

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To establish the IMPACT for Energy Foundation.

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IN THE SENATE OF THE UNITED STATES

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Mr. COONS (for himself and Mr. GRAHAM) introduced the following bill; which  
was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To establish the IMPACT for Energy Foundation.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Increasing and Mobi-  
5       lizing Partnerships to Achieve Commercialization of Tech-  
6       nologies for Energy Act” or the “IMPACT for Energy  
7       Act”.

8       **SEC. 2. DEFINITIONS.**

9       In this Act:

10           (1) BOARD.—The term “Board” means the  
11       Board of Directors for the Foundation described in  
12       section 3(c).

1           (2) CHAIR.—The term “Chair” means the  
2 Chair of the Board described in section 3(c)(2).

3           (3) EXECUTIVE DIRECTOR.—The term “Execu-  
4 tive Director” means the Executive Director of the  
5 Board described in section 3(f)(2).

6           (4) FOUNDATION.—The term “Foundation”  
7 means the IMPACT for Energy Foundation estab-  
8 lished under section 3(a).

9           (5) SECRETARY.—The term “Secretary” means  
10 the Secretary of Energy.

11 **SEC. 3. ESTABLISHMENT OF IMPACT FOR ENERGY FOUNDA-**  
12 **TION.**

13       (a) ESTABLISHMENT.—

14           (1) IN GENERAL.—Not later than February 1,  
15 2019, the Secretary shall establish a nonprofit cor-  
16 poration to be known as the “IMPACT for Energy  
17 Foundation”.

18           (2) LIMITATION.—The Foundation shall not be  
19 an agency or instrumentality of the Federal Govern-  
20 ment.

21       (b) PURPOSE AND ACTIVITIES OF FOUNDATION.—

22           (1) PURPOSE.—The purpose of the Foundation  
23 is to provide a mechanism to channel private sector  
24 investments that support efforts to create, develop,

1       and commercialize innovative technologies that ad-  
2       dress energy challenges, by methods that include—

3               (A) fostering collaboration and partner-  
4       ships with energy researchers from the Federal  
5       Government, State governments, institutions of  
6       higher education, federally funded research and  
7       development centers, industry, and nonprofit  
8       organizations for the research, development, or  
9       commercialization of transformative energy  
10      technologies;

11             (B) leveraging technologies to support new  
12      product development that supports regional eco-  
13      nomic development; and

14             (C) administering prize competitions to ac-  
15      celerate private sector competition and invest-  
16      ment.

17      (2) ACTIVITIES.—

18             (A) IN GENERAL.—The Foundation may  
19      solicit and accept gifts, grants, and other dona-  
20      tions, establish accounts, and invest and expend  
21      funds in support of the programs and activities  
22      described in subparagraphs (B) through (D).

23             (B) STUDIES, COMPETITIONS, AND  
24      PROJECTS.—The Foundation may conduct and  
25      support studies, competitions, projects, re-

1 search, development, commercialization, and  
2 other activities that further the purpose of the  
3 Foundation described in paragraph (1).

4 (C) FELLOWSHIPS AND GRANTS.—

5 (i) IN GENERAL.—The Foundation  
6 may provide fellowships and grants to re-  
7 cipients selected under clause (iii) for ac-  
8 tivities relating to research, development,  
9 prototyping, maturing, or commercializing  
10 of energy technologies.

11 (ii) USES OF FELLOWSHIPS AND  
12 GRANTS.—A fellowship or grant under  
13 clause (i) may include stipends, travel,  
14 health insurance benefits, and other appro-  
15 priate expenses.

16 (iii) SELECTION.—The Executive Di-  
17 rector shall select the recipient of a fellow-  
18 ship or grant based on the technical and  
19 commercialization merits of the project.

20 (iv) FEDERAL LABORATORIES.—

21 (I) IN GENERAL.—Federal Lab-  
22 oratories, including laboratories of the  
23 Department of Energy, may apply for  
24 and accept grants under clause (i).

1 (II) EFFECT.—A Federal labora-  
2 tory that applies for or accepts a  
3 grant under subclause (I) shall not be  
4 considered to be engaging in a com-  
5 petitive procedure.

