

that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775-1200; telephone: (907) 474-6117, before March 17, 1997. Repatriation of the human remains and associated funerary objects to the Kenaitze Indian Tribe may begin after that date if no additional claimants come forward.

Dated: January 28, 1997.

Michele C. Aubry,

*Acting Departmental Consulting Archeologist,*

*Archeology and Ethnography Program.*

[FR Doc. 97-3682 Filed 2-13-97; 8:45 am]

BILLING CODE 4310-70-F

**Notice of Intent to Repatriate a Cultural Item from Arizona in the Possession of the Metropolitan Museum of Art, New York, NY**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the Metropolitan Museum of Art, New York, NY, which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural item is an Apache *Gaan* mask of painted wood and cloth.

This mask was collected by E. H. Davis between 1910-1911, and transferred to the Metropolitan Museum of Art from the Museum of Primitive Art in 1978.

The cultural affiliation of this item is San Carlos Apache as verified by the San Carlos Apache Tribe. The Tribe has indicated that this item has ongoing traditional and cultural importance to the tribe and could not have been conveyed by any individual tribal member.

Based on the above mentioned information, officials of the Metropolitan Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (3)(D), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Metropolitan Museum of Art have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between this item and the San Carlos Apache Tribe.

This notice has been sent to officials of the Camp Verde Yavapai-Apache Community, the Fort McDowell Mohave-Apache Community, the Payson Tonto Apache Tribe, the San Carlos Apache Tribe, and the White Mountain Apache Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Julie Jones, Curator in Charge, Department of the Arts of Africa, Oceania, and the Americas, Metropolitan Museum of Art, New York, NY 10028-1098, telephone (212) 570-3705 before March 17, 1997. Repatriation of these objects to the San Carlos Apache Tribe may begin after that date if no additional claimants come forward.

Dated: February 7, 1997.

Francis P. McManamon,

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 97-3683 Filed 2-13-97; 8:45 am]

BILLING CODE 4310-70-F

**Bureau of Reclamation**

**Columbia River System Operation Review, Selection of a System Operation Strategy, Record of Decision**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of record of decision.

**SUMMARY:** The purpose of this notice is to announce the availability of the Record of Decision (signed February 7, 1997) which documents the decision of the Bureau of Reclamation (Reclamation) to implement existing and modified plans related to reservoir regulation and project operation for Hungry Horse (Montana) and Grand Coulee (Washington) projects.

**ADDRESSES:** Copies of the Record of Decision may be requested from: Regional Director, Bureau of Reclamation, Attention: Catherine Konrath, Pacific Northwest Region, 1150 North Curtis Road, Boise, ID 83706-1234; telephone (208) 378-5008.

Copies of the Record of Decision are available for inspection and review at the following Reclamation offices:

- Commissioners Office, 1849 C Street NW, Room 7627, Washington, DC
- Lower Columbia Area Office, 825 NE Multnomah, Suite 1110, Portland, Oregon
- Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington
- Grand Coulee Power Office, Grand Coulee, Washington

—Hungry Horse Field Office, Hungry Horse, Montana

**FOR FURTHER INFORMATION CONTACT:**

Bureau of Reclamation, Pacific Northwest Region, Attention: Catherine Konrath, 1150 North Curtis Road, Boise, Idaho 83706-1234; telephone (208) 378-5008.

**SUPPLEMENTARY INFORMATION:**

Reclamation, the U.S. Army Corps of Engineers, and the Bonneville Power Administration are responsible for management of the Federal Columbia River Power System. In 1990, the three Federal agencies began the System Operation Review for the purpose of developing and implementing a coordinated system operating strategy for managing the multiple uses of the system while meeting the biological needs of the species protected under the Endangered Species Act. Pursuant to the National Environmental Policy Act of 1969, the selection of the system operation strategy preferred alternative is documented in the Final Environmental Impact Statement, November 1995.

Dated: February 7, 1997.

John W. Keys, III,

*Regional Director, Pacific Northwest Region.*

[FR Doc. 97-3811 Filed 2-13-97; 8:45 am]

BILLING CODE 4310-94-M

**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Proposed Final Judgment and Competitive Impact Statement; United States v. Signature Flight Support Corporation**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Signature Flight Support Corporation*, Civil No. 97-0248. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).

