY FEDERAL LABS FROM INTELLECTUAL PROPERTY RIGHTS.—The bill requires that agencies must pay Federal inventors the first \$2000 in royalties, and thereafter 15 percent of the royalties, received each year by the agency for inventions of the employee. Current law simply provides that the researcher shall receive 15 percent of the royalties. The bill also expressly allows the use of the remaining royalties received by the lab to reward other researchers involved in the project, pay for administrative costs related to the project, and fund related research at the laboratory.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and Section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 17, 1995.*

Hon. LARRY PRESSLER,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1164, the Technology Transfer Improvements Act of 1995, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 3, 1995. We estimate that the provisions regarding the expenditure of license-related income would increase direct spending during this period but that the impact would not be significant. Other provisions would have no significant budgetary impact.

Because S. 1164 would affect direct spending, the bill would be subject to pay-as-you-go procedures. The bill would not affect the budgets of state or local governments.

Bill purpose. S. 1164 would revise statutory guidelines for various federal activities promoting technology transfer. The bill would clarify government policies for cooperative research and development agreements (CRADAs), especially with regard to rights to intellectual property and allowable contributions and expenditures. Policies for the distribution of royalties collected by the government under technology licensing agreements also would be modified. The bill would earmark a higher portion of the annual income from licenses for payments to inventors or coinventors, raise the ceiling on the amounts that can be paid to inventors, allow government laboratories to reinvest any remaining proceeds in related research initiatives, and extend the time allowed for agencies to obligate the proceeds by one year.

The bill also would amend the provisions of the Fasteners Quality Act regarding laboratory accreditation, commingling of fasteners, and enforcement of the act.

Federal budgetary impact. If enacted, S. 1164 would affect direct spending by extending the time allowed for agencies to spend income from licenses of intellectual property. Giving agencies an additional year to obligate income and royalties would increase direct spending because funds that currently lapse would now be spent instead of being returned to the Treasury. CBO estimates that the impact of this change in direct spending would not be significant because the amounts that lapse under existing law are small (less than \$100,000 a year). Changing the guidelines for CRADAs would have no net budgetary impact because any additional collections resulting from the new policies would be matched by an increase in spending for either payments to inventors or related agency programs. Other provisions of the bill would have no significant budgetary impact.

Previous estimate. On November 8, 1995, CBO provided an estimate for H.R. 2196, the National Technology Transfer and Advancement Act of 1995, as ordered reported by the House Committee on Science on October 25, 1995. That bill included provisions nearly identical to those in S. 1164, and the estimated budgetary effects of those sections are the same as estimated for this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Rachel Forward.

Sincerely,

PAUL VAN DE WATER  
(For June E. O'Neill, *Director*).

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

S. 1164, as reported, amends the Stevenson-Wydler Technology Innovation Act of 1980, as amended, to encourage more transfer and commercialization of Federal lab technology by clarifying the intellectual property rights of private companies participating in joint research with Federal labs and by increasing the financial incentives and rewards for Federal lab scientists who contribute to the joint research. The bill also makes changes in the Fastener Quality Act to clarify and correct certain provisions in the current law. The Committee believes that the bill will not subject any individuals or businesses affected by the bill to additional regulation, will not increase the paperwork requirements for such individuals and businesses, and will not have an adverse impact on individual privacy.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1—Short title*

This section states the Act may be cited as the “Technology Transfer Improvements Act of 1995”.

##### *Section 2—Findings*

This section states that Congress finds that: bringing technology and industrial innovation to the marketplace is central to the well-being of the United States; the Federal Government can help U.S. business to speed the development of new products and processes by entering into cooperative research and development agreements (CRADAs) which make available the assistance of Federal laboratories to the private sector; and commercialization and innovation will be enhanced if companies, in return for reasonable compensation to the Federal Government, can more easily obtain exclusive licenses to inventions which develop as a result of cooperative research with scientists employed by Federal laboratories.

##### *Section 3—Use of Federal technology*

This section amends Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (Stevenson-Wydler), which authorizes funding for the Federal Laboratory Consortium for Technology Transfer. The Consortium assists companies and others in locating Federal laboratories that might assist them. Section 11 requires that a fixed percentage (0.008 percent) of the budget of each Federal agency that is to be used for that agency’s labs be transferred to the National Institute of Standards and Technology to carry out Consortium activities.

Section 3 of the reported bill amends the language of Section 11 of Stevenson-Wydler to ensure that its requirements are only imposed on Federal agencies with substantial Federal lab budgets. In addition, Section 3 deletes language which would have ended the transfer authority in Section 11 after fiscal year 1996.

*Section 4—Title to intellectual property arising from cooperative research and development agreements*

This section amends section 12(b) of Stevenson-Wydler, which deals with laboratory authority regarding patent rights associated with inventions developed under CRADAs. Under the amended section 12(b), the laboratory participating in a CRADA must ensure that the collaborating party has the option to choose an exclusive license for a field of use for any invention made solely or jointly by a laboratory employee under the agreement. This gives the collaborating party greater assurance than it has under current law that it will get intellectual property rights under a CRADA to which it is contributing resources. Under current law, the lab decides what rights will be granted to the industry partner.

This section also amends section 12(b) of Stevenson-Wydler to provide that, in consideration for the Government's contribution under the agreement, grants of intellectual property shall be subject to two conditions: (1) a standard nonexclusive, nontransferable, irrevocable, paid-up license from the collaborating party to the laboratory to use the invention on behalf of the Government and (2) a Government right to require the collaborating party to grant to a responsible applicant a license in the applicant's licensed field of use, but only if the action is necessary to meet health and safety needs or to meet requirements for public use under Federal regulations, or if the collaborating party has failed to comply with an agreement stipulating that products resulting from the invention will be manufactured substantially in the United States.

Under the amended subsection, the laboratory also shall ensure that a collaborating party may retain title to any invention made solely by its employee under a CRADA, in exchange for granting the Government a license to use the invention for Government purposes.

The Committee notes that this section gives each private sector party entering into a CRADA with a Federal laboratory the right to require that the CRADA provide for exclusive intellectual property rights for a pre-negotiated field of use for any invention occurring under the CRADA, regardless of whether the invention is made by a laboratory employee, a company employee, or a combination thereof. This provision will guarantee the company, at a minimum, an exclusive license for that pre-negotiated field of use. However, agencies may still grant the company more than an exclusive license and, if they wish, assign full patent rights to the company.