6 (D) SUPPLEMENTARY PROGRAMS.—The  
7 Foundation may carry out supplementary pro-  
8 grams—

9 (i) to conduct and support forums,  
10 meetings, conferences, courses, and train-  
11 ing workshops consistent with the purpose  
12 of the Foundation described in paragraph  
13 (1);

14 (ii) to support and encourage the un-  
15 derstanding and development of—

16 (I) data reporting models that  
17 promote the translation of tech-  
18 nologies from the research stage,  
19 through development and maturation,  
20 and to the market; and

21 (II) policies that make regulation  
22 more effective and efficient by  
23 leveraging the technology translation  
24 data described in subclause (I) for the

1 regulation of relevant technology sec-  
2 tors;

3 (iii) for writing, editing, printing, pub-  
4 lishing, and vending books and other mate-  
5 rials relating to research carried out under  
6 the Foundation; and

7 (iv) to conduct other activities to  
8 carry out and support the purpose de-  
9 scribed in paragraph (1).

10 (E) AUTHORITY OF FOUNDATION.—The  
11 Foundation shall be the sole entity responsible  
12 for carrying out the activities described in this  
13 paragraph.

14 (F) ADMINISTRATIVE CONTROL.—No par-  
15 ticipant in a program under this paragraph or  
16 employee of the Foundation shall exercise any  
17 administrative control over any Federal em-  
18 ployee.

19 (c) BOARD OF DIRECTORS.—

20 (1) MEMBERSHIP.—

21 (A) IN GENERAL.—The Foundation shall  
22 operate under the direction of a Board of Di-  
23 rectors, which shall be composed of—

24 (i) ex-officio members described in  
25 subparagraph (B); and

1 (ii) appointed members described in  
2 subparagraph (C).

3 (B) EX-OFFICIO MEMBERS.—

4 (i) INITIAL MEMBERS.—

5 (I) IN GENERAL.—Subject to  
6 subclause (II), the initial ex-officio  
7 members of the Board shall be—

8 (aa) the chair of the Com-  
9 mittee on Energy and Natural  
10 Resources of the Senate (or a  
11 designee);

12 (bb) the ranking minority  
13 member of the Committee on En-  
14 ergy and Natural Resources of  
15 the Senate (or a designee);

16 (cc) the chair of the Com-  
17 mittee on Energy and Commerce  
18 of the House of Representatives  
19 (or a designee);

20 (dd) the ranking minority  
21 member of the Committee on En-  
22 ergy and Commerce of the House  
23 of Representatives (or a des-  
24 igned);

1 (ee) the chair of the Com-  
2 mittee on Environment and Pub-  
3 lic Works of the Senate (or a  
4 designee);

5 (ff) the ranking minority  
6 member of the Committee on En-  
7 vironment and Public Works of  
8 the Senate (or a designee);

9 (gg) the chair of the Com-  
10 mittee on Science, Space, and  
11 Technology of the House of Rep-  
12 resentatives (or a designee);

13 (hh) the ranking minority  
14 member of the Committee on  
15 Science, Space, and Technology  
16 of the House of Representatives  
17 (or a designee); and

18 (ii) the Secretary (or a des-  
19 igned).

20 (II) DESIGNEES.—A designee  
21 under subclause (I) shall be a member  
22 of the staff of the applicable chair,  
23 ranking minority member, or Sec-  
24 retary.

25 (ii) PERMANENT MEMBERS.—

1 (I) TERMINATION.—On the ap-  
2 pointment of appointed members of  
3 the Board under subparagraph (C),  
4 the terms of service of the ex-officio  
5 members of the Board described in  
6 items (aa) through (hh) of clause  
7 (i)(I) shall terminate.

8 (II) PERMANENT MEMBER.—The  
9 Secretary shall serve as a permanent  
10 ex-officio member of the Board.

11 (iii) NONVOTING MEMBERS.—The ex-  
12 officio members of the Board shall be non-  
13 voting members.

