

Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the "Export Administration Act of 1979"), and Executive Order 12851 of June 11, 1993, the United States Government determined on April 6, 2000, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in sections 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C)) and sections 11B(b)(1)(B)(ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) and (iii)) on these entities:

1. Changgwang Sinyong Corporation (North Korea) and its sub-units, successors, and affiliated companies;
2. The Ministry of Defense and Armed Forces Logistics (MODAFL) (Iran) and its sub-units and successors;
3. Aerospace Industries Organization (AIO) (Iran) and its sub-units and successors;
4. Shahid Hemmat Industrial Group (SHIG) (Iran) and its sub-units and successors; and
5. SANAM Industrial Group (Iran) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for exports to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(C) No new United States Government contracts involving the entities described above will be entered into for two years; and

(D) No products produced by the entities described above will be imported into the United States for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw Pact (as referenced in the definition of "person" in section 74(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(8)(B)), the following sanctions shall be applied to all activities of the North Korean government relating to the development or production of missile equipment or

technology and to all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New licenses for export to the government activities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(B) No new U.S. Government contracts involving the government activities described above will be entered into for two years; and

(C) No products produced by the government activities described above will be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: April 7, 2000.

**Robert J. Einhorn,**

*Assistant Secretary of State for Nonproliferation, Department of State.*

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**BILLING CODE 4710-25-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Notice of a Proposed Wetland Banking Memorandum of Agreement in the Commonwealth of Pennsylvania

**COORDINATING AGENCIES:** Federal Highway Administration, Pennsylvania Division (federal); U.S. Army Corps of Engineers Baltimore, Philadelphia, and Pittsburgh Districts (federal); U. S. Environmental Protection Agency, Region III (federal); U.S. Fish and Wildlife Service (federal); U.S. Department of Agriculture, Natural Resource Conservation Service (federal); Pennsylvania Department of Transportation (state); Pennsylvania Department of Environmental Protection (state); Pennsylvania Game Commission (state); Pennsylvania Fish and Boat Commission (state).

**ACTION:** Notice.

**SUMMARY:** The purpose of this proposed wetland banking agreement is to establish a wetland banking system to provide effective advanced compensatory mitigation for unavoidable, minimized impacts to wetlands of the United States and the Commonwealth of Pennsylvania

resulting from transportation construction or maintenance activities. The document will serve as an umbrella banking instrument for developing site specific subordinate instruments.

**COMMENTS:** Comments must bear postmarks dated no later than May 15, 2000.

**ADDRESSES:** Address comments to either the Pennsylvania Department of Transportation, Bureau of Environmental Quality, 555 Walnut Street— 7th Floor, Harrisburg, Pennsylvania 17101-1900 (Attn: Ms. Susan McDonald) or the Baltimore District Corps of Engineers, Regulatory Branch, P.O. 1715, Baltimore, Maryland 21203-1715 (Attn: Mr. Paul Wettlaufer) or Federal Highway Administration, Pennsylvania Division, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101-1720 (Attn: Mr. Daniel W. Johnson).

**FOR FURTHER INFORMATION CONTACT:** Susan McDonald, Acting Division Chief, Pennsylvania Department of Transportation, Bureau of Environmental Quality, Environmental Analysis Division (717-772-3083).

#### SUPPLEMENTARY INFORMATION:

**Draft Memorandum of Agreement** between Commonwealth of Pennsylvania, Department of Transportation (PennDOT) and Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) and Commonwealth of Pennsylvania, Fish and Boat Commission (PAFBC) and Commonwealth of Pennsylvania, Game Commission (PGC) and U.S. Army Corps of Engineers, North Atlantic Division and U.S. Army Corps of Engineers, Ohio Division and U.S. Environmental Protection Agency, Region III (EPA) and U.S. Fish and Wildlife Service, Pennsylvania Field Office (USFWS) and Natural Resource Conservation Service, Pennsylvania State Office (NRCS) and Federal Highway Administration, Pennsylvania Division (FHWA)

#### For the purposes of **Establishing a Statewide Umbrella Wetland Banking Instrument**

This Memorandum is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, between the above listed parties.