If more than one company is involved in negotiations regarding a particular CRADA, the Committee expects each of their research interests to be taken into consideration in defining the relevant field of use, and that in no event shall the total rights given to the private sector participants under a CRADA be less than they would be if just one company were participating in the CRADA.

It is also the Committee's intent in this section, as in the provisions of Stevenson-Wydler it amends, for an agency to be able to determine which of its management levels should be considered a laboratory for the purposes of Stevenson-Wydler. It is not the intent of the Committee to count as laboratories under this Act individual research laboratories which are part of a larger management structure which is also a laboratory. However, the Committee approves of decisions by agencies, such as the Department of Defense and the National Institutes of Health, to treat certain research institutes, centers, and divisions as separate laboratories even if they are co-located with other institutes, centers, or divisions.

*Section 5—Distribution of income from intellectual property received by Federal laboratories*

This section amends section 14 of Stevenson-Wydler, the provision that deals with the distribution of royalties that Federal laboratories receive under CRADAs. The main change is to direct laboratories to pay each year the first \$2,000, and thereafter at least 15 percent, of the royalties or other similar payments to the Federal inventor or coinventors of the CRADA invention. Current law directs that at least 15 percent go to the Federal inventor or coinventors or to promulgate an alternative system through regulation. It also raises the maximum amount of royalties a Federal inventor may receive in any one year from \$100,000 to \$150,000.

This section clarifies how laboratories may use remaining royalties after payments are made to Federal inventors. It provides that remaining royalties may be used to reward other employees who contributed substantially to CRADA inventions and for laboratory purposes unrelated to CRADAs, including rewarding laboratory employees for other contributions, furthering scientific exchange, supporting education and training, paying expenses incidental to the administration and licensing of intellectual property, and supporting research consistent with the objectives of the laboratory.

*Section 6—Employee activities*

This section makes technical amendments to section 15(a) of Stevenson-Wydler to clarify its intent. Section 15(a) states that a Federal agency shall give title to an invention to an employee or former employee who made that invention if the agency does not intend to file a patent application or otherwise promote commercialization of such invention. It also provides that the Government retains a license to use the invention for its own purposes.

The Committee believes that this language will correct any confusion that has arisen in agencies regarding whether the Government, when it takes ownership of an employee's invention, may subsequently waive ownership of any such invention it does not intend to pursue.

*Section 7—Amendment to Bayh-Dole Act*

This section makes a technical change to a provision in the Bayh-Dole Act, which legislation deals with the allocation of patent rights to inventions arising from Federally funded research. Current law makes clear that, in cases of conflict, Stevenson-Wydler

takes precedence over Bayh-Dole. However, as currently worded, the Bayh-Dole Act refers to Stevenson-Wydler “as amended by the Federal Technology Innovation Act of 1986,” which could be read to mean that the provision would not apply to any post-1986 amendments to Stevenson-Wydler. Section 7 of S. 1164 would strike the above-quoted phrase so that the law would simply read that Stevenson-Wydler takes precedence, which would be interpreted by the courts as covering all subsequent amendments to Stevenson-Wydler.

*Section 8—Fastener Quality Act Amendments*

This section amends the Fastener Quality Act (P.L. 101-592) to allow minor nonconformance in fastener specifications if such nonconformance is consistent with consensus standards organizations’ policies; exclude distributors from the persons covered by the commingling prohibition; and allow the fastener manufacturers to use a certification from the metal supplier to establish the chemistry of the finished fasteners. The Fastener Advisory Committee, created pursuant to the Fastener Quality Act, recommended that legislative changes in these three areas be made after estimating that, without such changes, implementation of the Act would impose almost \$1 billion in additional costs on the fastener industry. The text of Section 8 of the reported bill was developed by the Fastener Advisory Committee created under the law, a committee representing all segments of the fastener industry.

The bill repeals Section 4 of the Act, which allows the Secretary of Commerce to waive the requirements of Act with regard to categories of fasteners not used in critical applications and to include within the Act’s coverage categories of fasteners not specifically described in the Act. The bill also authorizes the Department of Commerce to conduct investigations into matters arising under the Fastener Quality Act and reduces from 10 years to 5 years the time for retention of records required under the Fastener Quality Act. Further, the bill strikes the phrase “within 180 days after the date of enactment of this Act” in Section 13 of the Fastener Quality Act. Section 13 requires the Secretary of Commerce to issue rules implementing the Act within 180 days of enactment of the Act. Since that deadline expired four years ago without regulations having been issued, the 180-day deadline in the current law no longer has meaning. Finally, the bill repeals Section 14 of the Act, which requires the Secretary of Commerce to appoint a fasteners advisory committee. The advisory committee referenced in Section 14 was, in fact, appointed after enactment of the Fastener Quality Act. It completed its main work in 1994 but continues under current law.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## TITLE 15, UNITED STATES CODE

### CHAPTER 63—TECHNOLOGY INNOVATION

#### § 3710. Utilization of Federal technology

(a) POLICY.—

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

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) ESTABLISHMENT OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions as staff for its Office of Research and Technology Applications, and (2) each Federal agency which operates or directs one or more Federal laboratories shall make available sufficient funding, either as a separate line item or from the agency's research and development budget, to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process. The agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry.

(c) FUNCTIONS OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;

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

(3) to cooperate with and assist the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry;

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

(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.

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

(d) CENTER FOR THE UTILIZATION OF FEDERAL TECHNOLOGY.—The National Technical Information Service shall—

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

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

(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;

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

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

(6) maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information.

(e) ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.—

(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal Laboratories and the private sector, shall—

(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curricu-

lum design, long-term research planning, personnel needs projections, and productivity assessments; and

(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government).

(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a senior representative appointed from each Federal agency with one or more member laboratories.

(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

(4) The Director of the National Institute of Standards and Technology shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Institute, as requested by the Consortium and approved by such Director.

(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

(6) Not later than one year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made. Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.

(7)(A) Subject to subparagraph (B), an amount equal to 0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Institute of Standards and Technology at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Institute to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

[(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

[(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed \$ 10,000; and

[(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996.]

*(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if the amount so transferred by that agency (as determined under such subparagraph) would exceed \$10,000.*

(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

(8) [Repealed]

(f) AGENCY REPORTING.—Each Federal agency which operates or directs one or more Federal laboratories shall report annually to the Congress, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.