14 (C) APPOINTED MEMBERS.—

15 (i) IN GENERAL.—The appointed  
16 members of the Board shall be composed  
17 of 11 individuals, which shall include not  
18 fewer than 1 but not more than 5 rep-  
19 resentatives of each of—

- 20 (I) the academic community;
- 21 (II) the business community;
- 22 (III) nonprofit organizations;
- 23 (IV) the communities sur-  
24 rounding the laboratories and facili-  
25 ties of the Department of Energy; and

1 (V) the technology transfer and  
2 commercialization community.

3 (ii) METHOD OF APPOINTMENT.—

4 (I) IN GENERAL.—Not later than  
5 90 days after the date of enactment of  
6 this Act, the ex-officio members of the  
7 Board shall select from a list of can-  
8 didates, to be provided by, at the dis-  
9 cretion of the Secretary, the Secretary  
10 of Energy Advisory Board or the Na-  
11 tional Academy of Sciences, individ-  
12 uals for appointment as members of  
13 the Board.

14 (II) VOTE.—For the initial mem-  
15 bership of the Board, an individual se-  
16 lected for appointment under sub-  
17 clause (I) shall be appointed on a vote  
18 of not fewer than  $\frac{3}{5}$  of the initial ex-  
19 officio members of the Board.

20 (iii) RESTRICTION ON MEMBERSHIP.—

21 No employee of the Department of Energy  
22 shall be appointed as a member of the  
23 Board.

24 (iv) AMENDMENT TO NUMBER OF AP-  
25 POINTED MEMBERS.—The Board, through

1 amendments to the bylaws of the Founda-  
2 tion, may provide that the number of ap-  
3 pointed members of the Board shall be  
4 greater than the number specified in clause  
5 (i).

6 (D) TERMS AND VACANCIES.—

7 (i) TERMS.—

8 (I) IN GENERAL.—Except as pro-  
9 vided in subclause (II), the term of  
10 service of each appointed member of  
11 the Board shall be 5 years.

12 (II) INITIAL APPOINTED MEM-  
13 BERS.—The term of service for each  
14 initial appointed member of the Board  
15 shall be—

16 (aa) determined by the ini-  
17 tial ex-officio members of the  
18 Board and the initial Chair to  
19 ensure that the continuity of rep-  
20 resentation of board members  
21 from each of the areas described  
22 in subclauses (I) through (V) of  
23 subparagraph (C)(i); and

24 (bb) for a term of either 3  
25 or 4 years.

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1 (ii) VACANCIES.—

2 (I) IN GENERAL.—Any vacancy  
3 in the membership of the appointed  
4 members of the Board—

5 (aa) shall be filled in accord-  
6 ance with the bylaws of the  
7 Foundation established under  
8 subsection (d)(1)(B); and

9 (bb) shall not affect the  
10 power of the remaining appointed  
11 members to execute the duties of  
12 the Board.

13 (II) FILLING UNEXPIRED  
14 TERM.—An individual appointed to fill  
15 a vacancy shall be appointed for the  
16 unexpired term of the member re-  
17 placed.

18 (III) SERVICE UNTIL VACANCY  
19 FILLED.—An appointed member of  
20 the Board may continue to serve on  
21 the Board after the expiration of the  
22 term of the member until a successor  
23 is appointed.

24 (2) CHAIR.—

1 (A) INITIAL CHAIR.—The initial Chair of  
2 the Board shall be an initial ex-officio member  
3 elected by the initial ex-officio members of the  
4 Board for a 3-year term that shall expire on the  
5 appointment of the next Chair.

6 (B) CHAIR AFTER MEMBERS ARE AP-  
7 POINTED.—On the termination of the term of  
8 service of the initial Chair under subparagraph  
9 (A), the appointed members of the Board shall  
10 elect an appointed member of the Board to  
11 serve as the Chair, who shall serve as the Chair  
12 for the entire remaining term of service of that  
13 member.

14 (3) COMPENSATION.—

15 (A) IN GENERAL.—Members of the Board  
16 may not receive compensation for service on the  
17 Board.

18 (B) CERTAIN EXPENSES.—In accordance  
19 with the bylaws of the Foundation, members of  
20 the Board may be reimbursed for travel ex-  
21 penses, including per diem in lieu of subsist-  
22 ence, and other necessary expenses incurred in  
23 carrying out the duties of the Board.

