Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION TO SETTLE CLAIMS ARISING OUT OF DISCOVERY OF LETHAL RICIN POWDER IN SENATE COMPLEX

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 329, which was introduced by Senators LOTT and DODD earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 329) authorizing the Sergeant at Arms and Doorkeeper of the Senate to ascertain and settle claims arising out of the discovery of lethal ricin powder in the Senate Complex.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 329) was agreed to, as follows:

S. RES. 329

Resolved,

SECTION 1. PAYMENT OF CLAIMS ARISING FROM THE RICIN DISCOVERY.

(a) SETTLEMENT AND PAYMENT.—The Sergeant at Arms and Doorkeeper of the Senate—

(1) in accordance with such regulations as the Committee on Rules and Administration may prescribe, consider, and ascertain any claim incident to service by a Member, officer, or employee of the Senate for any damage to, or loss of, personal property, for which the Member, officer, or employee has not been reimbursed, resulting from the discovery of lethal ricin powder in the Senate Complex on February 2, 2004, or the related remediation efforts undertaken as a result of that discovery; and

(2) may, with the approval of the Committee on Rules and Administration and in accordance with the provisions of section 3721 of title 31, United States Code, determine, compromise, adjust, and settle such claim in an amount not exceeding $4,000 per claimant.

(b) FILING OF CLAIMS.—Claimants shall file claims pursuant to this resolution with the Sergeant at Arms not later than July 31, 2004.

(c) USE OF CONTINGENT FUND.—Any compromise, adjustment, or settlement of any such claim pursuant to this resolution shall be paid from the contingent fund of the Senate on a voucher approved by the chairman of the Committee on Rules and Administration.

STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2003

Mr. MCCONNELL. I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 376, H.R. 1086.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1086) to encourage the development and promulgation of volunteer consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 1086

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Standards Development Organization Advancement Act of 2003''.

[SEC. 2. FINDINGS.

[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) 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) 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.

[SEC. 3. DEFINITIONS.

[Section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301) is amended—

[(1) in subsection (a) by adding at the end the following:

[''(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.

[''(9) The term 'technical standard' has the meaning given such term in section 12(d)(4)

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.''; and

[(2) by adding at the end the following:

[''(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.''.

[SEC. 4. RULE OF REASON STANDARD.

[Section 3 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4302) is amended by striking ''of any person in making or performing a contract to carry out a joint venture shall'' and inserting the following: ''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''.

[SEC. 5. LIMITATION ON RECOVERY.

[Section 4 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4303) is amended—

[(1) in subsections (a)(1), (b)(1), and (c)(1) by inserting '', or for a standards development activity engaged in by a standards development organization against which such claim is made'' after ''joint venture'', and

[(2) in subsection (e)—

[(A) by inserting '', or of a standards development activity engaged in by a standards development organization'' before the period at the end, and

[(B) by redesignating such subsection as subsection (f), and

[(3) by inserting after subsection (d) the following:

[''(e) 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,

[''(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

[''(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.''.

[SEC. 6. ATTORNEY FEES.

[Section 5 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4304) is amended—

[(1) in subsection (a) by inserting '', or of a standards development activity engaged in by a standards development organization'' after ''joint venture'', and

[(2) by adding at the end the following:

[''(c) Subsections (a) and (b) shall not apply with respect to any person who—

[''(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

[''(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

[''(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.''.

[SEC. 7. DISCLOSURE OF STANDARDS DEVELOPMENT ACTIVITY.

[Section 6 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4305) is amended—

[(1) in subsection (a)—

[(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

[(B) by inserting ''(1)'' after ''(a)'', and

[(C) by adding at the end the following:

[''(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a voluntary consensus standards or not later than 90 days after the date of the enactment of the Standards Development Organization Advancement Act of 2003, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

[''(A) the name and principal place of business of the standards development organization, and

[''(B) documents showing the nature and scope of such activity.

[Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.'',

[(2) in subsection (b)—

[(A) in the 1st sentence by inserting '', or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms'' before the period at the end, and

[(B) in the last sentence by inserting ''or available to such organization, as the case may be'' before the period,

[(3) in subsection (d)(2) by inserting '', or the standards development activity,'' after ''venture'',

[(4) in subsection (e)—

[(A) by striking ''person who'' and inserting ''person or standards development organization that'', and

[(B) by inserting ''or any standards development organization'' after ''person'' the last place it appears, and

[(5) in subsection (g)(1) by inserting ''or standards development organization'' after ''person''.

[SEC. 8. RULE OF CONSTRUCTION.

[Nothing in this Act 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 Act, or

[(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the Act.]

TITLE I—STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2003

SEC. 101. SHORT TITLE.

This title may be cited as the ''Standards Development Organization Advancement Act of 2003''.

SEC. 102. FINDINGS.

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) 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) 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.

SEC. 103. DEFINITIONS.

Section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301) is amended—

(1) in subsection (a) by adding at the end the following:

''(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.

''(9) The term 'technical standard' has the meaning given such term in section 12(d)(4) 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.''; and

(2) by adding at the end the following:

''(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.''.

SEC. 104. RULE OF REASON STANDARD.

Section 3 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4302) is amended by striking ''of any person in making or performing a contract to carry out a joint venture shall'' and inserting the following: ''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''.

SEC. 105. LIMITATION ON RECOVERY.

Section 4 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4303) is amended—

(1) in subsections (a)(1), (b)(1), and (c)(1) by inserting '', or for a standards development activity engaged in by a standards development organization against which such claim is made'' after ''joint venture'', and

(2) in subsection (e)—

(A) by inserting '', or of a standards development activity engaged in by a standards development organization'' before the period at the end, and

(B) by redesignating such subsection as subsection (f), and

(3) by inserting after subsection (d) the following:

''(e) 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,

''(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

''(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.''.

SEC. 106. ATTORNEY FEES.

Section 5 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4304) is amended—

(1) in subsection (a) by inserting '', or of a standards development activity engaged in by a standards development organization'' after ''joint venture'', and

(2) by adding at the end the following:

''(c) Subsections (a) and (b) shall not apply with respect to any person who—

''(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

''(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

''(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.''.

SEC. 107. DISCLOSURE OF STANDARDS DEVELOPMENT ACTIVITY.

