c. Review of traditional use areas draft analysis.

d. Work session: Subsistence Hunting Program.

(10) Set time and place of next Subsistence Resource Commission meeting.

(11) Adjournment.

DATES: The meeting will begin at 8:00 a.m. on Wednesday, January 14, 1998 and break at approximately 5:00 p.m., reconvene at 7:00 and conclude at approximately 9:00 p.m. On Thursday, January 15, 1998, the meeting will reconvene at 8:30 a.m. and conclude at 3:30 p.m.

LOCATION: The meeting will be held at the Sophie Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent, Gates of the Arctic National Park and Preserve, 201 First Avenue, Doyon Building, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 98–526 Filed 1–8–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 3, 1998 Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 26, 1998.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Adams County

Thede Farmhouse, 3190 W. 112th Ave., Northglenn, 98000024

FLORIDA

Hendry County

Duff, Capt. F. Deane, House, 151 W. Del Monte Ave., Clewiston, 98000025

Pinellas County

Green—Richman Arcade, 689 Central Ave., St. Petersburg, 98000027

St. Johns County

Walker, Horace, House, 33 Old Mission Ave., St. Augustine, 98000026

GEORGIA

Bartow County

Benham Place, 222 Grassdale Rd., Cartersville vicinity, 98000030

Chatham County

Cuyler—Brownville Historic District, Roughly bounded by Anderson Ln., W. 31st St., Montgomery St., Victory Dr., Ogeechee Rd., and Hopkins St., Savannah, 98000028

MISSOURI

Butler County

Greer, Alfred W., House (Poplar Bluff MPS) 955 Kinzer St., Poplar Bluff, 98000029

Mark Twain School (Poplar Bluff MPS) 1012 N. Main St., Poplar Bluff, 98000031

Moore, J. Herbert, House (Poplar Bluff MPS) 445 N. Eleventh St., Poplar Bluff, 98000032

Moore, Thomas, House (Poplar Bluff MPS) 435 Lester St., Poplar Bluff, 98000033

Phillips, John Archibald, House (Poplar Bluff MPS) 522 Cherry St., Poplar Bluff, 98000034

South Sixth Street Historic District (Poplar Bluff MPS) 205–225–303 S. Sixth St., Poplar Bluff, 98000035

Wheatley Public School (Poplar Bluff MPS) 921 Garfield St., Poplar Bluff, 98000037

Williamson—Kennedy School (Poplar Bluff MPS) 614 Lindsay St., Poplar Bluff, 98000036

Osage County

Osage County Poorhouse, MO 621, 0.5 mi. S of Linn, Linn vicinity, 98000038

NEW MEXICO

McKinley County

Redwood Lodge (Route 66 through New Mexico MPS) 907 E. 66 Ave., Gallup, 98000051

NEW YORK

Orange County

Thompson, Robert A., House, NY 302, S of jct. of NY 302 and Dickerson Ave., Crawford, 98000039

OHIO

Hamilton County

Levy, Harry Milton, House, 2383 Observatory Ave., Cincinnati, 98000040

Lake County

Methodist Episcopal Church of Painesville, The, 71 N. Park Place, Painesville, 98000043

Preble County

Camden Public School, 110 W. Central Ave., Camden, 98000041

Wood County

Fort Meigs Aboriginal—33WO08—33WO445, 1.3 mi. SW of Perrysburg, Perrysburg vicinity, 98000042

PENNSYLVANIA

Delaware County

Albertson, Henry, Subdivision Historic District, Roughly bounded by N. Lansdowne, Clover, Wycombe, Price, and Stewart Aves., and Balfour Cir., Lansdowne, 98000044

SOUTH CAROLINA

Charleston County

Sparrow, James, House, 65 Cannon St., Charleston, 98000045

VIRGINIA

Albemarle County

Red Hills, 2051 Polo Grounds Rd., Charlottesville vicinity, 98000047

Mecklenburg County

Chase City High School, 132 Endly St., Chase City vicinity, 98000050

Orange County

Grelen, 15149 Grelen Dr., Orange vicinity, 98000049

Richmond Independent City

Whitworth, John, House, 2221 Grove Ave., Richmond, 98000048

Suffolk Independent City

Dumpling Island Archeological Site, Address Restricted, Suffolk vicinity, 98000046