(g) FUNCTIONS OF THE SECRETARY.—

(1) The Secretary, through the Under Secretary, and in consultation with other Federal agencies, may—

(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

(2) Two years after the date of the enactment of this subsection and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this Act [15 U.S.C. 3701 et seq.]. Other Federal agencies shall cooperate in the report's preparation.

(3) Not later than one year after the date of the enactment of the Federal Technology Transfer Act of 1986, the Secretary shall submit to the President and the Congress a report regarding—

(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.

(h) [Repealed]

(i) RESEARCH EQUIPMENT.—The Director of a laboratory, or the head of any Federal agency or department, may give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer with a gift under the section.

**§ 3710a. Cooperative research and development agreements**

(a) GENERAL AUTHORITY.—Each Federal agency may permit the director of any of its Government-operated Federal laboratories, and, to the extent provided in an agency-approved joint work statement, the director of any of its Government-owned, contractor-operated laboratories—

(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency); and

(2) to negotiate licensing agreements under section 207 of title 35, United States Code, or under other authorities (in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for inventions made or other intellectual property developed at the laboratory and other inventions or other intellectual property that may be voluntarily assigned to the Government.

[(b) ENUMERATED AUTHORITY.—Under agreements entered into pursuant to subsection (a)(1), a Government-operated Federal laboratory, and, to the extent provided in an agency-approved joint work statement, a Government-owned, contractor-operated laboratory, may (subject to subsection (c) of this section)—

[(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

[(2) grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, or options thereto, in any invention made in whole or in part by a laboratory employee under the agreement, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory deems appropriate;

[(3) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government

may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party;

[(4) determine rights in other intellectual property developed under an agreement entered into under subsection (a)(1); and

[(5) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

[A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) may use or obligate royalties or other income accruing to such laboratory under such agreement with respect to any invention only (i) for payments to investors; (ii) for the purposes described in section 14(a)(1)(B) (i), (ii), and (iv) [15 U.S.C. 3710c(a)(1)(B) (i), (ii), and (iv)]; and (iii) for scientific research and development consistent with the research and development mission and objectives of the laboratory.]

*(b) ENUMERATED AUTHORITY.—(1) Under an agreement entered into pursuant to subsection (a)(1), the laboratory may grant, or agree to grant in advance, to a collaborating party patent licenses or assignments, or options thereto, in any invention made in whole or in part by a laboratory employee under the agreement, for reasonable compensation when appropriate. The laboratory shall ensure that the collaborating party has the option to choose an exclusive license for a field of use for any such invention under the agreement or, if there is more than one collaborating party, that the collaborating parties are offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party. In consideration for the Government's contribution under the agreement, grants under this paragraph shall be subject to the following explicit conditions:*

*(A) A nonexclusive, nontransferable, irrevocable, paid-up license from the collaborating party to the laboratory to practice the invention or have the invention practiced throughout the world by or on behalf of the Government. In the exercise of such license, the Government shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of section 552(b)(4) of title 5, United States Code, or which would be considered as such if it had been obtained from a non-Federal party.*

*(B) If a laboratory assigns title or grants an exclusive license to such an invention, the Government shall retain the right—*

*(i) to require the collaborating party to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the invention in the applicant's licensed field of use, on terms that are reasonable under the circumstances; or*

*(ii) if the collaborating party fails to grant such a license, to grant the license itself.*

*(C) The Government may exercise its right retained under subparagraphs (B)(ii) and (iii) only if the Government finds that—*

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

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

(iii) the collaborating party has failed to comply with an agreement containing provisions described in subsection (c)(4)(B).

(2) Under agreements entered into pursuant to subsection (a)(1), the laboratory shall ensure that a collaborating party may retain title to any invention made solely by its employee in exchange for normally granting the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

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

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

(B) use funds received from a collaborating party in accordance with subparagraph (A) to hire personnel to carry out the agreement who will not be subject to full-time equivalent restrictions of the agency; and

(C) to the extent consistent with any applicable agency requirements or standards of conduct, permit an employee or former employee of the laboratory to participate in an effort to commercialize an invention made by the employee or former employee while in the employment or service of the Government.

(4) A collaborating party in an exclusive license in any invention made under an agreement entered into pursuant to subsection (a)(1) shall have the right of enforcement under chapter 29 of title 35, United States Code.

(5) A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement pursuant to subsection (a)(1) may use or obligate royalties or other income accruing to the laboratory under such agreement with respect to any invention only—

(A) for payments to inventors;

(B) for purposes described in clauses (i), (iii), and (iv) of section 14(a)(1)(B); and

(C) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

(c) CONTRACT CONSIDERATIONS.—

(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this Act.

(3) (A) Any agency using the authority given it under subsection (a) shall review standards of conduct for its employees

for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the agency with which the employee involved is or was formerly employed).

(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall—

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(5)(A) If the head of the agency or his designee desires an opportunity to disapprove or require the modification of any such agreement presented by the director of a Government-operated laboratory, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented by the director of a Government-operated laboratory under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(C)(i) Except as provided in subparagraph (D), any agency which has contracted with a non-Federal entity to operate a laboratory shall review and approve, request specific modifications to, or disapprove a joint work statement that is submitted by the director of such laboratory within 90 days after such submission. In any case where an agency has requested specific modifications to a joint work statement, the agency shall approve or disapprove any resubmission of such joint work statement within 30 days after such resubmission, or 90 days after the original submission, whichever occurs later. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of

the agreement under clause (iv) and approval under this clause of a joint work statement.

(ii) In any case in which an agency which has contracted with a non-Federal entity to operate a laboratory disapproves or requests the modification of a joint work statement submitted under this section, the agency shall promptly transmit a written explanation of such disapproval or modification to the director of the laboratory concerned.

(iii) Any agency which has contracted with a non-Federal entity to operate a laboratory or laboratories shall develop and provide to such laboratory or laboratories one or more model cooperative research and development agreements, for the purposes of standardizing practices and procedures, resolving common legal issues, and enabling review of cooperative research and development agreements to be carried out in a routine and prompt manner.

(iv) An agency which has contracted with a non-Federal entity to operate a laboratory shall review each agreement under this section. Within 30 days after the presentation, by the director of the laboratory, of such agreement, the agency shall, on the basis of such review, approve or request specific modification to such agreement. Such agreement shall not take effect before approval under this clause.