On February 3, 1997, the United States filed a Complaint seeking to enjoin a transaction in which Signature Flight Support Corporation ("Signature") agreed to acquire International Aviation Palm Beach, Inc. ("International Aviation"). Signature and International Aviation are two of three fixed base operators ("FBOs")

located at Palm Beach International Airport ("PBI") in West Palm Beach, Florida. FBOs provide terminals, fueling, hangars and other services to general aviation customers, such as businesses and individuals with private planes. Signature's proposed acquisition of International Aviation would have created a duopoly at PBI. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing FBO services, such as jet fueling and hangar and ramp rental space, to general aviation customers at PBI in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment orders Signature to sell certain of its assets and leaseholds of its FBO business at PBI to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at PBI. The Stipulation also imposes a hold separate agreement that, in essence, requires the defendant to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Signature's FBO business at PBI will be held separate and apart from, and operated independently of, any of its other FBO assets and businesses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530 (telephone: (202) 307-6351). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, D.C. 20530 (telephone: (202) 514-2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,  
*Director of Operations, Antitrust Division.*

United States District Court, District of Columbia

*United States of America, Plaintiff, v. Signature Flight Support Corporation, Defendant. Civil Action No. 97-0248*

#### Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia;

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

3. Defendant Signature (as defined in paragraph II.A of the proposed Final Judgment attached hereto) shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court; provided, however, that Signature shall not be obligated to comply with Sections IV through VIII of the proposed Final Judgment unless and until the closing of any transaction in which Signature directly or indirectly acquires all or any part of the assets or capital stock of International Aviation (as defined in paragraph II.B of the proposed Final Judgment attached hereto);

4. Defendant shall not consummate the transaction before the Court has signed this Stipulation and Order;

5. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to

any party in this or any other proceeding.

6. The defendant represents that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: February 5, 1997.

For Plaintiff United States of America:

Joel I. Klein,

*Acting Assistant Attorney General.*

Constance K. Robinson,

*Director of Operations*

Charles Biggio,

*Senior Counsel.*

Roger W. Fones,

*Chief.*

Donna N. Kooperstein,

*Ass't Chief.*

Kelly Signs, Michele B. Cano, Robert

McGeorge, Michael Harmonis,

*Attorneys, U.S. Department of Justice,*

*Antitrust Division, Transportation, Energy*

*and Agriculture Department, 325 Seventh*

*Street, N.W., Suite 500, Washington, D.C.*

*20530, (202) 307-6475.*

For Defendant Signature Flight Support

Corporation:

Bruce Van Allen,

*Senior Vice President—Operations.*

Paul J. Mokris,

*General Counsel.*

Freeborn & Peters

By: William C. Holmes,

*A Member of the Firm, Suite 3000, 311 South*

*Wacker Driver, Chicago, Illinois 60606-6677,*

*(312) 360-6000.*

So Ordered:

United States District Judge

Dated:

Final Judgment

*Whereas, plaintiff, United States of America (hereinafter "United States"), having filed its Complaint herein on February 5, 1997, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein:*

*And whereas, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;*

*And whereas, prompt and certain divestiture is the essence of this agreement to assure that competition is not substantially lessened; And*

*Whereas, plaintiff requires defendant to make this divestiture for the purpose*

of remedying the loss of competition alleged in the complaint;

And whereas, defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties thereto, it is hereby

Ordered, Adjudged and Decreed as follows:

#### I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

#### II. Definitions

As used in this Final Judgment:

A. "Signature" means Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, Florida, and includes its successors and assigns, its parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "International Aviation" means International Aviation Palm Beach, Inc., a Florida corporation with its headquarters in West Palm Beach, Florida, and includes its successors and assigns, its parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. "The Assets to be Divested" means all rights, titles and interests, including all fee, leasehold and real property rights, in the following assets, owned or controlled by Signature, that are used by Signature to provide fuel and other services to general aviation customers at PBI Airport:

1. The existing Signature terminal and office building (building #1626), as shown on the attached map.

2. Approximately 71,000 square feet of hangar space, consisting of the existing Signature hangar buildings #1625, 1627, 1628 and 1629.