*Whereas*, Sections 501 and 502 of the Administrative Code of 1929, as amended, 71 P.S. §§ 181-182 require the Commonwealth Departments and agencies to cooperate with one another and coordinate their work; and,

*Whereas*, Section 2002(a)(7) of the Pennsylvania Administrative Code of

1929, as amended, 71 P.S. § 512(a)(7), requires The Pennsylvania Department of Transportation to cooperate with appropriate Federal agencies in the coordination of plans and policies in the development of transportation facilities; and,

*Whereas*, The Pennsylvania Department of Transportation, in pursuit of its mission to provide an improved transportation system for the citizens of the Commonwealth of Pennsylvania, is required to consider the impacts of its projects on wetlands pursuant to the National Environmental Policy Act of 1969 42 U.S.C. 4321 *et seq.* and the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, as amended; and,

*Whereas*, the federal government has set forth guidance for the Establishment, Use and Operation of Mitigation Banks at 60 FR 58605, 1995.

*Now, therefore*, these parties set forth the following as terms and conditions of this agreement:

## I. Introduction

### A. Purpose

The purpose of this wetland banking agreement (Agreement) is to establish a wetland banking system to provide effective compensatory mitigation for unavoidable, minimized impacts to wetlands of the United States and the Commonwealth resulting from transportation construction or maintenance activities. This document serves as an umbrella banking instrument for developing site specific subordinate instruments. Site specific development plans will be appended to this banking instrument as they are developed. Wetland compensatory mitigation is appropriate only after it has been demonstrated to the satisfaction of the permitting agencies that there is no practicable alternative to construction in a wetland and that all practicable measures to avoid and minimize impacts to wetlands have been incorporated into the project.

(1) When minimized project impacts total one acre or less, wetland bank debiting is appropriate when it has been demonstrated to the satisfaction of the permitting agencies that:

(a) On-site mitigation is not practicable or

(b) Compensation through wetland bank debiting is of greater environmental benefit than on-site mitigation.

(2) When minimized project impacts total over one acre, wetland bank debiting is appropriate compensatory mitigation when it has been demonstrated to the satisfaction of the permitting agencies that:

(a) On-site mitigation is not practicable, and

(b) Other off-site mitigation is not practicable, or

(c) Compensation through wetland bank debiting is of greater environmental benefit than either on-site mitigation or other off-site mitigation.

### B. Goal

The goal of the wetland banking system put forth in this Agreement is to provide an efficient and effective means to replace wetland functions and values in advance of their loss or alteration by the authorized construction or maintenance of transportation facilities. Wetland banks should be designed to ensure the maintenance, restoration, and, when feasible, improvement of the physical, chemical, and biological integrity of wetlands.

### C. Authority

This agreement is established in consideration of the following federal and state laws, regulations, policies, and guidance:

#### Federal:

Clean Water Act (33 USC 1251 *et seq.*)  
Rivers and Harbors Act of 1899 (33 U.S.C. 403)

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

Executive Order 11990—Protection of Wetlands

Regulatory Programs of the Corps of Engineers (33 CFR Parts 320 through 330)

Section 404 (b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 320)

Memorandum of Agreement between the EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act, Section 404(b)(1) Guidelines, February 6, 1990

Department of Transportation Order 5660.1A—Preservation of the Nation's Wetlands

Mitigation of Environmental Impacts to Privately Owned Wetlands (23 CFR 777)

Fish and Wildlife Coordination Act (16 U.S.C. 661)

U.S. Fish and Wildlife Service Mitigation Policy (46 FR 7644, 1981)

Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Magnuson Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

National Marine Fisheries Habitat Conservation Policy (48 FR 53142,

1983)

Transportation Equity Act for the 21st Century (codification pending)  
Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)

Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 58605, 1995)

#### State:

Constitution of the Commonwealth of Pennsylvania, Section 27, Article 1  
Pennsylvania Act 120 of 1970

Dam Safety and Encroachments Act (32 P.S. §§ 693.5 *et seq.*)

