

Section 4246, Pub. L. 98-365, title IV, §406, July 17, 1984, 98 Stat. 461, related to termination of subchapter.

SUBCHAPTER V—RESEARCH AND DEVELOPMENT

§§ 4261 to 4264. Repealed. Pub. L. 102-555, § 4, Oct. 28, 1992, 106 Stat. 4166

Section 4261, Pub. L. 98-365, title V, §501, July 17, 1984, 98 Stat. 461, related to continued Federal remote-sensing research and development.

Section 4262, Pub. L. 98-365, title V, §502, July 17, 1984, 98 Stat. 462; Pub. L. 100-147, title III, §306, Oct. 30, 1987, 101 Stat. 876, related to remote-sensing research and development activities of Federal agencies.

Section 4263, Pub. L. 98-365, title V, §503, July 17, 1984, 98 Stat. 463, related to sale of experimental data.

Section 4264, Pub. L. 98-365, title V, §504, as added Pub. L. 100-147, title III, §307, Oct. 30, 1987, 101 Stat. 877, related to remote-sensing research and development activities of system operators.

SUBCHAPTER VI—GENERAL PROVISIONS

§§ 4271 to 4278. Repealed. Pub. L. 102-555, § 4, Oct. 28, 1992, 106 Stat. 4166

Section 4271, Pub. L. 98-365, title VI, §601, July 17, 1984, 98 Stat. 463, related to nondiscriminatory availability of unenhanced data and public availability of terms and conditions for data sales.

Section 4272, Pub. L. 98-365, title VI, §602, July 17, 1984, 98 Stat. 463; Pub. L. 102-567, title I, §114(c), Oct. 29, 1992, 106 Stat. 4279, provided for archiving of land remote-sensing data.

Section 4273, Pub. L. 98-365, title VI, §603, July 17, 1984, 98 Stat. 464; Pub. L. 100-147, title III, §308, Oct. 30, 1987, 101 Stat. 877, related to nonreproduction of unenhanced data.

Section 4274, Pub. L. 98-365, title VI, §604, July 17, 1984, 98 Stat. 464, related to reimbursement of Federal agencies for assistance to remote-sensing system operators.

Section 4275, Pub. L. 98-365, title VI, §605, July 17, 1984, 98 Stat. 464, related to acquisition of equipment from Landsat system.

Section 4276, Pub. L. 98-365, title VI, §606, July 17, 1984, 98 Stat. 465, related to radio frequency allocation.

Section 4277, Pub. L. 98-365, title VI, §607, July 17, 1984, 98 Stat. 465, directed Secretary of Commerce to consult with Secretary of Defense on chapter's effect on national security matters, with Secretary of State on chapter's effect on international obligations, and provided for reimbursement of system operators for certain costs.

Section 4278, Pub. L. 98-365, title VI, §609, July 17, 1984, 98 Stat. 466; Pub. L. 99-62, July 11, 1985, 99 Stat. 118, authorized appropriations for chapter.

SUBCHAPTER VII—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§§ 4291, 4292. Repealed. Pub. L. 102-555, § 4, Oct. 28, 1992, 106 Stat. 4166

Section 4291, Pub. L. 98-365, title VII, §701, July 17, 1984, 98 Stat. 466, related to prohibition of commercialization of weather satellites.

Section 4292, Pub. L. 98-365, title VII, §702, July 17, 1984, 98 Stat. 467, required repeal of chapter prior to any action with respect to the commercialization of weather satellites.

CHAPTER 69—COOPERATIVE RESEARCH

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§ 4301. Definitions

(a) For purposes of this chapter:

(1) The term “antitrust laws” has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 of this title applies to unfair methods of competition.

(2) The term “Attorney General” means the Attorney General of the United States.

(3) The term “Commission” means the Federal Trade Commission.

(4) The term “person” has the meaning given it in subsection (a) of section 12 of this title.

(5) The term “State” has the meaning given it in section 15g(2) of this title.