3. The existing Signature fuel farm adjacent to Signature hangar building #1627, consisting of approximately one-half acre, as shown on the attached map.

4. Approximately 23.5 acres of ramp space adjacent to the foregoing

buildings, as shown on the attached map.

5. Approximately 2.5 acres of parking space, as shown on the attached map.

6. Existing office furniture, lobby furniture, phone system, radios, television, towing equipment, golf carts, pickup truck, refuellers, ground power units and other equipment and supplies necessary and appropriate to provide a viable FBO at the foregoing facilities.

7. Contracts (including, but not limited to, customer contracts) and customer lists.

D. "PBI Airport" means Palm Beach International Airport, located in West Palm Beach, Florida.

E. "FBO" means any or all services related to providing fixed based operator services, including, but not limited to, selling fuel, leasing hangar, ramp and office space, providing flight support services, performing maintenance, providing access to terminal facilities, or arranging for ancillary services such as limousines, rental cars or hotels.

#### III. Applicability

A. The provisions of this Final Judgment shall apply to defendant, its successors and assigns, parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets of its business, that the purchaser of such assets agree to be bound by the provisions of the Final Judgment; provided however, that defendant need not obtain such an agreement from the acquirer of The Assets to be Divested in the divestiture contemplated herein.

#### IV. Divestiture of the Assets To Be Divested

A. Defendant is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days of the filing of this Final Judgment, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest The Assets to be Divested to a purchaser acceptable to the plaintiff, in its sole discretion.

B. Divestiture of Signature's leasehold interest in any of The Assets to be Divested shall be by transfer of the entire leasehold interest which shall be for the entire remaining term of such

leasehold including all renewal or option rights.

C. Defendant shall use its best efforts and take all reasonable steps to accomplish the divestiture as expeditiously as possible. If defendant has not accomplished the required divestiture within the one hundred and eighty (180) calendar day period specified in section IV.A, the plaintiff may, in its sole discretion, extend the time period for two (2) additional periods of time, not to exceed ninety (90) calendar days in total.

D. In accomplishing the divestiture ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability for sale of The Assets to be Divested. Defendant shall notify any person making an inquiry regarding the possible purchase of The Assets to be Divested that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of The Assets to be Divested that the assets described in Section II.C. are being offered for sale. Defendant shall also offer to furnish to all bona fide prospective purchasers of The Assets to be Divested, subject to customary confidentiality assurances, all information regarding The Assets to be Divested customarily provided in a due diligence process, except information subject to attorney-client privilege or attorney work product privilege. Defendant shall make available such information to the plaintiff at the same time that such information is made available to any other person. Subject to customary confidentiality assurance, defendant shall permit prospective purchasers of The Assets to be Divested to have access to its personnel, to make inspection of The Assets to be Divested, and to have access to financial, operational, and other documents and information relating to The Assets to be Divested, as customarily provided as part of a due diligence process.

E. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV.A, or by the trustee appointed pursuant to Section V of this Final Judgment, shall include all of The Assets to be Divested and be accomplished by selling or otherwise conveying The Assets to be Divested to a purchaser in such a way as to satisfy the United States, in its sole discretion, that The Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business engaged in the provision of FBO services at PBI. The divestiture, whether pursuant to

Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, that: (1) the purchaser has the capability and intent of competing effectively in the provision of FBO services at PBI; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the provision of FBO services at PBI; and (3) none of the terms of any agreement between the purchaser and defendant give defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of FBO service at PBI.

#### V. Appointment of Trustee

A. In the event that defendant has not divested The Assets to be Divested within the time specified in Sections IV.A or IV.C of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of The Assets to be Divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell The Assets to be Divested. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendant must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the

assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendant and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of The Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, book, records, and facilities of defendant, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, that the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs.

#### VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendant or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendant, the proposed purchaser, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser. Defendant and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendant, the proposed purchaser, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, or by defendant under the proviso in Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### VII. Affidavits

A. Within twenty (20) calendar days of the closing of any transaction in which signature directly or indirectly acquires all or any part of the assets or

capital stock of International Aviation, and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, defendant shall deliver to plaintiff an affidavit as to the fact and manner of defendant's compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in The Assets to be Divested, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendant shall deliver to plaintiff an affidavit which describes in detail all actions defendant has taken and all steps defendant has implemented on an on-going basis to preserve The Assets to be Divested pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX.H of this Final Judgment with respect to defendant's efforts to preserve The Assets to be Divested. The affidavit also shall describe, but not be limited to, defendant's efforts to maintain and operate The Assets to be Divested as an active competitor, maintain the management, sales, marketing and pricing of The Assets to be Divested apart from that of defendant's other businesses that provide FBO services, maintain and increase sales of defendant's FBO operation at PBI, and maintain The Assets to be Divested in operable condition, continuing normal maintenance. Defendant shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendant's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendant shall preserve all records of all efforts made to preserve and divest The Assets to be Divested.

#### VIII. Financing

Defendant shall not finance all or nay part of any divestiture made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States.

#### IX. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant shall take all steps necessary to ensure that The Assets to be Divested will be maintained and operated as an ongoing, economically viable and active competitor in the provision of FBO services; and that, except as necessary to comply with Sections IX to IX.H of this Final Judgment, the management of The Assets to be Divested shall be kept separate and apart from the management of defendant's other FBO operations and will not be influenced by defendant, and the books, records, and competitively sensitive sales, marketing and pricing information associated with The Assets to be Divested will be kept separate and apart from that of defendant's other businesses that provide FBO services.

B. Defendant shall take all steps necessary to ensure that The Assets to be Divested are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for The Assets to be Divested.

C. Defendant shall provide and maintain sufficient sources of credit to maintain The Assets to be Divested as a viable, ongoing business.

D. Defendant shall provide and maintain sufficient working capital to maintain The Assets to be Divested as a viable, ongoing business.

E. Defendant shall not, except as part of a divestiture approved by the United States, remove, sell, or transfer any of The Assets to be Divested, other than sales in the ordinary course of business.

F. Unless it has obtained the prior approval of the United States, defendant shall not terminate or reduce the current employment, salary, housing, or benefit arrangements for any personnel employed by defendant who work at, or have managerial responsibility for, The Assets to be Divested, except in the ordinary course of business.

G. Defendant shall take no action that would jeopardize its ability to divest The Assets to be Divested as a viable, ongoing business.

H. Defendant shall appoint a person or persons to oversee The Assets to be Divested, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

#### X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on

reasonable notice to defendant made to its principal offices, shall be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal offices, defendant shall submit such written reports, under oath is requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section VII or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

## XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

## XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_

United States District Judge

This page could not be reprinted in the Federal Register, however, it may be inspected in Suite 215, U.S. Department of Justice, Legal Procedures Unit, 325 7th St., N.W., Washington, D.C. at (202) 514-2481 and at the Office of the Clerk of the United States Court for the District of Columbia.

## Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

### I. Nature and Purpose of the Proceeding

On February 5, 1997, the United States filed a Complaint alleging that the proposed acquisition of International Aviation Palm Beach, Inc. (hereinafter "International Aviation") by Signature Flight Support Corporation, (hereinafter "Signature") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Signature and International Aviation are two of three providers of fixed base operator ("FBO") services for general aviation customers at Palm Beach International airport ("PBI") located in West Palm Beach, Florida, and that this transaction will combine them. Signature and International Aviation compete head-to-head on price and quality of services to general aviation customers. This acquisition would eliminate this competition, reducing the number of competitors from three to two, creating a FBO duopoly at PBI. As a result, the effect of the merger would be to give Signature the market power to raise prices and lower the quality of services to PBI general aviation customers. The merger would also make coordinated behavior by Signature and Jet Aviation (the other remaining FBO) easier, resulting in higher prices. Thus, the proposed acquisition is likely to lessen competition substantially in the market for FBO services at PBI in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The prayer for relief in the Complaint seeks (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a preliminary and

permanent injunction preventing Signature and International Aviation from consummating the proposed acquisition.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Signature to complete its acquisition of International Aviation, but requires a divestiture that would preserve competition for general aviation customers at PBI. This settlement consists of a Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Signature to sell certain FBO assets (hereinafter "The Assets to be Divested") to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at PBI. The Assets to be Divested include Signature's terminal building, four hangars, a fuel farm, and adjacent ramp and parking space. Signature must complete the divestiture of these FBO assets before the later of one hundred and eighty (180) calendar days after the consummation of the proposed acquisition of International Aviation of five (5) days after entry of the Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. If Signature should fail to accomplish the divestiture, a trustee appointed by the Court would be empowered to divest these assets.