Pennsylvania Clean Streams Law (35 P.S. §§ 691.5 *et seq.*)

25 Pa. Code Chapter 82—

Conservation of Pennsylvania

Native Wild Plants

25 Pa. Code Chapter 93—Water

Quality Standards

25 Pa. Code Chapter 105—Dam Safety

and Waterway Management

Pa. Title 30—The Fish and Boat Code

Pa. Title 34—The Game and Wildlife Code

Pennsylvania State Water Plan

### D. Benefits

The advantages of mitigation banking include, but are not limited to:

Compensatory mitigation efforts are in place and functioning prior to impacts, thereby reducing the temporal loss of functions and ensuring successful replacement.

Mitigation banks can be monitored and maintained with greater ease than numerous small mitigation sites.

Mitigation banking can improve agency coordination in mitigation planning.

Mitigation banking can reduce permit preparation and evaluation time for qualifying projects.

Mitigation banks may be more resilient to natural environmental cycles and may provide increased ecological benefit in comparison to numerous small mitigation sites of equal area.

Mitigation banking can result in decreased cost and increased application of sound wetland science in design and construction.

### E. Definitions

*Permitting Agencies*—Any federal or state agency empowered by regulation to authorize the particular use of a mitigation bank as compensation for a permitted activity. As it pertains to this agreement the permitting agencies are specifically the U.S. Army Corps of Engineers (Philadelphia, Baltimore, and Pittsburgh Districts) and the Pennsylvania Department of Environmental Protection.

*Bank Sponsor*—An organization within the Pennsylvania Department of

Transportation (such as an Engineering District) assigned the responsibility for the establishment and operation of a mitigation bank in a given service area.

**Consensus**—A process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. While the primary goal of consensus is to reach an agreement on an issue by all parties, unanimity may not always be possible.

**Creation**—The establishment of a wetland where one did not formerly exist.

**Credit**—A unit of measure representing the accrual or attainment of wetland functions at a mitigation bank.

**Debit**—A unit of measure representing the loss of wetland functions at an impact or project site.

**Development Plan**—A site specific plan prepared for each mitigation bank site which details the particulars of bank establishment and operation.

**Enhancement**—Activities conducted in existing wetlands that increase one or more wetland functions.

**Environmental Clearance**

**Documentation**—Documentation prepared with the purpose of compliance with the National Environmental Policy Act and/or Pennsylvania Act 120 of 1970. Such documentation is reviewed and approved by the Federal Highway Administration and/or the Pennsylvania Department of Transportation.

**In-kind replacement**—Compensation that provides essentially the same set of interrelated wetland functions as those lost at the impacted wetlands. This is typically established through classification of wetland type.

**Mitigation Bank**—A site where wetlands have been restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to wetlands.

**Mitigation Bank Criteria**—Site specific parameters under which a bank is operated. These parameters form site specific portions of this wetland banking instrument and will be appended hereto as sites are developed. These criteria include the approved Development Plan, monitoring reports, transaction reports, mitigation bank site accounting, and other such documentation as may affect banking operations.

**Mitigation Banking Review Team (MBRT)**—A group consisting of one representative from each of the following agencies (which are signatory to this agreement) that oversees the

establishment, use and operation of banks established under this agreement:

The appropriate U.S. Army Corps of Engineers District (co-chair)  
Philadelphia District (Phil. Corps)  
Baltimore District (Balt. Corps)  
Pittsburgh District (Pbgh. Corps)  
U.S. Environmental Protection Agency (EPA)  
Natural Resource Conservation Service (NRCS)  
U.S. Fish and Wildlife Service (USFWS)  
Federal Highway Administration (FHWA)  
The Pennsylvania Department of Environmental Protection (DEP) (co-chair)  
Pennsylvania Fish & Boat Commission (PAFBC)  
Pennsylvania Game Commission (PGC)  
Pennsylvania Department of Transportation, Bureau of Environmental Quality (BEQ)

**On-site replacement**—Wetland creation, restoration, enhancement or preservation to compensate for impacts within the same watershed (defined by United States Geological Survey's twelve-digit Hydrologic Unit Code) as such impacts occur.