Section 6 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4305) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

(B) by inserting ''(1)'' after ''(a)'', and

(C) by adding at the end the following:

''(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a voluntary consensus standards or not later than 90 days after the date of the enactment of the Standards Development Organization Advancement Act of 2003, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

''(A) the name and principal place of business of the standards development organization, and

''(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.'',

(2) in subsection (b)—

(A) in the 1st sentence by inserting '', or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms'' before the period at the end, and

(B) in the last sentence by inserting ''or available to such organization, as the case may be'' before the period,

(3) in subsection (d)(2) by inserting '', or the standards development activity,'' after ''venture'',

(4) in subsection (e)—

(A) by striking ''person who'' and inserting ''person or standards development organization that'', and

(B) by inserting ''or any standards development organization'' after ''person'' the last place it appears, and

(5) in subsection (g)(1) by inserting ''or standards development organization'' after ''person''.

SEC. 108. RULE OF CONSTRUCTION.

Nothing in this title 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, or

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

TITLE II—ANTITRUST CRIMINAL PENALTY ENHANCEMENT AND REFORM ACT OF 2003

SEC. 201. SHORT TITLE.

This title may be cited as the ''Antitrust Criminal Penalty Enhancement and Reform Act of 2003''.

Subtitle A—Antitrust Enforcement Enhancements and Cooperation Incentives

SEC. 211. SUNSET.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of sections 211 through 214 shall cease to have effect 5 years after the date of enactment of this Act.

(b) EXCEPTION.—With respect to an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) ANTITRUST DIVISION.—The term ''Antitrust Division'' means the United States Department of Justice Antitrust Division.

(2) ANTITRUST LENIENCY AGREEMENT.—The term ''antitrust leniency agreement,'' or ''agreement,'' means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

(3) ANTITRUST LENIENCY APPLICANT.—The term ''antitrust leniency applicant,'' or ''applicant,'' means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

(4) CLAIMANT.—The term ''claimant'' means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

(5) COOPERATING INDIVIDUAL.—The term ''cooperating individual'' means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

(6) PERSON.—The term ''person'' has the meaning given it in subsection (a) of the first section of the Clayton Act.

SEC. 213. LIMITATION ON RECOVERY.

(a) IN GENERAL.—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that

portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

(b) REQUIREMENTS.—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

(3)(A) in the case of a cooperating individual—

(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

(c) TIMELINES.—If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant.

(d) CONTINUATION.—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

SEC. 214. RIGHTS AND AUTHORITY OF ANTITRUST DIVISION NOT AFFECTED.

Nothing in this subtitle shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213(b) from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement; or

(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement.

SEC. 215. INCREASED PENALTIES FOR ANTITRUST VIOLATIONS.

(a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by—

(1) striking ''$10,000,000'' and inserting ''$100,000,000'';

(2) striking ''$350,000'' and inserting ''$1,000,000''; and

(3) striking ''three'' and inserting ''10''.

(b) MONOPOLIZING TRADE.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended by—

(1) striking ''$10,000,000'' and inserting ''$100,000,000'';

(2) striking ''$350,000'' and inserting ''$1,000,000''; and

(3) striking ''three'' and inserting ''10''.

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended by—

(1) striking ''$10,000,000'' and inserting ''$100,000,000'';

(2) striking ''$350,000'' and inserting ''$1,000,000''; and

(3) striking ''three'' and inserting ''10''.

Subtitle B—Tunney Act Reform

SEC. 221. PUBLIC INTEREST DETERMINATION.

Section 5 of the Clayton Act (15 U.S.C. 16) is amended—

(1) in subsection (d), by inserting at the end the following: ''Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.''; and

(2) in subsection (e)—

(A) in the matter before paragraph (1), by—

(i) inserting ''independently'' after ''shall'';

(ii) striking ''court may'' and inserting ''court shall''; and

(iii) inserting ''(1)'' before ''Before''; and

(B) striking paragraphs (1) and (2) and inserting the following:

''(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous and any other competitive considerations bearing upon the adequacy of such judgment necessary to a determination of whether the consent judgment is in the public interest; and

''(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

''(2) The Court shall not enter any consent judgment proposed by the United States under this section unless it finds that there is reasonable belief, based on substantial evidence and reasoned analysis, to support the United States' conclusion that the consent judgment is in the public interest. In making its determination as to whether entry of the consent judgment is in the public interest, the Court shall not be limited to examining only the factors set forth in this subsection, but may consider any other factor relevant to the competitive impact of the judgment.''.

Mr. HATCH. Mr. President, I rise today to support passage of H.R. 1086, the Standards Development Organization Advancement Act of 2003. This legislation, along with provisions added to it during the Judiciary Committee markup and by the substitute amendment that I have offered along with Senators LEAHY, DEWINE, and KOHL, provides several important and significant improvements to our antitrust laws.

This legislation incorporates the limited antitrust protection for Standards Development Organizations that Senator LEAHY and I introduced as S. 1799, and that Chairman SENSENBRENNER introduced in the House as H.R. 1086. Under this provision, the civil liability for Standards Development Organizations or ''SDOs'' will be limited to single, rather than treble, damages for standards-setting activities about which they have informed the Department of Justice and Federal Trade Commission using a newly-created notification procedure.

The bill also increases the maximum criminal penalties for antitrust violations so that they are more in line with other comparable white collar crimes. I will note that this provision of the legislation is substantially the same as the one included in S. 1080, a Leahy-Hatch bill.

This legislation also provides increased incentives for participants in illegal cartels to blow the whistle on their co-conspirators and cooperate with the Justice Department's Antitrust Division in prosecuting the other members of these criminal antitrust conspiracies. This is accomplished by allowing the Justice Department, in appropriate circumstances, to limit a cooperating company's civil liability to actual, rather than treble, damages in return for the company's cooperation in both the resulting criminal case as well as any subsequent civil suit based on the same conduct.

Finally, this substitute would amend the Tunney Act to end the problem of courts simply ''rubber-stamping'' antitrust settlements reached with the Justice Department. In my view, this amendment essentially codifies existing case law, while reemphasizing the original congressional intent that lead to passage of the Tunney Act. When this provision was added to H.R. 1086 in the Senate Judiciary Committee, I noted that, although I supported it in principal, I thought that continued modifications of the actual language might be necessary to respond to concerns that had been raised. I am pleased to be able to state that, largely through the efforts of Senator KOHL and his staff, a compromise on this language was reached that is supported—or at least not strongly objected to—by the parties involved.

With that introduction, I will briefly discuss the four principal sections of the legislation.

The section Protection of Standards Development Organizations, which comes from S. 1799, a bill that Senator LEAHY and I introduced as a Senate companion to H.R. 1086, is designed to extend limited antitrust protection to Standards Development Organizations, or ''SDOs''.