[FR Doc. 98–584 Filed 1–8–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. International Business Machines Corporation and Storage Technology Corporation; Proposed Final Judgment and Competitive Impact Statement

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 a civil antitrust case, *United States* v. *International Business Machines Corporation and Storage Technology Corporation*, Case Number 1:97 CV 03040.

On December 18, 1997, the United States filed a Complaint alleging that an ''OEM Agreement'' between International Business Machines

Corporation)''IBM'') and Storage Technology Corporation (''STK'') unlawfully restrains competition in the market for disk storage subsystems (''DASD'') for mainframe computers, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment prohibits IBM and STK from carrying out anticompetitive terms of the OEM Agreement and imposes requirements to restore competition in the market. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment to the Justice Department and to the Court. Comments should be addressed to John F. Greaney, Chief, Computers & Finance Section, U.S. Department of Justice, Antitrust Division, 600 E. Street, N.W., Suite 9500, Washington, D.C. 20530 (telephone: (202) 307–6200). Comments must be received within sixty days.

Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th 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 these materials may be obtained from the U.S. Department of Justice upon request and payment of a copying fee.

Rebecca P. Dick,

Director, Civil Non-Merger Enforcement.

Stipulation

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

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 District of Columbia.

2. The parties consent 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 the defendants and by filing that notice with the Court.

3. The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 18, 1997.

For Plaintiff, United States of America

John F. Greaney,

Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, Bicentennial Building, 600 E Street, NW., Suite 9300, Washington, DC 20530, (202) 307–6122.

For Defendant, International Business Machines Corporation

Evan R. Chesler,

Paul C. Saunders (Bar No. 973388),

Cravath, Swaine & Moore, Counsel for Defendant International, Business Machines Corporation, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019, (212) 474–1000.

For Defendant, Storage Technology Corporation

J. Edd Stepp, Jr.,

Phillip H. Rudolph (Bar No. 392189),

Gibson, Dunn & Crutcher LLP, Counsel for Defendant Storage, Technology Corporation, 1050 Connecticut Avenue, NW., Washington, DC 20036–5306, (202) 955–8500.

Disclosure Pursuant to Rule 108(K)

Pursuant to Rule 108(k) of the Local Rules of this Court, the following is a list of all individuals entitled to be notified of the entry of the foregoing Stipulation and of the entry of the proposed Final Judgment:

John F. Greaney,

U.S. Department of Justice, Bicentennial Building, 600 E Street, N.W., Suite 9300, Washington, D.C. 20530, (202) 307–6122.

Evan R. Chesler,

Cravath, Swaine & Moore, Counsel for Defendant International Business Machines Corporation, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019, (212) 474–1000.

J. Edd Stepp, Jr.,

Gibson, Dunn & Crutcher LLP, Counsel for Defendant Storage Technology Corporation, 333 South Grand Ave., Los Angeles, CA 90071, (213) 229–7000.

Final Judgment

WHEREAS, the United States of America, having filed its Complaint herein on December 18, 1997, and the United States and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And whereas, Defendants having agreed to be bound by the provisions of this Final Judgment pending approval by the Court;

And whereas, the essence of this Final Judgment being prompt and certain action to ensure that the OEM agreement referred to herein will not substantially lessen competition in the development, production, or marketing of DASD as hereinafter defined;

And whereas, Defendants having represented to Plaintiff that the provisions of this Final Judgment can and will be accomplished;

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 hereto, it is hereby *Ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. Venue is proper in this Court. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Sherman Act (15 U.S.C. 1).

II. Definitions

A. *IBM* means International Business Machines Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agency and other person acting for or on behalf of any of them.