24 (d) MEETINGS AND QUORUM.—

1           (1) MEETINGS.—Not later than 180 days after  
2           the establishment of the appointed Board, the initial  
3           appointed members of the Board shall—

4                   (A) serve as incorporators; and

5                   (B) take such actions as are necessary—

6                           (i) to incorporate the Foundation;

7                           (ii) to establish the bylaws of the  
8           Foundation;

9                           (iii) to establish the general policies of  
10          the Foundation for carrying out the pur-  
11          pose described in subsection (b)(1); and

12                          (iv) to appoint the members of the  
13          Board in accordance with subsection  
14          (c)(1)(C)(ii).

15          (2) QUORUM.—A majority of the members of  
16          the Board shall constitute a quorum for purposes of  
17          conducting the business of the Board.

18          (e) CERTAIN BYLAWS.—

19                (1) IN GENERAL.—The Board shall include in  
20                the bylaws of the Foundation established under sub-  
21                section (d)(1)(B) the following policies:

22                   (A) Policies for the selection of the offi-  
23                cers, employees, agents, and contractors of the  
24                Foundation.

1 (B) Policies, including ethical standards,  
2 for the acceptance, solicitation, and disposition  
3 of gifts, grants, and other donations to the  
4 Foundation, which shall require that—

5 (i) officers, employees, agents, and  
6 contractors of the Foundation (including  
7 members of the Board) avoid encum-  
8 brances that would result in a conflict of  
9 interest, including a financial conflict of in-  
10 terest or a divided allegiance; and

11 (ii) information concerning any owner-  
12 ship or controlling interest in any entity  
13 related to the activities of the Foundation  
14 be disclosed by officers, employees, agents,  
15 and contractors of the Foundation (includ-  
16 ing members of the Board) and the rel-  
17 atives (as defined in section 109 of the  
18 Ethics in Government Act of 1978 (5  
19 U.S.C. App.)) of the officers, employees,  
20 agents, contractors, and members.

21 (C) Policies for the disposition of the as-  
22 sets of the Foundation.

23 (D) Policies for the conduct of the general  
24 operations of the Foundation.

1 (E) Policies for writing, editing, printing,  
2 publishing, and vending of books and other ma-  
3 terials.

4 (2) REQUIREMENTS.—In establishing the by-  
5 laws of the Foundation, the Board shall ensure that  
6 the bylaws of the Foundation and the activities car-  
7 ried out under the bylaws of the Foundation shall  
8 not—

9 (A) reflect unfavorably on the ability of the  
10 Foundation or the Secretary to carry out re-  
11 sponsibilities or official duties in a fair and ob-  
12 jective manner; or

13 (B) compromise, or appear to compromise,  
14 the integrity of any agency or program of the  
15 Federal Government, or any officer or employee  
16 involved in the program.

17 (f) POWERS AND DUTIES.—

18 (1) OPERATION UNDER DIRECTION OF  
19 BOARD.—The Foundation shall operate under the  
20 direction of the Board.

21 (2) EXECUTIVE DIRECTOR.—

22 (A) IN GENERAL.—An Executive Director  
23 of the Foundation shall be—

24 (i) appointed by, and serve at the  
25 pleasure of, the Board; and

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1 (ii) responsible for—

2 (I) the day-to-day operations of  
3 the Foundation; and

4 (II) such specific duties and re-  
5 sponsibilities as the Board may pre-  
6 scribe.

7 (B) COMPENSATION.—The rate of com-  
8 pensation of the Executive Director shall be  
9 fixed by the Board.

10 (3) CORPORATE SEAL.—The Foundation may  
11 adopt, alter, and use a corporate seal, which shall be  
12 judicially noticed.

13 (4) OFFICERS, EMPLOYEES, AND AGENTS.—The  
14 Foundation may—

15 (A) hire, promote, compensate, and dis-  
16 charge officers, employees, agents, and contrac-  
17 tors;

18 (B) define the duties of the officers, em-  
19 ployees, agents, and contractors;

20 (C) require surety bonds or make other  
21 provisions against losses occasioned by acts of  
22 the officers, employees, agents, or contractors;

23 (D) with the consent of any Federal agen-  
24 cy, use the information, services, staff, and fa-  
25 cilities of the agency; and

1           (E) appoint other groups of advisors as  
2           may be determined necessary.