In the United States, most technical standards are developed and promulgated by private, not-for-profit organizations called SDOs. Numerous concerns have been raised that the threat of treble damages deters SDOs from their pro-competitive standard-setting activities. This legislation addresses those concerns by providing a notification process whereby SDOs may inform DOJ and the FTC regarding their intended standards-development activities. If the authorities do not object to the proposed activities but the SDO is subsequently sued by a private plaintiff, the SDO's civil liability is limited

to single rather than treble damages. Importantly, this legislation does not in any way immunize industry participants who cooperate in the development of standards from antitrust liability for using the standards-setting process for anti-competitive purposes.

I thank Senator LEAHY and Chairman SENSENBRENNER and their staffs for their vigilant efforts toward passage of the Standards Development Organization Advancement Act of 2003.

The legislation also amends the antitrust laws to provide corporations and their executives with increased incentives to come forward and cooperate with the Department of Justice in prosecuting criminal antitrust cartels. It does so by enhancing the effectiveness of the already-successful Corporate Leniency Policy issued by the Justice Department's Antitrust Division.

In general, the leniency policy provides that a corporation and its executives will not be criminally charged if the company is not the ringleader of the conspiracy and it is the first of the conspirators to approach the division and fully cooperate with the division's criminal investigation. The program serves to destabilize cartels, and it causes the members of the cartel to turn against one another in a race to the Government. Cooperation obtained through the leniency program has led to the detection and prosecution of massive international cartels that cost businesses and consumers billions of dollars and has led to the largest fines in the Antitrust Division's history.

Though this important program has been successful, a major disincentive to self reporting still exists, the threat of exposure to a possible treble damage lawsuit by the victims of the conspiracy. Under current law, the successful leniency applicant is not criminally charged, but it still faces treble damage actions with joint and several liability. In other words, before voluntarily disclosing its criminal conduct, a potential amnesty applicant must weigh the potential ruinous consequences of subjecting itself to liability for three times the damages that the entire conspiracy caused.

This provision addresses this disincentive to self-reporting. Specifically, it amends the antitrust laws to modify the damage recovery from a corporation and its executives to actual damages. In other words, the total liability of a successful leniency applicant would be limited to single damages without joint and several liability. Thus, the applicant would only be liable for the actual damages attributable to its own conduct, rather than being liable for three times the damages caused by the entire unlawful conspiracy.

Importantly, this limitation on damages is only available to corporations and their executives if they provide adequate and timely cooperation to both the Government investigators as well as any subsequent private plaintiffs bringing a civil suit based on the covered criminal conduct. I should also note that, because all other conspirator firms would remain jointly and severably liable for three times the total damages caused by the conspiracy, the victims' potential total recovery would not be reduced by the amendments Congress is considering. And again, the legislation requires the amnesty applicant to provide full cooperation to the victims as they prepare and pursue their civil lawsuit.

With this change, more companies will disclose antitrust crimes, which will have several benefits. First, I expect that the total compensation to victims of antitrust conspiracies will be increased because of the requirement that amnesty applicants cooperate. Second, the increased self-reporting incentive will serve to further destabilize and deter the formation of criminal antitrust conspiracies. In turn, these changes will lead to more open and competitive markets.

The enhanced criminal penalties provision, which was originally part of S. 1080, which I introduced with Senator LEAHY, improves current law by increasing the maximum prison sentences and fines for criminal violations of antitrust law. This change puts the maximum prison sentences for antitrust violations more in line with other white collar crimes. By increasing these criminal penalties, we are recognizing the profoundly harmful impact that antitrust violations have on consumers and the economy.

This legislation also amends the Tunney Act to end what some have seen as courts simply ''rubber-stamping'' antitrust settlements reached with the Justice Department without providing meaningful review. As I have stated, while I agree with the principle behind this proposal, I had significant concerns with the specific language that was reported out of the Judiciary Committee. After several months of discussions, I am happy to say that the current language appears to have answered most, if not all, of the principal concerns that were raised regarding the amendments to the Tunney Act.

In conclusion, I would like to thank Senators LEAHY, KOHL, and DEWINE and their staffs for their efforts on this bill. In particular, I would like to thank Susan Davies of Senator LEAHY's staff, Jeff Miller and Seth Bloom of Senator KOHL's staff, and Pete Levitas and Bill Jones of Senator DEWINE's staff. I also appreciate the expert and energetic efforts of my own antitrust counsel, Dave Jones. And finally, I thank Makan Delrahim, my former chief counsel, for all of his ''technical assistance.''

I urge my colleagues to support this bill.

Mr. LEAHY. Mr. President, I am delighted that Senator HATCH, Senator KOHL, Senator DEWINE, and I have been able to work together to develop a version of this bill that can pass today as the Standards Development Organization Advancement Act. Technical standards help to promote safety, increase efficiency, and allow for interoperability in a variety of products Americans use every day. Despite the fact that they go largely unnoticed, we would be markedly less safe without airbags that deploy properly in serious automobile collisions, more vulnerable were there not technical standards for fire retardant materials in homes. And consumers would be less likely to make the purchases that drive our economy without the technical standards that ensure a light bulb will fit in its socket or allow DVDs to function properly regardless of the manufacturer.

In the United States, most technical standards are developed by private, not-for-profit Standards Development Organizations, which often possess superior knowledge and adaptability in highly technical matters. Rather than Government overregulation of technical standards, SDOs promulgate guidelines that frequently are then adopted by State and Federal governments. Like many conveniences we take for granted, technical standards are so deeply infused in our lives that they may attract little or no individual attention.

While standards serve this vital societal role, there exists a natural tension between the antitrust laws that prohibit businesses from colluding and the development of technical standards, which require competitors to reach agreement on basic design elements. The Standards Development Organization Advancement Act reduces this tension, providing relief for SDOs under current law while preserving the trademark features of antitrust enforcement that benefit consumers.

Without creating an antitrust exemption, the Standards Development Organization Act allows SDOs to seek review of their standards by the Department of Justice or Federal Trade Commission prior to implementation. If these agencies do not object to the standard during this ''screening'' phase, but the organization is later sued by a private plaintiff, the SDO would be limited to single damages, rather than the treble damages levied under existing law.

Additionally, this bill amends the National Cooperative Research and Production Act of 1993, by directing courts to apply a ''rule of reason'' standard to SDOs and the guidelines they produce. Under existing law, standards may be deemed anticompetitive by a court even if they have the effect of better serving consumers. Courts should be able to balance the competing interests of safety and efficiency against any anticompetitive effect, making certain that the law is doing everything possible to meet the needs of the one constituent we all share—the American consumer. The Standards Development Organization Advancement Act gives our courts the authority to do so.