The Stipulation and Order and the proposed Final Judgment also impose a hold separate agreement that requires defendant to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, The Assets to be Divested will be held separate and apart from, and operated independently of, Signature's other FBO assets and businesses.

The United States and Signature have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

### II. Events Giving Rise to the Alleged Violation

#### A. The Parties and the Proposed Transaction

On March 22, 1996, Signature, International Aviation, International Aviation Teterboro Inc. and IAS Holdings, Inc. (the parent of International Aviation and International

Aviation Teterboro, Inc.) entered into an agreement under which Signature would seek to acquire the assets of the three companies for approximately \$18 million.

Signature is a wholly owned subsidiary of BBA Group PLC, a British holding company. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature operates a nationwide network of 34 FBOs throughout the United States, including one at PBI. Signature's total revenues for fiscal year 1995 were \$233 million.

International Aviation operates an FBO at PBI airport in West Palm Beach, Florida, International Aviation is a subsidiary of IAS Holdings, Inc., which, in conjunction with its subsidiary International Aviation Teterboro, Inc., also operates FBO facilities at Westchester County (NY) airport, and Teterboro (NJ) airport.

#### B. The FBO Services Market

FBOs are facilities located at commercial airports that provide flight support services, including aircraft fueling, ramp and hangar rentals, office space rentals, and other services to general aviation customers. General aviation customers include charter, private and corporate aircraft operators, as distinguished from scheduled commercial airlines. Last year, general aviation customers purchased around \$1 billion of jet fuel from FBOs nationwide.

FBO services include sales of jet aviation ("Jet A") fuel and aviation gasoline ("avgas"), and ramp, hangar and office space rental. FBOs do not charge separately for many services offered to general aviation customers, such as use of customer and pilot lounges, baggage handling, and flight planning support; rather, they recover the costs for these services in the price that they charge for fuel. There are some services for which FBOs do charge separately, such as hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain other services.

The largest source of revenue for an FBO is its fuel revenues. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston driven planes. In 1995, Jet A fuel sales at PBI were approximately \$15 million; avgas sales were less than \$1 million. Revenues for hangar rentals and parking fees at PBI in 1995 were approximately \$1 million.

The Complaint alleges that the provision of FBO services to general aviation customers at PBI is a relevant market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at PBI, except through an FBO authorized to sell such products and services by the local airport authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at PBI.

FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use PBI. Although there are a number of smaller airports in the region, they are not economically viable substitutes for PBI general aviation customers. General aviation customers use PBI because of its location, convenience and facilities. General aviation customers have chosen PBI because of its proximity to their ultimate destination (whether their residence, business or other place); using a different airport would significantly increase their driving time. PBI has facilities that other airports lack: longer runways, precision instrument landing capability, a 24-hour landing tower, and a U.S. Customs facility. Because of these and other factors, there are not enough general aviation customers who have selected PBI as their airport who would switch to other airports to prevent anticompetitive price increases for fuel and other services at PBI resulting from this acquisition.

In addition, post-acquisition price increases at PBI for fuel would not be prevented by efforts of general aviation customers to decrease fuel purchases at PBI by increasing fuel purchases at airports outside the region. Carrying more fuel than is necessary to reach the next destination is referred to in the industry as "tankering." Most pilots tanker to some extent in response to fuel prices; that is, they buy more fuel at their origin if it is significantly cheaper so they can buy less at their destination (or vice versa). Tankering, however, would prevent a post-merger fuel price increase only if it would increase significantly after the merger, resulting in significant lost fuel sales at PBI. For a number of reasons, PBI general aviation customers are not likely to change their current tankering practices enough to prevent a post-merger fuel price increase at PBI. First, tankering is not possible on all flights, particularly on those that are near the aircraft's maximum range. Second, some pilots are unwilling to carry around excess fuel due to safety concerns. Third,

tankering itself is costly: fuel is heavy and the extra weight requires that more fuel be burned, and there is additional wear and tear on the engine and landing gear. These added costs mean that only large fuel price differences can induce tankering.