(v) If an agency fails to complete a review under clause (iv) within the 30-day period specified therein, the agency shall submit to the Congress, within 10 days after the end of that 30-day period, a report on the reasons for such failure. The agency shall, at the end of each successive 30-day period thereafter during which such failure continues, submit to the Congress another report on the reasons for the continuing failure. Nothing in this clause relieves the agency of the requirement to complete a review under clause (iv).

(vi) In any case in which an agency which has contracted with a non-Federal entity to operate a laboratory requests the modification of an agreement presented under this section, the agency shall promptly transmit a written explanation of such modification to the director of the laboratory concerned.

(D)(i) Any non-Federal entity that operates a laboratory pursuant to a contract with a Federal agency shall submit to the agency any cooperative research and development agreement that the entity proposes to enter into with a small business firm and the joint work statement required with respect to that agreement.

(ii) A Federal agency that receives a proposed agreement and joint work statement under clause (i) shall review and approve, request specific modifications to, or disapprove the proposed agreement and joint work statement within 30 days after such submission. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the

agreement and approval of a joint work statement under this clause.

(iii) In any case in which an agency which has contracted with an entity referred to in clause (i) disapproves or requests the modification of a cooperative research and development agreement or joint work statement submitted under that clause, the agency shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(6) Each agency shall maintain a record of all agreements entered into under this section.

(7)(A) No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained in the conduct of research or as a result of activities under this Act [15 U.S.C. 3701 et seq.] from a non-Federal party participating in a cooperative research and development agreement shall be disclosed.

(B) The director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of information that results from research and development activities conducted under this Act [15 U.S.C. 3701 et seq.] and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5, United States Code [5 U.S.C. 551 et seq.].

(d) DEFINITION.—As used in this section—

(1) the term “cooperative research and development agreement” means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contractor cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code;

(2) the term “laboratory” means—

(A) a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

(B) a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a substantial purpose of the contract is the performance of research and development, or the production, maintenance,

testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and

(C) a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal government,

but such term does not include any facility covered by Executive Order No. 12344 [42 U.S.C. 7158 note], dated February 1, 1982, pertaining to the naval nuclear propulsion program;

(3) the term "joint work statement" means a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement; and

(4) the term "weapon production facility of the Department of Energy" means a facility under the control or jurisdiction of the Secretary of Energy that is operated for national security purposes and is engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

(e) DETERMINATION OF LABORATORY MISSIONS.—For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

(f) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.

(g) PRINCIPLES.—In implementing this section, each agency which has contracted with a non-Federal entity to operate a laboratory shall be guided by the following principles:

(1) The implementation shall advance program missions at the laboratory, including any national security mission.

(2) Classified information and unclassified sensitive information protected by law, regulation, or Executive order shall be appropriately safeguarded.

### **§ 3710c. Distribution of royalties received by federal agencies**

(a) IN GENERAL.—

[(1) Except as provided in paragraphs (2) and (4), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into by Government-operated Federal laboratories under section 12 [15 U.S.C. 3710b], and inventions of government-operated Federal laboratories licensed under section 207 of title 35, United States Code, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:

[(A)(i) The head of the agency or his designee shall pay at least 15 percent of the royalties or other income the agency receives on account of any invention to the inventor

(or co-inventors) if the inventor (or each such co-inventor) has assigned his or her rights in the invention to the United States. This clause shall take effect on the date of the enactment of this section unless the agency publishes a notice in the Federal Register within 90 days of such date indicating its election to file a Notice of Proposed Rulemaking pursuant to clause (ii).

[(ii) An agency may promulgate, in accordance with section 553 of title 5, United States Code, regulations providing for an alternative program for sharing royalties with inventors licensed inventions under clause (i). Such regulations must—

[(I) guarantee a fixed minimum payment to each such inventor, each year that the agency receives royalties from that inventor's invention;

[(II) provide a percentage royalty share to each such inventor, each year that the agency receives royalties from that inventor's invention in excess of a threshold amount;

[(III) provide that total payments to all such inventors shall exceed 15 percent of total agency royalties in any given fiscal year; and

[(IV) provide appropriate incentives from royalties for those laboratory employees who contribute substantially to the technical development of a licensed invention between the time of the filing of the patent application and the licensing of the invention.

[(iii) An agency that has published its intention to promulgate regulations under clause (ii) may elect not to pay inventors under clause (i) until the expiration of two years after the date of the enactment of this Act or until the date of the promulgation of such regulations, whichever is earlier. If an agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to the date of the enactment of this Act. If promulgation of the regulations occurs within two years after the date of the enactment of this Act, payments shall be made in accordance with such regulations, retroactive to the date of the enactment of this Act. The agency shall retain its royalties until the inventor's portion is paid under either clause (i) or (ii). Such royalties shall not be transferred to the agency's Government-operated laboratories under subparagraph (B) and shall not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rulemaking under this subparagraph.

[(B) The balance of the royalties or other income shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other income from any invention going to the laboratory where the invention occurred; and the funds so transferred to any such laboratory may be used or obligated by that

laboratory during the fiscal year in which they are received or during the succeeding fiscal year—

[(i) for payment of expenses incidental to the administration and licensing of inventions by that laboratory or by the agency with respect to inventions which occurred at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for invention management and licensing services;

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

[(iii) to further scientific exchange among the Government-operated laboratories of the agency; or

[(iv) for education and training of employees consistent with the research and development mission and objectives of the agency, and for other activities that increase the licensing potential for transfer of the technology of the laboratories of the agency.

[Any of such funds not so used or obligated by the end of the fiscal year succeeding the fiscal year in which they are received shall be paid into the Treasury of the United States.]

*(1) Except as provided in paragraphs (2) and (4), any royalties or other payments received by a Federal agency from the licensing and assignment of inventions under agreements entered into by Federal laboratories under section 12, and from the licensing of inventions of Federal laboratories under section 207 of title 35, United States Code, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:*

*(A)(i) The head of the agency or laboratory, or such individual's designee, shall pay each year the first \$2,000, and thereafter at least 15 percent, of the royalties or other payments to the inventor or coinvestors.*

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

*(iii) The agency or laboratory shall retain the royalties and other payments received from an invention until the agency or laboratory makes payments to employees of a laboratory under clause (i) or (ii).*

*(B) The balance of the royalties or other payments shall be transferred by the agency to its laboratories, with the majority share of the royalties or other payments from any invention going to the laboratory where the invention occurred. The royalties or other payments so transferred to any laboratory may be used or obligated by that laboratory*

during the fiscal year in which they are received or during the succeeding fiscal year—

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

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

(iii) for education and training of employees consistent with the research and development missions and objectives of the agency or laboratory, and for other activities that increase the potential for transfer of the technology of the laboratories of the agency;

(iv) for payment of expenses incidental to the administration and licensing of intellectual property by the agency or laboratory with respect to inventions made at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or

(v) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

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

(2) If, after payments to inventors under paragraph (1), the royalties or other payments received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated [for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year] under paragraph (1)(B). Any funds not so used or obligated shall be paid into the Treasury of the United States.