We may fail to notice the technical standards that provide dependability,

security, and convenience in our lives, but they serve an increasingly vital role in a country driven by technological change but devoted to safety and reliability.

Title II of the Standards Development Organization Advancement Act also addresses several areas of our antitrust laws that merit updating, as our experience with the actual practice in the world has shown. First, the act strives to eliminate the disparity between the treatment of criminal white collar offenses and antitrust criminal violations. Without this legislation, offenders who violated the criminal provisions of the antitrust laws would face much less significant penalties than would their wire fraud or mail fraud counterparts. The act increases the maximum penalty for a criminal antitrust violation from 3 years to 10 years and raises the maximum fines to corporations from $10 million to $100 million per violation. Senator HATCH and I had introduced this provision in S. 1080, the Antitrust Improvements Act of 2003, and I am pleased that this useful update to the penalties for criminal violations of the antitrust laws can be made as part of this bill.

Title II will also update the Justice Department's amnesty program in the criminal antitrust context. We have worked with the antitrust division of the Department of Justice and our States' attorneys general to give prosecutors the maximum leverage against participants in criminal antitrust activity. The Department has long had an ''amnesty'' or ''leniency'' policy that is generally available to the first conspirator involved in a criminal cartel that offers to cooperate with the authorities. But under the current policy, the Department may only agree to not bring criminal charges against a corporation, and its officers and directors, in exchange for cooperation in providing evidence and testimony against other members in the cartel. Under this bill, to qualify for amnesty, a party must provide substantial cooperation not only in any criminal case brought against the other cartel members, but also in any civil case brought by private parties that is based on the same unlawful conduct.

This bill would then give our prosecutors the authority to effectively limit a cooperating party's potential civil liability as well, and to limit that liability to single damages in any subsequent civil lawsuit brought by a private plaintiff. And while a party that receives leniency would only be liable for the portion of the damages actually caused by its own actions, the rest of its non-cooperating co-conspirators would remain jointly and severally liable for the entire amount of damages, which would then be trebled, to ensure that no injured party will fail to enjoy financial redress.

Finally, the Standards Development Organization Advancement Act makes some useful adjustments to the Tunney Act. That law provides that consent decrees in civil antitrust cases brought by the United States must be reviewed and approved by the District Court in which the case was brought. Under the Tunney Act, before entering a consent decree, the court must determine that ''the entry of such judgment is in the public interest.'' In making this determination, the court may, but is not required to, consider a variety of enumerated factors. As currently drafted, the court has discretion in making this public interest determination, and some have expressed concerns that this lack of guidance results in courts that are overly deferential to prosecutors' judgments. Thus, this bill intends to explicitly restate the original and intended role of District courts in this process by mandating that the court make an independent judgment based on a series of enumerated factors. In addition, the legislation makes clear that this amendment to the Tunney Act will not change the law regarding whether a court may be required, in a particular instance, to permit intervention or to hold a hearing in a Tunney Act proceeding.

A final and important technical change would allow a judge to order publication of the comments received in a Tunney Act proceeding by electronic or other means. Currently, the Tunney Act requires the Antitrust Division to publish in the Federal Register the public comments received on its proposed consent judgments, along with the Division's response to those comments. This can be very expensive—it cost almost $3 million in the Microsoft case—with little benefit, because those materials are, if anything, more accessible on the Web than in a library. Of course, interested people who lack Internet access will need to go to a library, but they would have had to do that for a paper copy as well.

This is an important bill that makes necessary, well-conceived, and bipartisan reforms.

Mr. KOHL. Mr. President, I rise today in strong support of the Antitrust Criminal Penalty Enhancement and Reform Act of 2003. It passed the Judiciary Committee unanimously in November 2003. Today, along with Senators HATCH, LEAHY, and DEWINE, we offer a substitute amendment to H.R. 1086. This legislation will enhance and improve the enforcement of our nation's antitrust laws in several important respects.

In light of the importance of this legislation to the administration of our antitrust laws, as well as the infrequency with which we amend major provisions of the antitrust laws, it is essential to describe in detail the reasons we our advancing this bill. Our proposal will accomplish four important goals. First, our legislation will restore the ability of Federal courts to review the Justice Department's civil antitrust settlements to be sure that these settlements are good for competition and consumers. We will amend the Tunney Act, the law passed in 1974 in response to concerns that some of these settlements were motivated by inappropriate political pressure and failed to restore competition or protect consumers. Congress concluded then, and it is still true now, that judicial review will ensure that cases are settled in the public interest. Unfortunately, in recent years, many courts seem to have ignored this statute and do little more than ''rubber stamp'' antitrust settlements. This practice is contrary to the intent of the Tunney Act and effectively strips the courts of the ability to engage in meaningful review of antitrust settlements. Our bill will overturn this precedent and make clear that the courts have the authority to do this vital job.

Second, our legislation enhances criminal penalties for those who violate our antitrust laws. It will increase the maximum corporate penalty from $10 million to $100 million; it will increase the maximum individual fine from $350,000 to $1 million; and it will increase the maximum jail term for individuals who are convicted of criminal antitrust violations from 3 to 10 years. These changes will send the proper message that criminal antitrust violations, crimes such as price fixing and bid rigging, committed by business executives in a boardroom are serious offenses that steal from American consumers just as surely as does a street criminal with a gun.

Our legislation will give the Justice Department significant new tools under its antitrust leniency program. The leniency program helps the Government break up criminal cartels by encouraging wrongdoers to cooperate with the authorities. Our bill will give the Justice Department the ability to offer those applying for leniency the additional reward of only facing actual damages in antitrust civil suits, rather than treble damage liability. This will result in more antitrust wrongdoers coming forward to reveal antitrust conspiracies, and thus the detection and ending of more illegal cartels.

Finally, our bill incorporates a provision in the original House passed version of H.R. 1086. This provision limits the liability that standards setting organizations face under the antitrust laws to single damages in most circumstances. It will protect these important organizations from the threat of liability. However, it will not in any way limit the damages available to any company that is a member of such an organization for antitrust violations, nor limit damages should a standard setting organization engage in conduct that is a per se violation of antitrust law.

It is important to explain clearly and specifically why it is necessary to amend the Tunney Act and what we intend to accomplish with these changes. In recent years, courts have been reluctant to give meaningful review to antitrust consent decrees, and have been only willing to take action with respect to most egregious decrees that

make a ''mockery'' of the judicial function. Our bill will effectuate the legislative intent of the Tunney Act and restore the ability of courts to give real scrutiny to antitrust consent decree.