Available data confirmed that tankering is unlikely to prevent a post-merger fuel price increase at PBI. Using information on average prices and quantities of jet fuel sold at PBI, we estimated the elasticity of demand for Jet A fuel at PBI. The demand for Jet A fuel at PBI is inelastic. The elasticity was estimated to be about .7, which indicates that tankering, and all other forms of substitution, would not lead to a fuel sales decrease at PBI sufficient to deter a price increase.

### *C. Competition Between Signature and International Aviation*

Signature and International Aviation are direct competitors in the provision of FBO services to general aviation customers at PBI. All three FBOs at PBI compete over price and service packages.

General aviation customers have benefited from competition between Signature and International Aviation at PBI, receiving lower prices and improved FBO services. The elimination of this competition would reduce competition significantly in the market for FBO services to general aviation customers at PBI. Because Signature and International Aviation's facilities are close competitive alternatives for a substantial number of general aviation customers at PBI, competition between these FBOs limits the ability of each FBO to raise prices. This merger would eliminate the price constraining impact each has on the other.

In addition, as a result of Signature's acquisition of International Aviation, a duopoly would be created at PBI, making it easier for the two remaining firms to coordinate with one another and raise prices and lower the quality of FBO services to general aviation customers at PBI.

New entry is not likely to check Signature's ability to raise prices or reduce service as a result of the acquisition. The airport has set aside land for an additional FBO. Although that site is currently in use as the airport's antennae farm, the antennae farm could, at a cost, be relocated. There are additional sunk costs of entering, including costs associated with construction of ramp, terminal, hangar and fueling facilities. In this case, all of this necessary preparation could be completed within a reasonable period of time; that is, there are no

insurmountable obstacles to timely entry. That new entry could occur within a reasonable period of time, however, is a necessary but not sufficient condition for new entry to prevent the anticompetitive effects of the merger.

The ultimate issue is whether a firm would enter the market on a scale sufficient to cause prices to fall to pre-merger levels. The answer depends not only on whether entry on that scale is possible, but whether it would be profitable in the post-acquisition environment. Here, after taking into account the sunk costs required for entry on the airport, the likely margins an entrant would earn over time at pre-merger prices, and the discount or "hurdle" rates typically used in the FBO industry to make similar investment decisions, it appears that entry at PBI would be profitable only if the entrant could build a significantly smaller facility but still achieve a market share similar to that of the three current competitors, all without significantly underpricing its PBI rivals. Because an entrant is not likely to be able to lure customers away from incumbents without offering significant discounts or providing a better facility, post-merger entry is unlikely to occur at PBI.

### *D. Anticompetitive Consequences of the Acquisition*

The Complaint alleges that the combination of Signature and International Aviation would substantially increase concentration in the market for the provision of FBO services at PBI, using the Herfindahl-Hirschman Index ("HHI")<sup>1</sup> as a measure of market concentration. The post-merger HHI, based on Jet A gallons sold in 1995 at PBI, would be approximately 5450 with a change in HHI of about 2000 points. For that year, International Aviation sold approximately 40% of the throughput at PBI, and Signature accounted for approximately 25% of sales. If the proposed acquisition were consummated, the combined company

<sup>1</sup> The Herfindahl-Hirschman Index, or "HHI," is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ( $30^2+30^2+20^2+20^2=2600$ ). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated.

would account for 65% of the jet fuel sales at PBI.

The Complaint further alleges that the acquisition of International Aviation by Signature would substantially lessen competition. The transaction would have the following effects, among others:

1. actual competition between Signature and International Aviation in the market for FBO services at PBI will be eliminated;
2. competition generally in the market for FBO services at PBI is likely to be substantially lessened;
3. prices for fuel sold to general aviation customers at PBI are likely to increase.