(6) The term “joint venture” means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts,

(B) the development or testing of basic engineering techniques,

(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes,

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

(E) the testing in connection with the production of a product, process, or service by such venture,

(F) the collection, exchange, and analysis of research or production information, or

(G) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), (E), and (F),

and may include the establishment and operation of facilities for the conducting of such venture, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in subsection (b).

(7) The term “standards development activity” means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

(8) The term “standards development organization” means a domestic or international organization that plans, develops, establishes, or

coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119, as revised February 10, 1998. The term “standards development organization” shall not, for purposes of this chapter, include the parties participating in the standards development organization.

(9) The term “technical standard” has the meaning given such term in section 12(d)(4)¹ of the National Technology Transfer and Advancement Act of 1995.

(10) The term “voluntary consensus standard” has the meaning given such term in Office of Management and Budget Circular Number A-119, as revised February 10, 1998.

(b) The term “joint venture” excludes the following activities involving two or more persons:

(1) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service if such information is not reasonably required to carry out the purpose of such venture,

(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such venture of any product, process, or service, other than—

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

(B) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed under a written agreement entered into before June 10, 1993, or

(C) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed under a written agreement entered into on or after June 10, 1993,

(3) entering into any agreement or engaging in any other conduct—

(A) to restrict or require the sale, licensing, or sharing of inventions, developments, products, processes, or services not developed through, or produced by, such venture, or

(B) to restrict or require participation by any person who is a party to such venture in other research and development activities,

that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture,

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

(5) exchanging information among competitors relating to production (other than production by such venture) of a product, process, or service if such information is not reasonably

required to carry out the purpose of such venture,

(6) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production (other than the production by such venture) of a product, process, or service,

(7) using existing facilities for the production of a product, process, or service by such venture unless such use involves the production of a new product or technology, and

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

(c) The term “standards development activity” excludes the following activities:

(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.

(Pub. L. 98-462, §2, Oct. 11, 1984, 98 Stat. 1815; Pub. L. 103-42, §3(b), (c), June 10, 1993, 107 Stat. 117, 118; Pub. L. 108-237, title I, §103, June 22, 2004, 118 Stat. 663.)

REFERENCES IN TEXT

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, referred to in subsec. (a)(9), is section 12(d) of Pub. L. 104-113, which is set out as a note under section 272 of this title.

AMENDMENTS

2004—Subsec. (a)(7) to (10). Pub. L. 108-237, §103(1), added pars. (7) to (10).

Subsec. (c). Pub. L. 108-237, §103(2), added subsec. (c).

1993—Subsec. (a)(6). Pub. L. 103-42, §3(b), struck out “research and development” after “joint” in introductory provisions, inserted subpars. (D) and (E), redesignated former subpars. (D) and (E) as (F) and (G), respectively, inserted “or production” after “research” in subpar. (F), substituted “(D), (E), and (F)” for “and (D)” in subpar. (G), and substituted “such venture” for “research” after “facilities for the conducting of” in concluding provisions.

Subsec. (b). Pub. L. 103-42, §3(c)(1), struck out “research and development” before “venture” in introductory provisions.

Subsec. (b)(1). Pub. L. 103-42, §3(c)(2), substituted “if such information is not reasonably required to carry out” for “that is not reasonably required to conduct the research and development that is”.

Subsec. (b)(2). Pub. L. 103-42, §3(c)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets, and”.

¹ So in original. Probably should be section “12(d)(5)”.

Subsec. (b)(3). Pub. L. 103-42, §3(c)(4), in subpar. (A) substituted “, developments, products, processes, or services not developed through, or produced by,” for “or developments not developed through”, in subpar. (B) substituted “any person who is a party to such venture” for “such party”, and at end of concluding provisions substituted comma for period.

Subsec. (b)(4) to (8). Pub. L. 103-42, §3(c)(5), added pars. (4) to (8).

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-237, title I, §101, June 22, 2004, 118 Stat. 661, provided that: “This title [amending this section and sections 4302 to 4305 of this title and enacting provisions set out as notes under this section] may be cited as the ‘Standards Development Organization Advancement Act of 2004’.”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-42, §1, June 10, 1993, 107 Stat. 117, provided that: “This Act [enacting section 4306 of this title, amending this section and sections 4302 to 4305 of this title, enacting provisions set out as notes under this section and section 4305 of this title, and amending a provision set out as a note under this section] may be cited as the ‘National Cooperative Production Amendments of 1993’.”