The Tunney Act was enacted in 1974 and provides that consent decrees in civil antitrust cases brought by the United States must be reviewed and approved by the district court in which the case was brought to determine if they are in the public interest. However, the text of the statute contains no standards governing how a court is to conduct this review. While the legislative history of the law is clear that it was meant to prevent ''judicial rubber stamping'' of consent decrees, the leading precedent of the D.C. Circuit Court of Appeals currently interprets the law in a manner which makes meaningful review of these consent decrees virtually impossible. Leading cases stand for the proposition that only consent decrees that ''make a mockery of the judicial function'' can be rejected by the district court. The changes in the Tunney Act incorporated in this legislation, as well as the statement of Congressional findings, will make clear that such an interpretation misconstrues the legislative intent of the statute.

The amendments to the Tunney Act found in our bill will restore the original intent of the Tunney Act, and make clear that courts should carefully review antitrust consent decrees to ensure that they are in the public interest. It will accomplish this by, No. 1, a clear statement of congressional findings and purposes expressly overruling the improper judicial standard of recent D.C. Circuit decisions; No. 2, by requiring, rather than permitting, judicial review of a list of enumerated factors to determine whether a consent decree is in the public interest; and No. 3, by enhancing the list of factors which the court now must review.

The Tunney Act was enacted in 1974 to end the practice of courts ''rubber stamping'' antitrust consent decrees, and to remove political influence from the Justice Department's decision as to whether to settle antitrust cases. There were several prominent decisions in the preceding years in which antitrust settlements by the Justice Department came under strong criticism as inadequate or motivated by illegitimate purposes, and which were not scrutinized by the courts. One of the leading early cases applying the Tunney Act noted that

> the legislators found that consent decrees often failed to provide appropriate relief, either because of miscalculations by the Justice Department [citation omitted] or because of the ''great influence and economic power'' wielded by antitrust violators [citing S. Rep. No. 93–298, 93d Cong., 1st Sess. 5 (1973)]. The [legislative] history, indeed, contains references to a number of antitrust settlements deemed ''blatantly inequitable and improper'' on these bases [citing 119 Cong. Rec. 24598 (1973) (Remarks of Sen. Tunney)].

U.S. v. *American Telephone and Telegraph,* 552 F.Supp. 131, 148 (D.D.C. 1982), aff'd sub nom., *Maryland* v. *U.S.,* 460 U.S. 1001 (1983).

While there were several notable cases which gave rise to the concern that the government was settling for inadequate remedies for antitrust violations, see *U.S.* v. *AT&T,* 552 F.Supp. at 148 n. 72; 119 Cong. Rec. 24598, Remarks of Sen. Tunney, the most prominent case was the Government's settlement in 1971 of an antitrust suit brought against ITT. Critics alleged that the Nixon administration had been influenced by campaign contributions to the Nixon reelection effort in 1972. The reasons for the settlement were not publicly disclosed, and the settlement was strongly criticized by consumer advocates. The settlement's critics attempted to have the settlement overturned by the district court, but the court rejected these efforts. ''[T]here was no meaningful judicial scrutiny of the terms of the consent decree and no consideration of whether it was in the public interest.'' *Anderson,* supra, 65 Antitrust Law Journal at 8.

The legislative history of the original Tunney Act is clear that the purpose of the statute was to give courts the opportunity to engage in meaningful scrutiny of antitrust settlements, so as to deter and prevent settlements motivated either by corruption, undue corporate influence, or which were plainly inadequate. In introducing the bill, Senator Tunney highlighted his concern that antitrust settlements could result from the economic power of the companies under scrutiny. He noted that ''[i]ncreasing concentration of economic power, such as occurred in the flood of conglomerate mergers, carries with it a very tangible threat of concentration of political power. Put simply, the bigger the company, the greater the leverage it has in Washington.'' 119 Cong. Rec. 3451, Feb. 6, 1973.

Senator Tunney also pointed with concern at the lack of scrutiny the courts were applying to antitrust settlements. He argued that ''too often in the past district courts have viewed their rules [sic] as simply ministerial in nature—leaving to the Justice Department the role of determining the adequacy of the judgment from the public's view.'' Id. at 3542. Thus, his legislation was intended to substantially expand the role of the court in considering an antitrust consent decree. Senator Tunney described the criteria in the bill under which the courts to review the settlements, and stated that

> The thrust of those criteria is to demand that the court consider both the narrow and the broad impacts of the decree. Thus, in addition to weighing the merits of the decree from the viewpoint of the relief obtained thereby and its adequacy, the court is directed to give consideration to the relative merits of other alternatives and specifically to the effect of the entry of the decree upon private parties aggrieved by the alleged violations and upon the enforcement of antitrust laws generally.

In a later floor debate on the legislation, Senator Tunney cited the testimony of Judge J. Skelley Wright of the U.S. Court of Appeals for the D.C. Circuit, who had testified at an earlier hearing of the Senate Antitrust and Monopoly Subcommittee expressing concern as to whether antitrust settlements ''might shortchange the public interest.'' 119 Cong. Rec. 24597, July 18, 1973. Commenting on this testimony, Senator Tunney stated that ''I think Judge Wright gets to the heart of the problem—it is the excessive secrecy with which many consent decrees have been fashioned, and *the almost mechanistic manner in which some courts have been, in effect, willing to rubber stamp consent judgments.*'' *Id.* at 24598 (emphasis added). The bill passed the Senate that day on a 92 to 8 vote.

The later House debate in which the bill was passed echoed Senator Tunney's concern. Congressman Seiberling of Ohio commented that, in considering antitrust consent decrees, ''too often the courts have, in fact, simply rubberstamped such agreements, and the public or competitors that might be affected have had an effective way to get their views before the court . . .'' 120 Cong. Rec. 36341, Nov. 19, 1974. Similar sentiments were expressed by Congressman McClory, id., Congressman Jordan, id. at 36343, and Congressman Heinz, id. at 36341. Congressman Holtzman of New York commented that these procedures would ''insure that our antitrust laws are not for sale.'' Id. at 36342.

The House and Senate Committee Reports on the legislation also echo the floor debate. The Report of the House Judiciary Committee states that

> [o]ne of the abuses sought to be remedied by the bill has been called ''judicial rubber stamping'' by district courts of proposals submitted by the Justice Department. The bill resolves this area of dispute by requiring district court judges to determine that each proposed consent judgment is in the public interest.

House Rep. No. 93–1463, 93rd Cong., 1st Sess. (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6535, 6538.