Several sources of data were examined in this case to determine the likely effect of reducing the number of FBOs at PBI from three to two. Using estimates of the PBI Jet A fuel demand elasticity and other information, a standard economic model of competition among sellers of differentiated products predicted an overall average increase in the price of Jet A fuel at PBI on the order of four percent in the event that the merger were allowed to occur without a divestiture. Also, an analysis of margins earned by Signature at its many different airports suggested that reducing the number of competitors from three to two tends to increase average price by about five percent.

### III. Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the acquisition of International Aviation by Signature may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the market for FBO services to general aviation customers at PBI. The risk to competition posed by this acquisition, however, would be eliminated if certain assets and leases currently held by Signature to operate its PBI FBO business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Signature, within one hundred and eighty (180) calendar days after acquiring International Aviation, to divest the bulk of its FBO business, as set out in Section II.C (hereinafter "The Assets to

be Divested") of the proposed Final Judgment. Unless the United States otherwise consents in writing, Signature is required to divest its interests in its terminal building, four hangars, its fuel farm, and ramp and parking space adjacent to these facilities. In addition, Signature shall divest such equipment and supplies as is necessary and appropriate to operate a viable FBO at PBI. Finally, Signature shall transfer its contracts, including customer contracts, and customer lists, for providing FBO services at PBI.

Divestiture of the assets and leaseholds will cure the potential anticompetitive consequences of Signature's acquisition of International Aviation. The Assets to be Divested include all the ramp, hangar, terminal, parking, and fuel farm assets that have been used by Signature in providing FBO services at PBI. Together with the equipment, supplies and customer contracts and lists, these assets will give a qualified purchaser the means to establish itself as a competitive alternative to Signature and Jet Aviation. Thus, as a result of the divestiture required by the proposed Final Judgment, general aviation consumers at PBI will continue to have a choice among three competitive FBOs.

Under the proposed Final Judgment, Signature must take all reasonable steps necessary to accomplish quickly the divestiture of The Assets to be Divested, and shall cooperate with bona fide prospective purchasers by supplying all information relevant to the proposed sale. Should Signature fail to complete its divestiture within one hundred and eighty (180) calendar days, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. The United States will have the discretion to delay the appointment of the trustee for up to an additional three months should it appear that the assets can be sold in the extended time period.

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Signature will be required to pay for all of the trustee's sale-related expenses. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Signature or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any

prospective purchaser prior to consummation. Upon objection by the United States to a sale of the divestiture assets by the defendant Signature, a proposed divestiture may not be completed. Should the United States object to a sale of the divested assets by the trustee, that sale shall not be consummated unless approved by the Court.

Pursuant to Section V.E, should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make recommendation to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the trust of the term of the trustee's appointment.

Under Section IX of the proposed Final Judgment, defendant Signature must take certain steps to ensure that, until the required divestiture has been completed, the divestiture assets will be maintained as a separate, ongoing, viable business and kept distinct from Signature's other FBO operations. Until such divestiture, Signature must also continue to maintain and operate the divestiture assets as a viable, independent competitor at PBI, using all reasonable efforts to maintain and increase sales of FBO services to general aviation customers. Signature must maintain the business, so that it continues to be stable, including maintaining all records, loans, and personnel necessary for its operation.

Section X requires the defendant to make available, upon request, the business records and the personnel of its business. This provision allows the United States to inspect its facilities and ensure that the defendant is complying with the requirements of the proposed Final Judgment. Section XII of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private

lawsuit that may be brought against the defendant.

#### V. Procedure for Commenting on the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

#### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Signature. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the provision of FBO services to general aviation customers at PBI that otherwise would be affected adversely by the acquisition. Thus, the compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

#### VII. Standard of Review Under the APPA For Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases

brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment 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.

15 U.S.C. § 16(e). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>2</sup> Rather,

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an

<sup>2</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460–62. Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>3</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."<sup>4</sup>

#### VIII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: February 5, 1997.

<sup>3</sup> *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716; see also *Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" (citations omitted).