(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed [ \$100,000 ] \$150,000 per year to any one person, unless the President approves a larger award (with the excess over [ \$100,000 ] \$150,000 being treated as a Presidential award under section 4504 of title 5, United States Code).

(4) A Federal agency receiving royalties or other [income] payments as a result of invention management services per-

formed for another Federal agency or laboratory under section 207 of title 35, United States Code, may retain such royalties or **[income]** *payments* to the extent required to offset **[the payment of royalties to inventors]** *payments to inventors* under clause (i) of paragraph (1)(A), costs and expenses incurred under **[clause (i) of paragraph (1)(B)]** *clause (iv) of paragraph (1)(B)*, and the cost of foreign patenting and maintenance for any invention of the other agency. All royalties and other **[income]** *payments* remaining after **[payment of the royalties,]** *offsetting the payments to inventors,* costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with **[clauses (i) through (iv) of]** paragraph (1)(B).

(b) CERTAIN ASSIGNMENTS.—If the invention involved was one assigned to the Federal agency—

**[(1) by a contractor, grantee, or participant in a cooperative agreement with the agency, or]**

*(1) by a contractor, grantee, or participant, or an employee of a contractor, grantee, or participant, in an agreement or other arrangement with the agency, or*

*(2) by an employee of the agency who was not working in the laboratory at the time the invention was made,*

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

(c) REPORTS.—

(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.

(2) The Comptroller General, five years after the date of the enactment of this section, shall review the effectiveness of the various royalty-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, his findings, conclusions, and recommendations for improvements in such programs.

#### **§ 3710d. Employee activities**

(a) IN GENERAL.—If a Federal agency which has **[the right of ownership to an invention under this Act [15 U.S.C. 3701 et seq.]]** *ownership of or the right of ownership to an invention made by a Federal employee* does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency shall allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to *obtain or* retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely fil-

ing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

(b) DEFINITION.—For purposes of this section, Federal employees include special Government employees as defined in section 202 of title 18, United States Code.

(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.

## CHAPTER 80—FASTENERS

### § 5401. Findings and purpose

(a) FINDINGS.—The Congress finds that—

(1) the American economy uses billions of fasteners each year;

(2) millions of mismarked, substandard, counterfeit, and other nonconforming fasteners have been sold in commerce to end-users in the United States, and their use has dramatically increased the risk of equipment and infrastructure failures;

(3) both the military and civilian sectors of the economy have encountered unnecessary, unwarranted, and dangerous equipment and construction failures, as well as extraordinary expenses, as a result of the use of nonconforming fasteners;

[(4) the sale in commerce of nonconforming fasteners and the use of nonconforming fasteners in numerous critical applications have reduced the combat readiness of the Nation's military forces, endangered the safety of other Federal projects and activities, and cost both the public and private sectors large sums in connection with the retesting and purging of fastener inventories;]

[(5)] (4) the purchase and use of nonconforming fasteners stem from material misrepresentations about such fasteners made by certain manufacturers, importers, and distributors engaged in commerce;

[(6)] (5) current fastener standards of measurement evaluate bolts and other fasteners according to multiple criteria, including strength, hardness, and composition, and provide grade identification markings on fasteners to make the characteristics of individual fasteners clear to purchasers and users;

[(7)] (6) current tests required by consensus standards, designed to ensure that fasteners are of standard measure, are adequate and appropriate for use as standards in a program of high-strength fastener testing;

[(8)] (7) the lack of traceability [by lot number] of fasteners sold in commerce is a serious impediment to effective quality control efforts; and

[(9)] (8) the health and safety of Americans is threatened by the widespread sale in commerce of mismarked, substandard, and counterfeit fasteners, a practice which also harms American manufacturers, importers, and distributors of safe and conforming fasteners, and workers in the American fastener industry.

(b) PURPOSE.—In order to protect public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the traceability of fasteners [used in critical applications,] *in com-*

*merce*, and generally to provide commercial and governmental customers with greater assurance that fasteners meet stated specifications, it is the purpose of this Act [15 U.S.C. 5401 et seq.] to create procedures for the testing, certification, and distribution of certain fasteners used in commerce within the United States.

**§ 5402. Definitions**

As used in this Act [15 U.S.C. 5401 et seq.], the term—

- (1) “alter” means to alter—  
 (A) by through-hardening,  
 (B) by electroplating of fasteners [having a minimum tensile strength of 150,000 pounds per square inch], or  
 (C) by machining;

(2) “consensus standards organization” means the American Society for Testing and Materials, American National Standards Institute, American Society of Mechanical Engineers, Society of Automotive Engineers, or any other *consensus* standard-setting organization determined by the Secretary to have comparable knowledge, expertise, and concern for health and safety in the field for which such organization purports to set standards;

(3) “container” means any package of fasteners traded in commerce;

(4) “Director” means the Director of the National Institute of Standards and Technology;

(5) “fastener” means—

- (A) a—  
 (i) screw, nut, bolt, or stud having internal or external threads, or  
 (ii) a load-indicating washer,

with a nominal diameter of 5 millimeters or greater, in the case of such items described in metric terms, or 1/4 inch or greater, in the case of such items described in terms of the English system of measurement, which contains any quantity of metal and is held out as meeting a standard or specification which requires through-hardening,

(B) a screw, nut, bolt, or stud having internal or external threads which bears a grade identification marking required by a standard or specification, *or*

(C) a washer to the extent that it is subject to a standard or specification applicable to a screw, nut, bolt, or stud described in subparagraph (B), [or]

[(D) any item within a category added by the Secretary in accordance with section 4(b) [15 U.S.C. 5403(b)],]

except that such term does not include any screw, nut, bolt, or stud that is produced and marked as ASTM A 307 Grade A *or produced in accordance with ASTM F 432*;