In one of the first cases to construe the statute, the Government's case to break up the AT&T phone monopoly, Judge Greene of the U.S. District Court for the District of Columbia reviewed, and then summarized, the legislative history of the Tunney Act. He concluded that:

> To remedy these problems [that led to the passage of the Tunney Act], Congress imposed two major changes in the consent decree process. First, it reduced secrecy by ordering disclosure by the Justice Department of the rationale and the terms of proposed consent decrees and by mandating an opportunity for public comment. Second, it sought to eliminate '''judicial rubber stamping' of proposals submitted to the courts by the Department,'' by requiring an explicit judicial determination in every case that the proposed decree was in the public interest. *It is clear that Congress wanted the courts to act as an independent check upon the terms of decrees negotiated by the Department of Justice.* . . .

U.S. v. *AT&T,* 552 F. Supp. at 148–149 (emphasis added) (citations omitted).

This conclusion is supported by a recent law journal article co-authored by

John J. Flynn, who was special counsel to the Senate Antitrust Subcommittee during the period when the Tunney Act was drafted and adopted. Professor Flynn writes that, in enacting the Tunney Act, Congress rejected the ''notion that courts must give deference to the DOJ when determining if a consent decree is in the public interest. Instead, Congress wanted the courts to make an independent, objective, and active determination without deference to the DOJ.'' Flynn and Bush, The Misuse and Abuse of the Tunney Act: The Adverse Consequences of the ''Microsoft Fallacies'', 34 Loyola U. Chicago L. J. 749, 758 (2003).

The early case law that followed the adoption of the Tunney Act in 1974 imposed fairly stringent requirements on courts reviewing antitrust settlements reached by the Justice Department.

The leading early case is the district court's review of the Government's proposed settlement with AT&T in the massive antitrust case that broke up the telephone monopoly, U.S. v. AT&T, supra (D.D.C. 1983). Judge Greene of the U.S. District Court for the District of Columbia rejected an argument for a highly deferential review of the proposed consent decree. The court stated that

> It does not follow . . . that courts must unquestionably accept a proffered decree as long as it somehow, and however inadequately, deals with the antitrust and other public policy problems implicated in the lawsuit. To do so would be to revert to the ''rubber stamp'' role which was at the crux of the congressional concerns when the Tunney Act became law.

U.S. v. *AT&T*, 552 F. Supp. at 151.

Instead the standard the court applied to determine if the public interest was served by the consent decree was rather exacting. The court stated it would only enter the proposed consent decree ''if the decree meets the requirements for an antitrust remedy that is, if it effectively opens the relevant markets to competition and prevents the recurrence of anticompetitive activity, all without imposing undue and unnecessary burdens upon other aspects of the public interest.'' Id. at 153.

The more recent precedent under the Tunney Act have sharply retreated from Judge Green's opinion in AT&T to a much more deferential standard of review. It is this misinterpretation of the Tunney Act that our bill corrects. In describing the recent Tunney Act precedent, one commentator has called it a ''retreat toward rubber stamping.'' Anderson, supra, 65 Antitrust Law Journal at 19. We agree. It is this overly deferential standard review which makes reform of the Tunney Act necessary so that the legislative intent can be effectuated and courts can provide an independent safeguard to prevent against improper or inadequate settlements. The changes we make to the Tunney Act today address these problems and correct the mistaken precedents.

The precedent continues to recognize that the Tunney Act is intended ''to prevent ''judicial rubber stamping' of the Justice Department's proposed consent decree,'' and for the court to '''make an independent determination as to whether or not entry of a proposed consent decree [was] in the public interest.''' *U.S.* v. *Microsoft*, 56 F.3d 1448, 1458 (D.C. Cir. 1995), quoting S. Rep. No. 298 at 5. Further, in reviewing the proposed consent decree, the court should inquire into ''the purpose, meaning, and efficacy of the decree.'' *Microsoft*, 56 F.3d at 1463.

However, these same decisions improperly and strictly circumscribe the role of the trial court and give it little leeway to fail to approve an antitrust consent decree. The D.C. Circuit has stated that:

> [T]he district judge is not obligated to accept [an antitrust consent decree] that, on its face and even after government explanation, appears to make a mockery of judicial power. *Short of that eventuality*, the Tunney Act cannot be interpreted as an authorization for a district judge to assume the role of Attorney General.

Id., 56 F.3d at 1462 (emphasis added). In other words, under this precedent, unless the proposed decree would ''make a mockery of judicial power,'' the consent decree must be entered by the Court. In another portion of this opinion, in language much cited by lower courts, the D.C. Circuit held that the court should not insist that the consent decree is the one that will ''*best* serve society,'' but only confirm that the resulting settlement is ''within the *reaches* of the public interest.'' Id. at 1460, citations omitted; emphasis in original.

In a subsequent decision, the D.C. Circuit summarized a district court's review under the Tunney Act, as follows:

> The district court must examine the decree in light of the violations charged in the complaint and should withhold approval *only* if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes ''a mockery of judicial power.''

Massachusetts School of Law v. *U.S.*, 118 F.3d 776, 783 (D.C. Cir. 1997) (emphasis added) (quoting *Microsoft*, 56 F.3d at 1462). This is plainly quite a limited standard of review, which contains no admonition to review the likely effects of the consent decree on competition, and makes it very unlikely that a court would fail to enter almost any consent decree.

In the opinion of a leading academic commentator on the Tunney Act,

> the court of appeals in Microsoft made a potentially serious mistake by formulating a rule that, so long as procedural niceties are followed, all antitrust consent decrees must be approved unless they are a ''mockery.'' Once the real threat of meaningful scrutiny is eliminated, the benefits of deterrence and mediation would be destroyed and the Tunney Act would be nullified.

Anderson, supra, 65 Antitrust Law Journal at 38. Professor Flynn, who was involved in drafting the Tunney Act, agrees with this criticism of the D.C. Circuit's approach. Professor Flynn states that ''from the language of the Tunney Act and its legislative history, this is precisely the sort of deferential standard the drafters of the Tunney Act did not want. . . . [T]he D.C. Circuit chose to ignore the legislative intent and cast judicial review of consent decrees back to the days when rubber-stamping was prevalent.'' Flynn and Bush, supra, 34 Loyola U. Chi. L. J. at 780–781.

As originally written, the Tunney Act serves two goals deterrence and mediation. The prospect of judicial scrutiny deters the Justice Department from heeding political pressure to enter into a ''sweetheart'' settlement. And real Tunney Act review also provides an opportunity for a judge to act as a mediator, obtaining modifications to deficient settlements. As Professor Anderson points out, ''[i]f the government and antitrust defendants come to perceive that meaningful [judicial] scrutiny is not a real threat, the door will be wide open for attempts to swing sweetheart deals and for the public to lose confidence in antitrust enforcement by the government.'' 65 Antitrust Law Journal at 38.