**Out-of-kind replacement**—Compensation which is not in-kind replacement.

**Participant**—An entity obtaining credits from a wetland bank to compensate for authorized impacts resulting from that entity's activities. Specifically in this agreement, approved Participants are limited to the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission. Other state agencies, county or municipal governments, transit authorities, ports, airports and others may be deemed appropriate participants by decision of both the Bank Sponsor and the Permitting Agencies on a case by case basis when such entities impact wetlands directly as a result of delivering transportation infrastructure or services.

**Practicable**—Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Preservation**—The protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation will only be considered appropriate compensatory mitigation in exceptional circumstances.

**Restoration**—Re-establishment of previously existing wetland characteristics and functions at a site where they have ceased to exist.

**Service Area**—A set geographic region, based on watershed and ecoregion concepts, wherein a bank can reasonably be expected to provide appropriate compensation for impacted wetlands within which a mitigation bank's debits and credits can be exchanged. Specifically, within this agreement these areas are based on Pennsylvania State Water Plan subwatersheds that have been correlated to approximate ecosystem boundaries. See also the Map of Service Areas, Appendix A.

**Wetland Functions**—Natural processes of wetlands that include but are not limited to:

Supporting the food chain,  
Meeting the general habitat needs of nesting, spawning, rearing and resting sites for aquatic and terrestrial species,  
Providing areas for the study of the environment,  
Providing environmental sanctuary or refuge,  
Maintaining natural drainage characteristics including sedimentation patterns, salinity distribution, flushing characteristics, and natural water filtration,  
Shielding other areas from wave action, erosion, or storm damage,  
Serving as a storage area for storm and flood waters,  
Providing groundwater discharge that supports minimum baseflows,  
Serving as a recharge area where surface water and groundwater are directly interconnected,  
Preventing or reducing pollution impacts (e.g. toxicant retention, nutrient transformation),  
Providing recreation

**Wetland Type**—The characterization and categorization of a wetland according to an accepted classification system (i.e. Cowardin, HGM or other system as deemed appropriate).

**Wetlands**—Those areas that are inundated or saturated by surface or groundwater at frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

## II. Duties and Responsibilities of Signatories and Participants

### A. Duties and Responsibilities of the Bank Sponsor

The bank sponsor will:

1. Establish the mitigation bank in accordance with Article III below.
2. Operate the mitigation bank in accordance with Articles IV and V below.

### *B. Duties and Responsibilities of the MBRT*

The MBRT oversees bank development and crediting. All decisions made by the MBRT with respect to mitigation bank establishment and operation, as outlined in this agreement, shall be reached by consensus except as provided for in Article II Section D.1. below. In exercising this authority, the MBRT will:

1. Field view each potential mitigation banking site and recommend development of such sites as are appropriate and practicable.
2. Review, provide comments, and as appropriate, approve bank development plans.
3. Establish available credits for mitigation banks in accordance with Section IV.A.6. below.
4. Advise the Sponsor and Permitting Agencies on maintenance and remediation activities.

### *C. Duties and Responsibilities of the Mitigation Banking Participant*

The Mitigation Bank Participant is responsible to the Permitting Agencies and must:

1. Comply with applicable regulatory processes.
2. Demonstrate that use of the bank is practicable and appropriate.
3. Arrange and document the exchange of credits with the Sponsor to the satisfaction of the Permitting Agencies.
4. Participants with known project programs are strongly encouraged to annually consult with the Permitting Agencies by providing a list of projects that the participant anticipates may qualify for use of a mitigation bank.