B. *STK* means Storage Technology Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

C. *Defendants* means, collectively or individually as the context request, IBM and/or STK.

D. *DASD* means direct access magnetic disk storage subsystems configured for attachment to IBM System 390 mainframe computers, any future versions, models, or generations of IBM System 390 mainframe computers (regardless of name or other product designation), and plug-compatible mainframe computers, without regard to whether or not such subsystems also attach to any other computer processor product. The term ''DASD'' does not include parts of

subassemblies sold or shipped to repair or upgrade existing DASD installations, and it does not include any used DASD.

E. *STK DASD* means any DASD product developed, manufactured, or supplied by STK at any time prior to the expiration of this Final Judgment, including but not limited to Iceberg, Kodiak, the products marketed by IBM as RAMAC Virtual Array and RAMAC Scaleable Array, and any future versions, models, or generations of any of the aforementioned products (regardless of name or other product designation). The term ''STK DASD'' does not include Virtual Storage Manager, any future versions, models, or generations thereof (regardless of name or other product designation), or any existing or future STK Nearline storage products, or any used DASD.

F. *Agreement* means any agreement or understanding, whether written or oral, formal or informal.

G. *OEM agreement* means the agreement dated June 7, 1996, pursuant to which IBM has purchased STK DASD, including all attachments, exhibits, schedules, and other documents referenced therein, and all amendments, additions, updates, or modifications to any of the foregoing.

H. *Modified OEM agreement* means the agreement dated December 18, 1997, pursuant to which IBM has agreed to purchase STK DASD from STK, and STK has agreed to sell STK DASD to IBM, including all attachments, exhibits, schedules, and other documents referenced therein, and all amendments, additions, updates, or modifications to any of the foregoing.

I. *STK Minimum* Means a number of terabytes of STK DASD determined for a twelve-month period by multiplying the number of months before January 1, 2000, included in such period by 10.5; multiplying the number of months after December 31, 1999, included in the period by 16; and adding the two products together. For example, the STK Minimum for the period from October 1, 1998, through September 30, 1999, would be 126 terabytes (10.5×12), and the STK Minimum for the period from October 1, 1999, through September 30, 2000, would be 175.5 terabytes ((10.5×3)+(16×9)).

J. *Purchase* means, in connection with IBM purchases of STK DASD, a transaction in which IBM requires title to the STK DASD purchased, other than a financing transaction that meets each of the following conditions: (1) IBM Credit Corporation acquires title to STK DASD, ordered by a customer from STK or an STK remarketer other than IBM, in order to finance the STK DASD; (2) such STK DASD carries an STK logo and conforms in appearance to other STK DASD sold by STK, or an STK remarketer other than IBM, to non-IBM purchasers; (3) the price for the STK DASD is negotiated between the customer and STK or an STK remarketer other than IBM, without participation by IBM; (4) such STK DASD is not installed on the customer's premises by IBM or any person acting on its behalf; (5) warranty service, if any, for such STK DASD is not provided by IBM or any person acting on its behalf; and (6) the transaction if financed by other than IBM would be considered a sale by STK under Section VI.A. of this Final Judgment. The term ''purchase'' does not include a transaction in which IBM may act as sales agent, distributor, or other channel of distribution in which IBM does not acquire title to the STK DASD.

K. *Change of control* means the acquisition by an entity of more than 20 percent of the outstanding common shares of STK representing the right to vote for STK's board of directors, the sale of all or substantially all of the assets of the assets of STK, or any consolidation, merger, or other reorganization of STK in which STK is not the continuing or surviving corporation or pursuant to which shares of such common stock would be converted into cash, securities, or other property.

L. *Derivative work* means a work that is based on an underlying work that would be a copyright infringement if prepared without the authorization of the copyright owner of the underlying work, Derivative works are subject to the ownership rights and licenses of others in the underlying work.

III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys and 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. Defendants and each person bound by this Final Judgment shall cooperate in ensuring that the provisions of this Final Judgment are carried out.