<sup>4</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom, Maryland v. United States*, 460 U.S. 1001 (1983), quoting *United States v. Gillette Co.*, supra, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Respectfully submitted,  
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 [FR Doc. 97-3698 Filed 2-13-97; 8:45 am]  
**BILLING CODE 4410-11-M**

## Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the Federal Register on November 29, 1996, (61 FR 60729), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

| Drug                            | Schedule |
|---------------------------------|----------|
| Methaqualone (2565) .....       | I.       |
| Dimethyltryptamine (7435) ..... | I.       |
| Amphetamine (1100) .....        | II.      |
| Methamphetamine (1105) .....    | II.      |
| Pentobarbital (2270) .....      | II.      |
| Secobarbital (2315) .....       | II.      |
| Phencyclidine (7471) .....      | II.      |
| Cocaine (9041) .....            | II.      |
| Codeine (9050) .....            | II.      |
| Benzoyllecgonine (9180) .....   | II.      |
| Methadone (9250) .....          | II.      |
| Morphine (9300) .....           | II.      |
| Fentanyl (9801) .....           | II.      |

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cambridge Isotope Lab to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: January 27, 1997.  
 Gene R. Haislip,  
*Deputy Assistant Administrator, Office of  
 Diversion Control, Drug Enforcement  
 Administration.*  
 [FR Doc. 97-3795 Filed 2-13-97; 8:45 am]  
**BILLING CODE 4410-09-M**

### Anibal P. Herrera, M.D.; Continuation of Registration with Restriction; Correction

January 31, 1997.

In notice document 96-31252 appearing on page 65075 in the issue of Tuesday, December 10, 1996, make the following correction:

On page 65075 at the top of page (Docket No. 94-41) should read (Docket No. 94-80).

James S. Milford,  
*Acting Deputy Administrator.*  
 [Fr Doc. 97-3796 Filed 2-13-97; 8:45 am]  
**BILLING CODE 4410-09-M**

## Office of Justice Programs

[OJP (OVC) No. 1105]

RIN 1121-AA30

### Victims of Crime Act Victim Compensation Grant Program

**AGENCY:** Office of Justice Programs,  
 Office for Victims of Crime, Justice.

**ACTION:** Final Program Guidelines.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is publishing Final Program Guidelines to implement the victim compensation grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, *et seq.* (hereafter referred to as VOCA).

**EFFECTIVE DATE:** From October 1, 1996 (Federal Fiscal Year 1997 VOCA grant program), until further revised by OVC.

**FOR FURTHER INFORMATION CONTACT:** Jackie McCann Cleland, Director, State Compensation and Assistance Division, 633 Indiana Avenue NW., Washington, DC 20531; telephone number (202) 307-5983. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VOCA provides federal financial assistance to states for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of federal crimes.

These Final Program Guidelines provide information on the administration and implementation of the VOCA victim compensation grant program as authorized in Section 1403 of VOCA, Public Law 98-473, as amended, codified at 42 U.S.C. 10602 and 10603b, and contain the following information: Summary of the Comments on the Proposed Program Guidelines; Background; Funding Allocation and Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and

Termination of Funding. These Final Program Guidelines are based on the experience gained and legal opinions rendered since the inception of the grant program in 1986, and are in accordance with VOCA. These Final Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC.

The Office of Justice Programs, Office for Victims of Crime, in conjunction with the Office of Policy Development, DOJ, and the Office of Information and Regulatory Affairs, the Office of Management and Budget (OMB), has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866 and, accordingly, these Final Program Guidelines were not reviewed by OMB.

In addition, it has been determined that these Final Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these Guidelines on such entities is not required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The program reporting requirements described in the Program Requirements section have been approved by the OMB as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121-0014.)

### Summary of the Revisions to the 1997 Proposed Program Guidelines

Proposed VOCA Victim Compensation Program Guidelines were distributed to interested individuals and organizations for the purpose of soliciting comments. In September, 1996, OVC asked the state VOCA victim compensation program administrators attending the annual conference of the National Association of Crime Victim Compensation Boards (NACVCB) for their comments. In September, OVC also mailed copies of the Proposed Guidelines to all of the state VOCA victim compensation and assistance program administrators, as well as to the executive directors of national victim organizations.

OVC received comments from state VOCA victim compensation and assistance administrators, representatives of national victim organizations, and one state legislator. In total, over 18 different recommendations, questions, and comments were received.

As a result of the comments from the field, recent legislative amendments, and modifications of applicable federal regulations, substantive changes were made to four sections of the Proposed Program Guidelines, including: the