

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1313

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IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, APRIL 19), 1993

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

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## AN ACT

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

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

3 (1) technological innovation and its profitable  
4 commercialization are critical components of the  
5 ability of the United States to raise the living stand-  
6 ards of Americans and to compete in world markets;

7 (2) cooperative arrangements among  
8 nonaffiliated businesses in the private sector are  
9 often essential for successful technological innova-  
10 tion; and

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

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

24 **SEC. 3. AMENDMENTS.**

25 (a) SHORT TITLE.—Section 1 of the National Coop-  
26 erative Research Act of 1984 (15 U.S.C. 4301 note) is

1 amended by striking “National Cooperative Research Act  
2 of 1984” and inserting “National Cooperative Research  
3 and Production Act of 1993”.

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

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

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

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

13 (4) by redesignating subparagraphs (D) and  
14 (E) as subparagraphs (F) and (G), respectively;

15 (5) by inserting after subparagraph (C) the  
16 following:

17 “(D) the production of a product, process,  
18 or service,

19 “(E) the testing in connection with the  
20 production of a product, process, or service by  
21 such venture,”; and

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

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

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

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

10 (3) by amending paragraph (2) to read as  
11 follows:

12 “(2) entering into any agreement or engaging  
13 in any other conduct restricting, requiring, or other-  
14 wise involving the marketing, distribution, or provi-  
15 sion by any person who is a party to such venture  
16 of any product, process, or service, other than—

17 “(A) the distribution among the parties to  
18 such venture, in accordance with such venture,  
19 of a product, process, or service produced by  
20 such venture,

21 “(B) the marketing of proprietary informa-  
22 tion, such as patents and trade secrets, devel-  
23 oped through such venture formed under a  
24 written agreement entered into before the date

1 of the enactment of the National Cooperative  
2 Production Amendments of 1993, or

3 “(C) the licensing, conveying, or transfer-  
4 ring of intellectual property, such as patents  
5 and trade secrets, developed through such ven-  
6 ture formed under a written agreement entered  
7 into on or after the date of the enactment of  
8 the National Cooperative Production Amend-  
9 ments of 1993,”;

10 (4) in paragraph (3)—

11 (A) in subparagraph (A) by striking “or  
12 developments not developed through” and in-  
13 serting “, developments, products, processes, or  
14 services not developed through, or produced  
15 by,”;

16 (B) in subparagraph (B) by striking “such  
17 party” and inserting “any person who is a  
18 party to such venture”; and

19 (C) by striking the period at the end and  
20 inserting a comma; and

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

22 “(4) entering into any agreement or engaging  
23 in any other conduct allocating a market with a  
24 competitor,

1           “(5) exchanging information among competitors  
2 relating to production (other than production by  
3 such venture) of a product, process, or service if  
4 such information is not reasonably required to carry  
5 out the purpose of such venture,

6           “(6) entering into any agreement or engaging  
7 in any other conduct restricting, requiring, or other-  
8 wise involving the production (other than the pro-  
9 duction by such venture) of a product, process, or  
10 service,

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

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

21           (d) RULE OF REASON STANDARD.—Section 3 of the  
22 National Cooperative Research Act of 1984 (15 U.S.C.  
23 4302) is amended—

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

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

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

5           “For the purpose of determining a properly defined, rel-  
6           evant market, worldwide capacity shall be considered to  
7           the extent that it may be appropriate in the cir-  
8           cumstances.”.

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

12           (1) in section 4—

13                   (A) in subsections (a)(1), (b)(1), (c)(1),  
14                   and (e) by striking “research and development”  
15                   each place it appears;

16                   (B) in subsections (a), (b), and (c) by in-  
17                   serting “of this section” after “subsection (d)”  
18                   each place it appears; and

19                   (C) in subsection (e) by striking “the effec-  
20                   tive date of this Act” and inserting “October  
21                   11, 1984,”; and

22           (2) in section 5(a) in the matter preceding  
23           paragraph (1) by striking “research and develop-  
24           ment”.

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

4 (1) in the heading by striking “RESEARCH AND  
5 DEVELOPMENT”;

6 (2) in subsection (a)—

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

9 (B) in paragraph (1) by striking “and” at  
10 the end;

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

13 (D) by inserting the following after para-  
14 graph (2):

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

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

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

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

6 “SEC. 7. Notwithstanding sections 4 and 6, the pro-  
7 tections of section 4 shall not apply with respect to a joint  
8 venture’s production of a product, process, or service, as  
9 referred to in section 2(a)(6)(D), unless—

10 “(1) the principal facilities for such production  
11 are located in the United States or its territories,  
12 and

13 “(2) each person who controls any party to  
14 such venture (including such party itself) is a United  
15 States person, or a foreign person from a country  
16 whose law accords antitrust treatment no less favor-  
17 able to United States persons than to such country’s  
18 domestic persons with respect to participation in  
19 joint ventures for production.”.

20 **SEC. 4. REPORTS ON JOINT VENTURES AND UNITED**  
21 **STATES COMPETITIVENESS.**

22 (a) PURPOSE.—The purpose of the reports required  
23 by this section is to inform Congress and the American  
24 people of the effect of the National Cooperative Research  
25 and Production Act of 1993 on the competitiveness of the

1 United States in key technological areas of research, devel-  
2 opment, and production.

3 (b) ANNUAL REPORT BY THE ATTORNEY GEN-  
4 ERAL.—In the 30-day period beginning at each 1-year in-  
5 terval in the 6-year period beginning on the date of the  
6 enactment of this Act, the Attorney General shall submit  
7 to the Committee on the Judiciary of the House of Rep-  
8 resentatives and the Committee on the Judiciary of the  
9 Senate—

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

15 (A) the purpose of each joint venture;

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

18 (C) the identity and nationality of each  
19 person described in section 6(a)(3) of such Act;  
20 and

21 (2) a list of cases and proceedings, if any,  
22 brought during such period under the antitrust laws  
23 by the Department of Justice, and by the Federal  
24 Trade Commission, with respect to joint ventures for

1 which notice was filed under such section at any  
2 time.

3 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-  
4 ERAL.—In the 30-day period beginning at each 3-year in-  
5 terval in the 6-year period beginning on the date of the  
6 enactment of this Act, the Attorney General, after con-  
7 sultation with such other agencies as the Attorney General  
8 considers to be appropriate, shall submit to the Committee  
9 on the Judiciary of the House of Representatives and the  
10 Committee on the Judiciary of the Senate a description  
11 of the technological areas most commonly pursued by joint  
12 ventures for production for which notice was filed under  
13 section 6(a) of the National Cooperative Research and  
14 Production Act of 1993 during the 3-year period for which  
15 such report is made, and an analysis of the trends in the  
16 competitiveness of United States industry in such areas.

17 (d) REVIEW OF ANTITRUST TREATMENT UNDER  
18 FOREIGN LAWS.—In the three 30-day periods beginning  
19 1 year, 3 years, and 6 years after the date of the enact-  
20 ment of this Act, the Attorney General, after consultation  
21 with such other agencies as the Attorney General consid-  
22 ers to be appropriate, shall submit to the Committee on  
23 the Judiciary of the House of Representatives and the  
24 Committee on the Judiciary of the Senate a report on the  
25 antitrust treatment of United States businesses with re-

1 spect to participation in joint ventures for production,  
2 under the law of each foreign nation any of whose domes-  
3 tic businesses disclosed its nationality under section  
4 6(a)(3) of the National Cooperative Research and Produc-  
5 tion Act of 1993 at any time.

Passed the House of Representatives May 18, 1993.

Attest: DONNALD K. ANDERSON,  
*Clerk.*