3           (5) OTHER POWERS.—The Foundation may—

4           (A) modify or consent to the modification  
5           of any contract or agreement to which the  
6           Foundation is a party or in which the Founda-  
7           tion has an interest;

8           (B) enter into contracts with public and  
9           private organizations for the writing, editing,  
10          printing, and publishing of books and other ma-  
11          terial;

12          (C) take such action as may be necessary  
13          to obtain patents and licenses for devices and  
14          procedures developed by the Foundation;

15          (D) enter into contracts, leases, coopera-  
16          tive agreements, and other transactions as the  
17          Executive Director considers appropriate to  
18          conduct the activities of the Foundation;

19          (E) solicit, accept, hold, administer, invest,  
20          and spend any gift, devise, or bequest of real or  
21          personal property made to the Foundation;

22          (F) sue and be sued in its corporate name  
23          and complain and defend itself in any court of  
24          competent jurisdiction; and

1 (G) exercise such other powers, including  
2 incidental powers, as are necessary to carry out  
3 the powers, duties, and functions of the Foun-  
4 dation under this Act.

5 (6) FEES.—The Foundation may assess fees  
6 for the provision of professional, administrative, and  
7 management services by the Foundation in amounts  
8 determined reasonable and appropriate by the Exec-  
9 utive Director.

10 (g) INCORPORATION.—The initial members of the  
11 Board shall serve as incorporators and shall take any ac-  
12 tions necessary to incorporate the Foundation.

13 (h) NONPROFIT STATUS.—The Foundation shall be  
14 considered to be an organization described in section  
15 501(c) of the Internal Revenue Code of 1986, and exempt  
16 from taxation under section 501(a) of such Code.

17 (i) GENERAL PROVISIONS.—

18 (1) FOUNDATION INTEGRITY.—The Board  
19 shall—

20 (A) be accountable for the integrity of the  
21 operations of the Foundation; and

22 (B) ensure that integrity through the de-  
23 velopment and enforcement of criteria and pro-  
24 cedures relating to—

25 (i) standards of conduct;

- 1 (ii) financial disclosure statements;
- 2 (iii) conflicts of interest;
- 3 (iv) recusals and waivers;
- 4 (v) audits; and
- 5 (vi) other matters determined appro-
- 6 priate by the Board.

7 (2) FINANCIAL CONFLICTS OF INTEREST.—Any  
8 individual who is an officer, employee, or member of  
9 the Board shall not, in accordance with the policies  
10 established under subsection (e)(1)(B)(ii), personally  
11 or substantially participate in the consideration or  
12 determination by the Board of any matter that  
13 would directly and foreseeably affect any financial  
14 interest of—

15 (A) the individual;

16 (B) a relative (as defined in section 109 of  
17 the Ethics in Government Act of 1978 (5  
18 U.S.C. App.)) of the individual; or

19 (C) any business organization or other en-  
20 tity—

21 (i) of which the individual is an officer  
22 or employee;

23 (ii) of which the individual is negoti-  
24 ating for employment; or

1 (iii) in which the individual has any  
2 other financial interest.

3 (3) AUDITS; AVAILABILITY OF RECORDS.—The  
4 Board shall—

5 (A) conduct annual audits of the financial  
6 condition of the Foundation; and

7 (B) make those audits, and all other  
8 records, documents, and other papers of the  
9 Foundation, available to the Secretary and the  
10 Comptroller General of the United States for  
11 examination or audit.

12 (4) REPORTS.—

13 (A) IN GENERAL.—Not later than 150  
14 days after the end of each fiscal year, the  
15 Board shall publish a report describing the ac-  
16 tivities of the Foundation during the preceding  
17 fiscal year.