(6) “grade identification marking” means any symbol appearing on a fastener purporting to indicate that the fastener’s base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization or [other person] *government agency*;

(7) “importer” means a person located within the United States who contracts for the initial purchase of fasteners man-

ufactured outside the United States for resale or such person's use within the United States;

(8) "Institute" means the National Institute of [Standard] *Standards and Technology*;

(9) "lot" means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer and submitted for inspection and testing at one time;

(10) "manufacturer" means a person who fabricates fasteners, or who alters any item so that it becomes a fastener;

[(11) "original equipment manufacturer" means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products;]

[(12)] (11) "private label distributor" means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor's distinguishing insignia;

[(13)] (12) "Secretary" means the Secretary of Commerce;

[(14)] (13) "standard and specifications" means the provisions of a document published by a consensus standards organization, [a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener] *or a government agency*; and

[(15)] (14) "through-harden" means heating above the transformation temperature followed by quenching and tempering *for the purpose of achieving a uniform hardness*.

### **[§ 5403. Special rules for fasteners]**

[(a) WAIVER REQUIREMENT.—If the Secretary determines that any category of fastener is not used in critical applications, the Secretary shall waive the requirements of this Act with respect to such category.]

[(b) ADDITIONAL ITEMS.—If the Secretary determines that—

[(1) a category of screw, nut, bolt, or stud which is not described in section 3(5)(A)(i) or (B),

[(2) a category of item which is associated with a fastener described in section 3(5)(A), (B), or (C), or

[(3) a category of item which serves a function comparable to that served by a fastener so described

is used in critical applications, the Secretary may include such category under section 3(5)(D) and therefore within the definition of fasteners under this Act.]

[(c) NOTICE AND OPPORTUNITY FOR COMMENTS.—The Secretary shall provide advance notice and the opportunity for public comments prior to making any determination under subsections (a) and (b) and shall act through the Director in making any such determination.]

### **§ 5404. Testing and certification of fasteners**

(a) REQUIREMENT.—

(1) No fastener shall be offered for sale or sold in commerce unless it is part of a lot which—

(A) conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and

(B) has been inspected, tested, and certified as provided in ~~subsections (b) and (c)~~ *subsections (b), (c), and (d)* of this section.

(2)(A) Paragraph (1)(B) of this subsection shall not apply to fasteners which are part of a lot of 50 fasteners or less if, within 10 working days after the delivery of such fasteners, or as soon as practicable thereafter—

(i) inspection, testing, and certification as provided in subsections (b) and (c) is carried out; and

(ii) written notice detailing the results of such inspection, testing, and certification is sent (I) to all purchasers of such fasteners, except retail sellers and retail consumers, and (II) to any retail seller or retail consumer who, prior to delivery, requests such written notice.

(B) If a fastener is sold under this paragraph, each purchaser of such fastener, except for retail sellers and retail consumers unless such retail sellers and retail consumers request such notice in advance, shall be provided, contemporaneously with each sale and delivery, written notice stating that such fastener has not yet been inspected, tested, and certified as required by this Act [15 U.S.C. 5401 et seq.].

(b) INSPECTION AND TESTING.—

(1) The manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample, as provided in paragraph (2) of this subsection, of the fasteners in such lot to determine whether the lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured. Such inspection and testing shall be performed by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6 [15 U.S.C. 5405]. The standards and specifications to which the manufacturer represents such lot has been manufactured shall be disclosed by the manufacturer to the laboratory at the time the lot is submitted for inspection and testing under this paragraph. The manufacturer of a lot may perform the inspection and testing required by this paragraph in a laboratory which it owns or with which it is otherwise affiliated, if such laboratory is accredited in accordance with the procedures and conditions specified by the Secretary under section 6 [15 U.S.C. 5405]; unless the Secretary finds that, as to a specific type of fastener and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety of the public or industrial workers.

(2) The size, selection, and integrity of the sample to be inspected and tested under paragraph (1) shall be governed—

(A) by the standards and specifications to which the manufacturer represents the fasteners in the sample have been manufactured; or

(B) if such standards and specifications do not provide for the size, selection, or integrity of the sample, by sam-

pling procedures prescribed by the Secretary, who shall to the extent practicable use consensus testing standards and related materials.

Nothing in this paragraph shall prohibit a purchaser from requiring the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards and specifications or in the applicable sampling procedures prescribed by the Secretary.

(c) LABORATORY REPORT OF TESTING.—If a laboratory performing the inspection and testing under subsection (b)(1) determines, as to the characteristics selected under the sampling procedures prescribed by the Secretary and based on the sample examined, that a lot conforms to the standards and specifications which the manufacturer represents it has been manufactured, the laboratory shall provide to the manufacturer a written inspection and testing report with respect to such lot. The report, which shall be in a form prescribed by the Secretary by regulation, shall—

(1) state the manufacturer's name, the part description, and the lot number and note the grade identification mark and insignia found on the fastener;

(2) reference the standards and specifications disclosed by the manufacturer with respect to such lot under subsection (b)(1) [or, where applicable, certified by the manufacturer under section 7(c)(1) [15 U.S.C. 5406(c)(1)]];

(3) list the markings and characteristics selected under the Secretary's procedures for testing, [such as the chemical, dimensional, physical, mechanical, and any other] significant characteristics required by the standards and specifications described in paragraph (2) and specify the results of the inspection and testing under subsection (b)(1);

(4) *except as provided in subsection (d)*, state whether, based on the samples provided as representative of the lot, such lot has been found after such inspection and testing to conform to such standards and specifications; and

(5) bear the original signature of a laboratory employee or officer determined by the Secretary to be responsible for the accuracy of the report and of the inspection and testing to which it relates.