### *D. Duties and Responsibilities of Permitting Agencies*

1. As permitting agencies for wetlands, these agencies will co-chair the MBRT. These co-chair agencies will have the final determination on any banking issue with respect to their particular regulatory programs in the event that the MBRT cannot reach consensus.
2. As permitting agencies for wetlands the Permitting Agencies have sole authority over the transfer of credits, notwithstanding any other decision-making requirements bearing upon them by law or regulation. As such they will:
  - a. Determine if and when the transfer of credits from a bank is appropriate and practicable for compensatory mitigation.
  - b. Ensure that in the interest of achieving functional replacement, in-kind compensation of aquatic resource

impacts should generally be required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g. of greater ecological value to a particular region).

c. Establish, on a case by case basis, the number of bank credits necessary for appropriate compensatory mitigation, within a framework that includes areal extent, landscape position, and ecological function.

d. Ensure that a Participant has effected a proper exchange of credits.

e. Ensure compliance with the Mitigation Banking Criteria.

3. Approve transfers of legal interests in closed wetland banks as appropriate.

### **III. Procedures for Establishing a Wetland Mitigation Bank**

The Bank Sponsor will take the following steps in developing a mitigation bank. The development effort should occur in conjunction with an appropriate public and agency coordination process that is initiated early and is continuous in nature.

A. Identify sites within a service area with the potential for the development of a mitigation bank. Location of anticipated transportation program projects should be considered in locating such sites. When a watershed assessment has been conducted for a service area or a portion thereof, the sponsor should also give consideration to the recommendations therein.

B. Schedule and conduct a field view to assist the MBRT in their review and approval of a site for mitigation bank development. The field view should include dissemination and discussion of appropriate background material concerning the potential bank site. Appropriate background material may include such data as a project location map, aerial photography, soil survey data, site soil data, preliminary site hydrology and rudimentary concepts of potential compensatory mitigation options for the site.

C. Prepare a draft Development Plan. The plan will contain, at a minimum, the following information:

1. The geographic location of the mitigation bank site.
2. Identification of the applicable service area and anticipated need for wetland banking.
3. Description of existing site conditions including:
  - a. A wetland delineation and jurisdictional determination where appropriate
  - b. Cultural Resource Issue Identification
  - c. Threatened and Endangered Species Issue Identification

- d. Soils data
- e. Hydrologic data
- f. Natural communities
- g. Land Use and Land Cover

4. Draft Environmental Clearance Documentation.

5. Conceptual Mitigation Design including proposed future conditions.

6. Proposed method of securing legal interest.

D. Conduct an appropriate public involvement effort that, at a minimum, consists of a public notice publication.

E. Submit the Draft Development Plan and the results of the public involvement effort to the MBRT for review and approval.

F. Gain approval of Environmental Clearance Documentation for mitigation bank development from FHWA and PennDOT Central Office.

G. Secure legal interest in the site sufficient to protect the site in perpetuity. Such legal interest may be either in the form of fee-simple interest or a permanent conservation easement.

H. Conduct final site design as necessary.

I. Prepare and submit to the MBRT for review and approval the final Development Plan. In addition to including all data in the draft Development Plan it should include:

1. Project goals and objectives including anticipated benefits to the service area,
2. Plans, specifications and estimates for construction including excavation, grading, hydrologic alteration, soil and planting issues as appropriate,
3. Proposed maintenance program,
4. Proposed monitoring protocol,
5. Anticipated final credit accrual,
6. Any site specific accounting procedures,
7. A closure plan, and
8. Any refinements to the data presented in the draft Development Plan

J. Obtain all needed contracts and permits.

K. Ensure that an individual technically competent in the construction of compensatory mitigation sites is present during construction.

L. Construct the site.

M. Submit as-built plans including vegetative plantings to the MBRT.

### **IV. Procedures for the Administrative Operation of a Mitigation Bank**

#### *A. Establishment of Credits and Timing of Withdrawals*

1. Establishment of credits at a wetland bank will be based on the use of an appropriate functional assessment methodology as adopted in the Development Plan. If an appropriate functional assessment methodology is

impracticable to employ, acreage may be used as a surrogate for measuring function for the determination of credits.

2. When using a functional assessment methodology to establish credits, credits will be based on the net functional increase over baseline conditions and the area over which such increase has occurred at the time of debiting.