SHORT TITLE

Pub. L. 98-462, §1, Oct. 11, 1984, 98 Stat. 1815, as amended by Pub. L. 103-42, §3(a), June 10, 1993, 107 Stat. 117, provided that: “This Act [enacting this chapter] may be cited as the ‘National Cooperative Research and Production Act of 1993’.”

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-237, title I, §108, June 22, 2004, 118 Stat. 665, provided that: “Nothing in this title [amending this section and sections 4302 to 4305 of this title and enacting provisions set out as notes under this section] shall be construed to alter or modify the antitrust treatment under existing law of—

“(1) parties participating in standards development activity of standards development organizations within the scope of this title, including the existing standard under which the conduct of the parties is reviewed, regardless of the standard under which the conduct of the standards development organizations in which they participate are reviewed, or

“(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title.”

FINDINGS AND PURPOSE

Pub. L. 108-237, title I, §102, June 22, 2004, 118 Stat. 661, provided that: “The Congress finds the following:

“(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103-42 [see Short Title of 1993 Amendment note set out above]) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

“(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) [Pub. L. 104-113; see Short Title of 1996 Amendment note set out under section 3701 of this title] recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of

Management and Budget on February 18, 1998, revised Circular A-119 to reflect these changes made in law.

“(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

“(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

“(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

“(A) notice to all parties known to be affected by the particular standards development activity,

“(B) the opportunity to participate in standards development or modification,

“(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

“(D) readily available access to essential information regarding proposed and final standards,

“(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

“(F) the right to express a position, to have it considered, and to appeal an adverse decision.

“(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

“(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

“(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

“(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

“(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy.”

Pub. L. 103-42, §2, June 10, 1993, 107 Stat. 117, provided that:

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

“(1) technological innovation and its profitable commercialization are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

“(2) cooperative arrangements among nonaffiliated businesses in the private sector are often essential for successful technological innovation; and

“(3) the antitrust laws may have been mistakenly perceived to inhibit procompetitive cooperative innovation arrangements, and so clarification serves a useful purpose in helping to promote such arrangements.

“(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1993 Amendment note above] to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which businesses may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damages limitation on civil antitrust liability.”

§ 4302. Rule of reason standard

In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of—

- (1) any person in making or performing a contract to carry out a joint venture, or
- (2) a standards development organization while engaged in a standards development activity,

shall not be deemed illegal per se; such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including, but not limited to, effects on competition in properly defined, relevant research, development, product, process, and service markets. For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.

(Pub. L. 98-462, §3, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103-42, §3(d), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §104, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Pub. L. 108-237 substituted “of—

“(1) any person in making or performing a contract to carry out a joint venture, or

“(2) a standards development organization while engaged in a standards development activity, shall” for “of any person in making or performing a contract to carry out a joint venture shall”.

1993—Pub. L. 103-42 substituted “joint venture” for “joint research and development venture” and “, development, product, process, and service” for “and development” and inserted at end “For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.”

§ 4303. Limitation on recovery

(a) Amount recoverable

Notwithstanding section 15 of this title and in lieu of the relief specified in such section, any person who is entitled to recovery on a claim under such section shall recover the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney’s fee pursuant to section 4304 of this title if such claim—

- (1) results from conduct that is within the scope of a notification that has been filed

under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

- (2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(b) Recovery by States

Notwithstanding section 15c of this title, and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section 1961 of title 28 on such total damage as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney’s fee pursuant to section 15c of this title if such claim—

- (1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and
- (2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(c) Conduct similar under State law

Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney’s fee pursuant to section 4304 of this title if such claim—

- (1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and
- (2) is filed after notification has become effective pursuant to section 4305(c) of this title.

(d) Interest

Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

(e) Rule of construction

Subsections (a), (b), and (c) shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

- (1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,