(d) ALTERNATIVE PROCEDURE FOR CHEMICAL CHARACTERISTICS.—*Notwithstanding the requirements of subsections (b) and (c), a manufacturer shall be deemed to have demonstrated, for purposes of subsection (a)(1), that the chemical characteristics of a lot conform to the standards and specifications to which the manufacturer represents such lot has been manufactured if the following requirements are met:*

(1) *The coil or heat number of metal from which such lot was fabricated has been inspected and tested with respect to its chemical characteristics by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.*

(2) *Such laboratory has provided to the manufacturer, either directly or through the metal manufacturer, a written inspection and testing report, which shall be in a form prescribed by*

*the Secretary by regulation, listing the chemical characteristics of such coil or heat number.*

*(3) The report described in paragraph (2) indicates that the chemical characteristics of such coil or heat number conform to those required by the standards and specifications to which the manufacturer represents such lot has been manufactured.*

*(4) The manufacturer demonstrates that such lot has been fabricated from the coil or heat number of metal to which the report described in paragraphs (2) and (3) relates.*

*In prescribing the form of report required by subsection (c), the Secretary shall provide for an alternative to the statement required by subsection (c)(4), insofar as such statement pertains to chemical characteristics, for cases in which a manufacturer elects to use the procedure permitted by this subsection.*

#### **§ 5405. Laboratory accreditation**

(a) ESTABLISHMENT OF ACCREDITATION PROGRAM.—

(1) ~~Within 180 days after the date of enactment of this Act, the~~ *The* Secretary, acting through the Director, shall issue regulations which shall include—

(A) procedures and conditions, including sampling procedures referred to in section 5 [15 U.S.C. 5404], for the accreditation by the Institute of laboratories engaged in the inspection and testing of fasteners under section 5 [15 U.S.C. 5404];

(B) procedures and conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), using to the extent practicable the requirements of national or international consensus documents intended to govern the operation of accreditation bodies, under which private entities may apply for approval by the Secretary to engage directly in the accreditation of laboratories in accordance with the requirements of this Act [15 U.S.C. 5401 et seq.]; and

(C) conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements of this section.

(2) Upon establishing a laboratory accreditation program under paragraph (1), the Secretary shall publish a notice in the Federal Register stating that the Secretary is prepared to accept applications for accreditation of such laboratories.

(3) No accreditation provided under the terms of this subsection shall be effective for a period of greater than 3 years.

(b) LABORATORY ACCREDITATION PROCEDURES.—Existing Institute accreditation procedures stated in part 7 of title 15, Code of Federal Regulations, as in effect on the date of enactment of this Act, supplemented as the Secretary considers necessary, shall be used to accredit laboratories under the accreditation program established under subsection (a).

(c) ENSURING COMPLIANCE.—

(1) The Secretary shall ensure that—

- (A) private entities accrediting laboratories under procedures and conditions established under subsection (a)(1)(B) comply with such procedures and conditions, and
- (B) laboratories accredited by such private entities, or by foreign governments pursuant to subsection (a)(1)(C), comply with the requirements for such accreditation.
- (2) The Secretary may require any such private entity or laboratory to provide all records and materials that may be necessary to allow the Secretary to carry out this subsection.
- (d) OPERATION OF LABORATORY ACCREDITATION PROGRAM.—
- (1) The Director may hire such contractors as are necessary to carry out the accreditation program established under subsection (a).
- (2) Costs to the Institute and to the Secretary for the establishment and operation of the accreditation program under this section shall be fully reimbursable to the Institute or to the Secretary, as appropriate, through fees or other charges for accreditation services under such program.
- (e) RECOMMENDATIONS TO CONSENSUS STANDARDS ORGANIZATIONS.—The Director shall periodically transmit to appropriate consensus standards organizations any information or recommendations that may be useful in the establishment or application by such organizations of standards and specifications for fasteners.

**§ 5406. Sale of fasteners subsequent to manufacture**

[(a) DOMESTICALLY PRODUCED FASTENERS.—It shall be unlawful for a manufacturer to sell any shipment of fasteners (except fasteners for which the Secretary has waived the requirements of this Act [15 U.S.C. 5401 et seq.] pursuant to section 4 [15 U.S.C. 5403]) which are manufactured in the United States unless the fasteners are accompanied, at the time of delivery, by a written certificate by the manufacturer certifying that—

[(1) the fasteners have been manufactured according to the requirements of the applicable standards and specifications and have been inspected and tested by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6 [15 U.S.C. 5405]; and

[(2) an original laboratory testing report described in section 5(c) [15 U.S.C. 5404(c)] is on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.]

(a) *DOMESTICALLY PRODUCED FASTENERS.*—*It shall be unlawful for a manufacturer to sell any shipment of fasteners covered by this Act which are manufactured in the United States unless the fasteners—*

*(1) have been manufactured according to the requirements of the applicable standards and specifications and have been inspected and tested by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6; and*

*(2) an original laboratory testing report described in section 5(c) and a manufacturer's certificate of conformance are on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.*

## (b) FASTENERS OF FOREIGN ORIGIN.—

(1) Except as provided in paragraph (2) of this subsection, it shall be unlawful—

(A) for any person to sell to any importer, and

(B) for any importer to purchase,

any shipment of fasteners which are manufactured outside the United States unless delivery of such shipment to such importer is accompanied by a manufacturer's certificate as described in subsection (a), an original laboratory testing report described in section 5(c) [15 U.S.C. 5404(c)], with respect to each lot from which such fasteners were taken, and any other relevant lot identification information.

(2) The requirement under paragraph (1) of this subsection that the delivery of such a shipment to such importer be accompanied by an original laboratory testing report shall not apply in the case of fasteners imported into the United States—

(A) as products manufactured within a nation which is party to a congressionally-approved free trade agreement with the United States that is in effect, so long as the Secretary certifies that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory testing report for such fasteners; or

(B) as Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles.

## (c) OPTION FOR IMPORTERS AND PRIVATE LABEL DISTRIBUTORS.—

(1) Notwithstanding section 5(a) [15 U.S.C. 5404(a)] and subsections (a) and (b) of this section, delivery of a lot, or portion of a lot, of fasteners may be made to an importer or private label distributor without the required original copy of the laboratory testing report if—

(A) the manufacturer provides to the importer or private label distributor a manufacturer's certificate certifying that the fasteners have been manufactured according to the requirements of the applicable standards and specifications; and

(B) the importer or private label distributor assumes responsibility in writing for the inspection and testing of such lot or portion by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6 [15 U.S.C. 5405].

(2) If the importer or private *label* distributor assumes the responsibility in writing for the inspection and testing of such lot or portion, the provisions of section 5(a) [15 U.S.C. 5404(a)] and subsections (a) and (b) of this section shall apply to the importer or private label distributor in the same manner and *to the same* extent as to a manufacturer; except that the importer or private label distributor shall provide to the testing laboratory the manufacturer's certificate described under paragraph (1) of this subsection.