18 (B) CONTENTS.—Each report published  
19 under subparagraph (A) shall include, for the  
20 applicable fiscal year—

21 (i) a comprehensive statement of the  
22 operations, activities, financial condition,  
23 and accomplishments of the Foundation,  
24 including an accounting of the use of

1 amounts transferred under subsection  
2 (k)(1); and

3 (ii) with respect to the financial condi-  
4 tion of the Foundation—

5 (I) the source, and a description,  
6 of each gift or grant of real or per-  
7 sonal property to the Foundation;

8 (II) the source and amount of  
9 each cash gift or grant to the Founda-  
10 tion; and

11 (III) a specification of any re-  
12 strictions on the purposes for which  
13 the gifts and grants described in sub-  
14 clauses (I) and (II) may be used.

15 (C) AVAILABILITY.—The Board shall—

16 (i) make copies of each report sub-  
17 mitted under subparagraph (A) available—

18 (I) for public inspection; and

19 (II) to the appropriate commit-  
20 tees of Congress; and

21 (ii) on request, provide a copy of any  
22 report submitted under subparagraph (A)  
23 to any individual for a charge that shall  
24 not exceed the cost of providing the copy.

1 (D) PUBLIC MEETING.—The Board shall  
2 annually hold a public meeting—

3 (i) to summarize the activities of the  
4 Foundation; and

5 (ii) to distribute written reports de-  
6 scribing—

7 (I) those activities; and

8 (II) the scientific results derived  
9 from those activities.

10 (5) SERVICE OF FEDERAL EMPLOYEES.—A  
11 Federal employee may serve on a committee advisory  
12 to the Foundation and otherwise cooperate with and  
13 assist the Foundation in carrying out this Act, sub-  
14 ject to the condition that the Federal employee shall  
15 not direct or control any activity of the Foundation.

16 (6) RELATIONSHIP WITH EXISTING ENTITIES.—  
17 The Board may, in accordance with appropriate  
18 agreements, merge the Foundation with, acquire, or  
19 use the resources of an existing nonprofit private  
20 corporation that has a mission similar to the pur-  
21 pose of the Foundation described in subsection  
22 (b)(1).

23 (7) INTELLECTUAL PROPERTY RIGHTS.—The  
24 Board shall adopt written standards with respect to  
25 the ownership of any intellectual property rights de-

1       rived from the collaborative efforts of the Founda-  
2       tion before the commencement of any collaborative  
3       efforts.

4           (8) TRANSFER OF FUNDS.—The Board may  
5       transfer amounts to the Secretary, and the Sec-  
6       retary may accept transfers of amounts from the  
7       Foundation.

8           (j) SUPPORT SERVICES.—The Secretary may provide  
9       facilities, utilities, and support services to the Foundation  
10      if it is determined by the Secretary to be advantageous  
11      to the research programs of the Department of Energy.

12          (k) AUTHORIZATION OF APPROPRIATIONS.—There  
13      are authorized to be appropriated to carry out this section  
14      such sums as are necessary for fiscal year 2018 and each  
15      fiscal year thereafter.

16   **SEC. 4. ESTABLISHMENT OF FOR-PROFIT SUBSIDIARIES.**

17          (a) ESTABLISHMENT.—The Board may establish 1 or  
18      more for-profit subsidiaries, which may include an impact  
19      investment fund—

20           (1) to stimulate economic development activities  
21      relating to the purpose of the Foundation described  
22      in section 3(b)(1); and

23           (2) to attract for-profit investment partners for  
24      technology translation and commercialization activi-  
25      ties.

1       (b) AUTHORITIES OF THE FOR-PROFIT SUB-  
2       SIDIARY.—

3           (1) IN GENERAL.—Subject to paragraph (2), a  
4       for-profit subsidiary established under subsection (a)  
5       may—

6           (A) enter partnerships with economic de-  
7       velopment corporations, including incubators,  
8       accelerators, and small business investment  
9       companies;

10          (B) pay for the cost of building and ad-  
11       ministering facilities, including microlabs and  
12       incubators, to support the activities of the  
13       Foundation described in section 3(b)(2); and

14          (C) provide funding to startups.

15       (2) COST RECOVERY REQUIREMENTS.—A for-  
16       profit subsidiary established under subsection (a)  
17       shall—

18           (A) ensure that the Foundation owns any  
19       intellectual property rights generated through  
20       activities funded by the for-profit subsidiary, if  
21       appropriate; and

22           (B) own an equity stake in any startup in-  
23       vested in by the for-profit subsidiary.