In sum, as the Tunney Act is currently interpreted, it is difficult if not impossible for courts to exercise meaningful scrutiny of antitrust consent decrees. The ''mockery'' standard is contrary to the intent of the Tunney Act as found in the legislative history. Our legislation will correct this misinterpretation of the statute. Our legislation will insure that the courts can undertake meaningful and measured scrutiny of antitrust settlements to insure that they are truly in the public interest, and to remind the courts of Congress' intention in passing the Tunney Act.

In an effort to explain how the revisions to the Tunney Act in H.R. 1086 correct the mistaken standard used by certain courts in applying the law, it is important to describe each of the specific provisions of section 221 of H.R. 1086. Today we have introduced, with Senators HATCH, LEAHY, and DEWINE, a Managers' Amendment to H.R. 1086. These comments address H.R. 1086 as amended.

First, section 221(a) of our bill contains Congressional Findings and Declarations of Purposes. These provisions clarify that we are determined to effectuate the original Congressional intent of the Tunney Act. In other words, after the enactment of this legislation, courts will once again independently review antitrust consent decrees to ensure that they are in the public interest. The Congressional Findings expressly state that for a court to limit its review of antitrust consent decrees to the lesser standard of determining whether entry of the consent judgments would make a ''mockery of the judicial function'' misconstrues the meaning and intent in enacting the Tunney Act. The language quoted paraphrases the D.C. Circuit decisions in

Massachusetts School of Law v. *U.S.*, 118 F.3d 776, 783 (D.C. Cir. 1997) and *U.S.* v. *Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). To the extent that these precedents are contrary to section 221(a) of our bill regarding the standard of review a court should apply in reviewing consent decrees under the Tunney Act, these decisions are overruled by this legislation. While this legislation is not intended to require a trial de novo of the advisability of antitrust consent decrees or a lengthy and protracted review procedure, it is intended to assure that courts undertake meaningful review of antitrust consent decrees to assure that they are in the public interest and analytically sound.

Section 221(b)(2)(A) of our bill amends the existing subsection of Section 5 of the Clayton Act (codified at 15 U.S.C. § 16(e)) containing the requirement that courts review antitrust consent decrees to determine that these consent decrees are in the public interest. Our bill modifies the law by stating that, in making this determination, the court ''shall'' look at a number of enumerated factors bearing on the competitive impact of the settlement. The current statute merely states that the court ''may'' review these factors in making its determination. Requiring, rather than permitting, the court to examine these factors will strengthen the review that courts must undertake of consent decrees and will ensure that the court examines each of the factors listed therein. Requiring an examination of these factors is intended to preclude a court from engaging in ''rubber stamping'' of antitrust consent decrees, but instead to seriously and deliberately consider these factors in the course of determining whether the proposed decree is in the public interest.

Our bill, in section 221(b)(2)(B), also revises and enhances the factors which the court is now required to review in making its public interest determination. In addition to the factors enumerated under current law, the court must examine whether the terms of the proposed decree are ambiguous. While complete precision when dealing with future conduct may be impossible to achieve, an overly ambiguous decree is incapable of being enforced and is therefore ineffective. A mandate to review the impact of entry of the consent judgment upon ''competition in the relevant market or markets'' is also added by our bill. This will ensure that the Tunney Act review is properly focused on the likely competitive impact of the judgment, rather than extraneous factors irrelevant to the purposes of antitrust enforcement. Finally, this list is not intended to be exclusive, as the court is directed to review any other competitive consideration ''that the court deems necessary to a determination of whether the consent judgment is in the public interest.''

Under the existing statute, the trial court is granted broad discretion as to how to conduct Tunney Act proceedings. Our amendments make no changes to these procedures. In deciding whether to approve the consent decree, the court may, but is not required to, hold a hearing on the proposed decree. Id. § 16(f). In such a hearing, the court may take the testimony of Government officials or expert witnesses. The court may also take testimony from witnesses or other ''interested persons or agencies'' and examine documents relevant to the case. The court may also review the public comments filed during the sixty-day period pursuant to the Tunney Act. In addition, the court may appoint a special master or outside consultants as it deems appropriate. Finally, the court is granted the discretion to ''take such other action in the public interest as the court may deem appropriate.'' Id. While the court may do any of the preceding, it is not required to follow any of these procedures.

Our amendments to section five of the Clayton Act add language stating that nothing in that section will be ''construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' This language is not intended to make any changes to existing law, but merely to restate the current interpretation of the law. Under the statute, the court is not required to conduct an evidentiary hearing, but is permitted to do so or to take testimony if it wishes to do so. See 15 U.S.C. §16(f). This will remain the procedure, a court will be permitted, but not required, to conduct evidentiary hearings in making its Tunney Act determination. Additionally, the statute currently permits in 15 U.S.C. §16(f)(3) intervention by interested parties in the Tunney Act review proceeding. This will remain the procedure a court will be permitted, but not required, to allow parties to intervene.

Our amendments also make two other minor and technical changes to Tunney Act procedures. First, section 221(b)(1) of the bill permits the district court to authorize an alternative means of publication, rather than publication in the Federal Register, of the public comments received in response to the announcement of the proposed consent decree. A court may only authorize such alternative means of publication if it finds the expense of Federal Register publication exceeds the public interest benefits to be gained from such publication. This provision is intended to avoid unnecessary expense in publishing proposed consent decrees if alternate means are available, such as, for example, posting the proposed decrees electronically, which are sufficient to inform interested persons of the proposed consent decree.

The second technical amendment, found in section 221(b)(3) of our bill, amends the provision of the Tunney Act codified in 15 U.S.C. § 16(g) which requires that defendants notify the court of all communications with the Government relevant to the consent decree, except for communications between the defendant's counsel of record and the Justice Department. Our bill adds language which clarifies the statute's language to make clear that only communications with the defendant, or any officer, director, employee, or agent of such defendant, or other person representing the defendant must be disclosed. The defendant is not required to disclose contacts with the Government concerning the settlement by persons not affiliated with, representing, or acting on behalf of the defendant, for example, competitors of the defendant. The defendant's obligation to disclose contacts by agents or persons representing the defendant, including outside lobbyists, is unaffected by this technical change.