## (d) ALTERATIONS SUBSEQUENT TO MANUFACTURE.—

(1) Any person who significantly alters a fastener so that such fastener no longer conforms to the description in the relevant [certificate] *test report* issued under section 5(c) [15 U.S.C. 5404(c)], and who thereafter offers for sale or sells such altered fastener, shall be treated as a manufacturer for purposes of this Act [15 U.S.C. 5401 et seq.] and shall cause such altered fastener to be inspected and tested under section 5 [15 U.S.C. 5404] of this section as though it were newly manufactured, unless delivery of such fastener to the purchaser is accompanied by a written statement noting the original lot number, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(2) Any person who knowingly sells an altered fastener and who did not alter such fastener shall provide to the purchaser a copy of the statement required by paragraph (1).

[(e) COMMINGLING.—

[(1) Subject to paragraph (2), it shall be unlawful for any manufacturer or any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from different lots in the same container; except that such manufacturer or such person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations: *Provided*, That any container which contains like fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

[(2) Paragraph (1) does not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturers.]

*(e) COMMINGLING.—It shall be unlawful for any manufacturer, importer, or private label distributor to commingle like fasteners from different lots in the same container; except that such manufacturer, importer, or private label distributor may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations: Provided, that any container which contains the fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.*

[(f) SUBSEQUENT PURCHASER.—

[(1) It shall be unlawful for any person to sell fasteners, of any quantity, to any person who purchases such fasteners—

[(A) for sale at wholesale, or

[(B) for assembling components of a product or structure for sale,

unless the container of fasteners sold is conspicuously marked with the number of the lot from which such fasteners were taken, except that this requirement shall not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer.

[(2) If a person who purchases fasteners for purposes other than those described in paragraph (1) (A) and (B) so requests

either prior to the sale or at the time of sale, the seller shall conspicuously mark the container of fasteners with the lot number from which such fasteners were taken.】

(f) *SUBSEQUENT PURCHASER.*—*If a person who purchases fasteners for any purpose so requests either prior to the sale or at the time of sale, the seller shall conspicuously mark the container of the fasteners with the lot number from which such fasteners were taken.*

(g) REGULATIONS.—The Secretary may issue such regulations as may be necessary to ensure compliance with the provisions of this section.

### § 5408. Remedies and penalties

(a) CIVIL REMEDIES.—

(1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this Act [15 U.S.C. 5401 et seq.] or any regulation under this Act.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) CIVIL PENALTIES.—

(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act [15 U.S.C. 5401 et seq.] or any regulation under this Act shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) CRIMINAL PENALTIES.—

(1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this Act [15 U.S.C. 5401 et seq.] or a regulation under this Act shall be fined under title 18, United States Code [18 U.S.C. 1 et seq.], or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act [15 U.S.C. 5401 et seq.] shall be fined under title 18, United States Code [18 U.S.C. 1 et seq.], or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this Act [15 U.S.C. 5401 et seq.] or a regulation under this Act shall be fined under title 18, United States Code [18 U.S.C. 1 et seq.], or imprisoned not more than 2 years, or both.

(d) ENFORCEMENT.—*The Secretary may designate officers or employees of the Department of Commerce to conduct investigations pursuant to this Act. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this Act, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.*

**§ 5409. Recordkeeping requirements**

(a) LABORATORIES.—Laboratories which perform inspections and testing under section 5(b) [15 U.S.C. 5404(b)] shall retain for [10 years] 5 years all records concerning the inspection and testing, and certification, of fasteners under section 5 [15 U.S.C. 5404].

(b) MANUFACTURERS, IMPORTERS, PRIVATE LABEL DISTRIBUTORS, AND PERSONS WHO MAKE SIGNIFICANT ALTERATIONS.—Manufacturers, importers, private label distributors, and persons who make significant alterations shall retain for [10 years] 5 years all records concerning the inspection and testing, and certification, of fasteners under section 5 [15 U.S.C. 5401 et seq.], and shall provide copies of any applicable laboratory testing report or manufacturer's certificate upon request to [any subsequent] the subsequent

purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

**§ 5412. Regulations**

The Secretary shall [within 180 days after the date of enactment of this Act] issue such regulations as may be necessary to implement this Act [15 U.S.C. 5401 et seq.].

**[§ 5413. Advisory committee]**

[Within 90 days after the date of enactment of this Act, the Secretary shall appoint an advisory committee consisting of representatives of fastener manufacturers, importers, distributors, end-users, independent laboratories, and standards organizations. The Secretary and Director shall consult with the advisory committee—

[(1) prior to promulgating any regulations under this Act [15 U.S.C. 5401 et seq.]; and

[(2) in such other matters related to fasteners as the Secretary may determine.]

**TITLE 35, UNITED STATES CODE**

**PART II—PATENTABILITY OF INVENTIONS  
AND GRANT OF PATENTS**

**CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE  
WITH FEDERAL ASSISTANCE**

**§ 210. Precedence of chapter**

(a) This chapter [35 U.S.C. 200 et seq.] shall take precedence over any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this chapter [35 U.S.C. 200 et seq.], including but not necessarily limited to the following:

(1) section 10(a) of the Act of June 29, 1935, as added by title I of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);

(4) section 30168(e) of title 49;

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);

(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

(8) section 6 of the Coal Research Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

(11) subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5);

(12) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908; 88 Stat. 1878);

(13) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

(14) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);

(15) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

(16) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

(17) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

(18) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);

(19) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

(20) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

(21) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178(j); 92 Stat. 2533); and

(22) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

The Act creating this chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

(b) Nothing in this chapter [35 U.S.C. 200 et seq.] is intended to alter the effect of the laws cited in paragraph (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

(c) Nothing in this chapter [35 U.S.C. 200 et seq.] is intended to limit the authority of agencies to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to allow such persons to retain ownership of inventions. Any disposition of rights in inventions made in accordance with the Statement or implementing regulations, including any disposition occurring before enactment of this section, are hereby authorized except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title.

(d) Nothing in this chapter [35 U.S.C. 200 et seq.] shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of

Central Intelligence by statute or Executive order for the protection of intelligence sources or methods.

(e) The provisions of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], [as amended by the Federal Technology Transfer Act of 1986 [15 U.S.C. 3701 et seq.],] shall take precedence over the provisions of this chapter to the extent that they permit or require a disposition of rights in subject inventions which is inconsistent with this chapter.