3. When using acreage and classification as the basis for establishing credits, credits resulting from wetland restoration or creation will be established at a rate of one credit per acre per type. Credits from wetland enhancement or preservation will be accrued at a rate based on acreage and type established by the MBRT in advance of construction and specific to the bank's development plan and compensatory mitigation techniques used.

4. Upon completion of construction and submission of the as-built plans to the MBRT as required in Section III. M., ten percent of the anticipated final credits of the bank will be immediately available for transfer.

5. Periodically following construction, upon request of the Sponsor or a permitting agency, the MBRT will review the monitoring data and establish the new total of credits available for transfer. This crediting process will be based on the site's demonstrated progress toward the project goals as established in the development plan. This process will be continued until the bank site is closed. Final credit accrual may exceed the amount anticipated in the original development plan when a site exceeds the project goals as established in that development plan.

6. So long as site conditions are maintained in accordance with the project goals as established in the development plan, credits remain valid. There is no date of expiration beyond which accrued credits are discounted due to lack of debiting.

#### *B. Transferring Credits and Accounting Procedures*

1. The Sponsor may transfer credits to any participant specifically defined in this agreement for the purposes of the participant's permit compliance.

2. The Sponsor will determine the conditions of credit transfer to the participant. The Sponsor retains the right to deny the transfer of credits to any potential participant outside of the Pennsylvania Department of Transportation.

3. The Sponsor will provide documentation of the transfer of credits to a participant.

4. The Sponsor will enter the details of credit transfer (participant, number and type of credits transferred, date, and remaining bank credit balance) into the accounting record.

5. When PennDOT is the participant, it will provide mitigation for impacts less than 0.05 acres at a 1:1 ratio through the transfer of bank credits when the impact occurs in the service area of a bank having available credits.

6. Except as provided for in IV.B.5, ratios for the bank debiting to provide compensatory mitigation will be determined during the permit review process.

7. The Sponsor will submit to the MBRT a yearly summary of all credit transfers from banks operational in that year.

### **V. Procedures for the Physical Operation of a Mitigation Bank**

#### *A. Monitoring*

The Sponsor will monitor the mitigation bank in accordance with the protocol established in the Development Plan and provide a yearly report of such monitoring to the MBRT. Such monitoring and reporting will continue until bank closure.

#### *B. Maintenance*

The Sponsor will maintain the site until bank closure to promote the attainment of project goals in accordance with the Development Plan. Following bank closure, the Sponsor will maintain the mitigation bank as directed by the Permitting Agencies.

#### *C. Remediation*

Once credits are transferred from a bank, the Sponsor is responsible for preserving the performance of project goals and objectives that caused such credits to accrue. The Sponsor shall take all appropriate and practicable measures to ensure this preservation. These measures may include remediation at the bank; wetland restoration, creation, enhancement or preservation at a new location; or other efforts as directed by the permitting agencies.

#### *D. Closure*

The bank will be considered closed after the longer period of the following: (a) the monitoring program set forth in the Development Plan is complete, or, (b) when the Sponsor requests and the MBRT approves closure. Following closure, and as provided for by regulation, the Sponsor continues to hold the responsibility to maintain the site as a wetland in perpetuity, except

as provided for in Section V. E. below. Routine maintenance and monitoring will not be required after closure. However, as appropriate and practicable, the Permitting Agencies may direct the performance of specific maintenance or remediation efforts.

#### *E. Transfer of Legal Interest*

Upon bank closure, the Sponsor may propose, and the MBRT may approve, the transfer of legal interest in the site to any public or private entity so long as the site will continue to be protected in perpetuity. The proposal for transfer of interest must specifically stipulate which responsibilities of sponsorship are to be transferred to the entity as well as document the entity's awareness and willingness to accept such responsibilities.

### **VI. Ratification, Modification, and Termination of This Agreement**

Nothing in this agreement is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of signatory agencies.