In sum, our bill will mandate that courts engage in meaningful review of the Justice Department's antitrust consent decrees and not merely ''rubber stamp'' the decrees. It will make clear that it is a misinterpretation of the Tunney Act to limit a court's review to limit judicial review of these consent decrees to whether they make a mockery of judicial function, and therefore overrule recent D.C. Circuit decisions holding to the contrary. The bill is expressly intended to effectuate the legislative intent of the Tunney Act and ensure the ability of courts to effectively review consent decrees to ensure that they are in the public interest. It will require, rather than permit, a court to review a list of enumerated factors to determine whether a consent decree is in the public interest. By restoring a robust and meaningful standard of judicial review, our bill will ensure that the Justice Department's antitrust consent decrees are in the best interests of consumers and competition.

Mr. DEWINE. Mr. President, I rise today, along with Senator HATCH, Senator LEAHY and Senator KOHL, as a sponsor of H.R. 1086, the Standards Development Organization Advancement Act of 2003. H.R. 1086 was passed unanimously by the Judiciary Committee in November 2003, and I am proud to say that H.R. 1086 encompasses many of the provisions of S. 1797, the Antitrust Criminal Penalty Enhancement and Reform Act of 2003, which Senator KOHL and I introduced in October 2003. H.R. 1086 is a comprehensive bill that will enhance and improve the enforcement of U.S. antitrust law in four key areas.

First, and perhaps most important, this bill will raise the penalties for criminal violations of antitrust law and bring those penalties more into line with penalties for other, comparable white collar offenses. Antitrust crimes such as bid rigging or cartel activity cheat consumers and distort the free market just as surely as any other type of commercial fraud, and should be strongly punished. Under current antitrust laws, the maximum criminal penalties for individuals guilty of

price-fixing are three years incarceration and $350,000 in fines. For corporations, the maximum fine is $10 million. This bill will, No. 1, raise the maximum prison term to 10 years; No. 2, raise the maximum fine for individuals to $1,000,000; and No. 3, raise the maximum corporate fine to $100 million. By increasing the prison terms for individuals, this bill brings criminal antitrust penalties closer in line with the maximum penalties assessed for mail fraud and wire fraud, which are both 20 years. Executives and other antitrust offenders need to know that they face serious consequences when they collude with their competitors, and this bill will send that message to the marketplace.

Second, this bill improves on an investigative and prosecutorial tool already being employed effectively by the Justice Department. Since 1993 the Antitrust Division has successfully used a revised corporate amnesty program to help infiltrate and break-up criminal antitrust conspiracies. In short, if a corporate conspirator self-reports its illegal activity to the Antitrust Division and meets certain conditions—it must be the first conspirator to confess, it cannot be the ringleader of the conspiracy, and it must agree to cooperate fully with the investigation, among other things—it will receive a ''free pass'' from prosecution. This program has been extremely successful in cracking conspiracies, because it creates a strong uncertainty dynamic among co-conspirators; members of the cartel can never be sure that one of the other conspirators will not confess its illegal activity to the Antitrust Division in order to avoid criminal liability. This uncertainty decreases the likelihood of cartels forming to begin with, and makes cartels less stable when they do form.

H.R. 1086 helps to enhance the Division's corporate amnesty program by expanding its reach. The current amnesty program does not affect the civil liability of the conspirators; that is, a corporation cooperating with the Division through the amnesty program receives protection from government prosecution, but may still be sued in court by private parties for treble damages. This bill decreases that liability by limiting the damages a private plaintiff may recover from a corporation that has cooperated with the Antitrust Division. Specifically, the conspirator is not liable for the usual treble-damages; instead, it is only liable for actual damages. This modification recognizes that a corporation that has fully cooperated with the Antitrust Division is less culpable than other conspirators, and provides a far greater incentive for corporations to cooperate with the Antitrust Division.

Third, H.R. 1086 addresses a concern raised recently by a string of court opinions that appear to limit the depth of review required by the Tunney Act. In brief, the Tunney Act requires that prior to implementing an antitrust consent decree a court must review that decree to assure that it is in the public interest; historically, that requirement has been understood to require that the courts engage in more than merely ''rubber-stamping'' those decrees. A number of recent opinions have led some to question the depth of review required by the Tunney Act. This bill makes clear that the Tunney Act requires what it has always required, and that mere rubber-stamping is not acceptable. In addition, H.R. 1086 makes a small number of minor modifications and revisions to ensure both that the Tunney Act accurately reflects its original intent and that it effectively functions in the modern legal and economic environment.

Finally, this bill will treat Standard Development Organizations (SDOs) more favorably under the antitrust laws. SDOs are private, voluntary nonprofit organizations that set standards for industry products—e.g., one SDO sets the standard for the required depth of a swimming pool before a diving board may be installed. Under the bill, qualifying SDOs which pre-notify the Antitrust Division of their standard-setting activities will not be subject to treble damages in private suits brought against them. Moreover, SDO activities will be scrutinized for antitrust violations under the less strict ''rule of reason'' legal standard, and SDOs may be awarded certain costs and attorney fees if they substantially prevail in litigation which is later held to be frivolous.

In all of these ways, H.R. 1086 modernizes and enhances the enforcement of U.S. antitrust laws, and I am proud to sponsor it.

Mr. MCCONNELL. I ask unanimous consent that the Hatch-Leahy amendment at the desk be agreed to, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3010) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 1086), as amended, was read the third time and passed.

ORDERS FOR MONDAY, APRIL 5, 2004

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Monday, April 5. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY TO FILE

Mr. MCCONNELL. I ask unanimous consent that notwithstanding the Senate's adjournment, it be in order for the Commerce Committee to file legislative matters until 2 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. MCCONNELL. On Monday, the Senate will be in a period for the transaction of morning business throughout the day. There will be no rollcall votes on Monday, but Senators are encouraged to come to the floor to deliver morning business statements if they have any.

As a reminder, earlier today the majority leader propounded a unanimous consent request that would have allowed us to take up and begin debate on S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004. There was an objection to that request, and the majority leader was forced to file cloture on the motion to proceed.

The cloture vote on the motion to proceed to S. 2207 will occur on Wednesday of next week at 2:15, and that vote will be the next rollcall vote.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator WYDEN for up to 15 minutes and Senator SESSIONS for up to 15 minutes.

Mr. REID. Mr. President, I ask unanimous consent to add Senator CORZINE for 10 minutes following that.

Mr. MCCONNELL. Senator CORZINE for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. WYDEN pertaining to the submission of S. Res. 330 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Alabama is recognized.

INCREASE IN EMPLOYMENT

Mr. SESSIONS. Madam President, I would like to celebrate the good employment news we received today.

I think it is important for us to at least take a few moments to celebrate what was revealed today in the March employment figures released by the Department of Labor statistics.

I just left a hearing of the Joint Economic Committee, of which I am a