The previously existing mitigation banking interagency agreement between PennDOT Engineering District 9-0, the Baltimore Corps District, the Pittsburgh Corps District, the DEP Southwest Regional Office, and the DEP Southcentral Regional Office and the previously existing mitigation banking interagency agreement between PennDOT Engineering District 3-0, the Baltimore Corps District, and the DEP Northcentral Regional Office, are hereby integrated into and superceded by this agreement. All existing plans, permits, negotiations and approvals made under these agreements specific to District 9-0 banks sites in Fulton, Huntingdon, and Cambria County sites and District 3-0 bank site at the former Hoffman Farm in Tioga County are validated under this agreement.

This agreement will take effect one (1) day after the date of the last signature. Periodic review of this agreement by signatory agencies will occur every five (5) years following ratification unless waived. This agreement may be modified with the approval of all signatories. Modifications of this agreement may be proposed by one or more signatories. The originator(s) of the modification shall circulate such draft modification(s) to all signatories for a sixty (60) day period of review. Approval of the modification(s) will be indicated by written acceptance. A signatory may terminate participation in

this agreement upon a ninety (90) day written notice to all other signatories.

**David C. Lawton,**

*Assistant Division Administrator, Federal Highway Administration, Pennsylvania Division.*

**Paul Wettlaufer,**

*Transportation Program Manager, Regulatory Branch, U.S. Army Corps of Engineers, Baltimore District.*

[FR Doc. 00-9279 Filed 4-13-00; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-7006]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of petitions and intent to grant applications for exemption; request for comments.

**SUMMARY:** This notice announces the FMCSA's preliminary determination to grant the applications of 61 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** Comments must be received on or before May 15, 2000.

**ADDRESSES:** Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-2519, FMCSA, Department of Transportation, 400 Seventh Street,

SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the office of the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Background

On October 9, 1999, the Secretary of Transportation transferred the motor carrier safety functions performed by the Federal Highway Administration (FHWA) to the Office of Motor Carrier Safety, a new office created in the DOT. This transfer was performed pursuant to section 338 of the Fiscal Year 2000 Department of Transportation and Related Agencies Appropriations Act (Pub. L. 106-69, 113 Stat. 986, at 1022, October 9, 1999, as amended by Pub. L. 106-73, 113 Stat. 1046). The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748), transferred the functions to the FMCSA, a new administration within the DOT, effective January 1, 2000.

Sixty-one individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated each of the 61 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 30 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

#### Qualifications of Applicants

##### 1. John W. Arnold

Mr. Arnold, 47, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/80 in the left eye. Mr. Arnold was examined in 1999 and his optometrist stated that, "I see no visual reason why John Arnold could not sufficiently operate a commercial vehicle."

Mr. Arnold has 22 years of experience driving tractor-trailer combinations, and drives 50,000 miles annually. He holds a Kentucky Class AC License and has had no accidents or convictions of moving violations in a CMV for the past three years.

##### 2. James H. Bailey

Mr. Bailey, 60, has had a chorioretinal scar in the macular area of his left eye since childhood. His best corrected visual acuity is 20/25 in his right eye and 20/400 in his left eye. In a 1999 examination, his optometrist stated, "In my medical opinion Mr. Bailey has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Bailey has driven straight trucks for 7 years and a total of 175,000 miles. He holds a Louisiana Class B commercial driver's license (CDL). His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

##### 3. Victor F. Brast, Jr.

Mr. Brast, 37, has been blind in his left eye since 1989 due to trauma. His visual acuity in the right eye is 20/20. Mr. Brast was examined in 1999, and his optometrist stated, "Mr. Brast has more than sufficient vision for operating a commercial vehicle."

Mr. Brast has driven straight trucks and tractor-trailer combination vehicles for 16 years each, averaging more than 60,000 miles per year. He holds a Texas CDL and has no accident or convictions of moving violations in a CMV on his driving record for the last 3 years.

##### 4. James P. Brooks

Mr. Brooks, 32, suffered an injury to his right eye in 1981. His best corrected visual acuity is 20/20 in the left eye and hand motions at 1 foot in the right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle."

Mr. Brooks has driven straight trucks for 3 years and a total of 66,000 miles. He holds an Illinois Class B CDL. His official driving record shows no