B. Each Defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business for developing, manufacturing and selling DASD that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Terms of IBM Purchases From STK

A. Defendants may enter into or carry out any agreement pursuant to which IBM may in any manner distribute STK DASD, including any such agreement pursuant to which IBM may act as sales agent, distributor, or any other channel of distribution for STK DASD in which IBM does not acquire title to the STK DASD to be distributed, provided that in each such instance such agreement is not inconsistent with the provisions of this Final Judgment. The volume of STK DASD distributed under any such agreement, except in an agency agreement in which IBM acts only as agent for the end-user customer, shall be included in IBM's and not STK's volumes of terabytes computed pursuant to Section VI of this Final Judgment. Where IBM acts as agent to procure the STK DASD for the end-user customer and also finances the transaction, the STK DASD so distributed shall also be included in IBM's and not STK's volumes of terabytes computed pursuant to Section VI of this Final Judgment.

B. Defendants shall not make any changes to any of the terms of the modified OEM agreement, or enter into any other agreement, that would be inconsistent with any of the unexpired provisions of this Final Judgment. Defendants shall provide to the Antitrust Division of the United States Department of Justice written notice (or a copy) no later than 15 business days after receipt by the Defendants' Contract Administrators of any written amendment, executed by authorized representatives of Defendants, of the following documents included within the modified OEM agreement: the ''OEM Agreement Between IBM and STK'' dated December 18, 1997; the ''IBM Developer Base Agreement;'' the ''Statement of Work'' referenced in the IBM Developer Base Agreement; and the ''Description of Licensed Works'' (but not including any exhibits, attachments, or schedules to such documents, or other documents referenced in such documents).

C. Except to the extent set forth in this Final Judgment, Defendants shall not enter into or carry out any agreement that: (1) sets any IBM volume commitments, or provides for recovery payments or liquidated damages from IBM as a consequence of IBM's failure to purchase a certain volume of STK DASD; or (2) contains any provision

under which any IBM obligation to STK is contingent upon any level of sales or shipments of STK DASD by STK to persons other than IBM.

D. Except to the extent set forth in this Final Judgment, Defendants shall not enter into or carry out any agreement pursuant to which IBM is bound to purchase any volume of STK DASD, or that contains any provision requiring IBM to make payments for IBM's failure to purchase a certain volume of STK DASD; provided, however, that IBM may provide STK with non-binding monthly, quarterly, and/or 12-month estimates, expressed in terabytes or other units of storage capacity, of anticipated purchases of STK DASD, and IBM, subject to Section VI of this Final Judgment, may become contractually obligated to purchase STK DASD as follows: (1) On or after the 30th day before the beginning of a calendar quarter, IBM may bind itself to purchase up to 80 percent of its estimate of purchases for that quarter; (2) IBM may thereafter issue binding purchase orders for deliveries within such quarter without regard to the estimate; (3) to the extent that IBM's purchases of STK DASD for a given quarter are less than IBM's estimate for that quarter, IBM may bind itself to purchase during the subsequent quarter some or all of the difference between IBM's estimated and actual purchases from the prior quarter, in addition to up to 80 percent of its estimate for the subsequent quarter; and (4) in the event of termination or winding down of the modified OEM agreement, in the last quarter in which IBM provides an estimate of purchases, IBM may issue purchase orders for volumes to satisfy its future needs and such volumes may be delivered in that quarter or subsequent quarters. IBM shall issue purchase orders for STK DASD only to the extent that they reflect IBM's actual intention to purchase and take delivery of the STK DASD ordered. IBM shall purchase and pay for all STK DASD for which it becomes contractually obligated pursuant to the foregoing provisions; provided, however, that nothing in this Final Judgment shall preclude IBM and STK, in the event of a bona fide dispute concerning IBM's obligation to purchase or accept delivery of STK DASD under a purchase order, or concerning whether or to what extent IBM is obligated to purchase STK DASD under a specific binding estimate, from pursuing their remedies at law or resolving the dispute in a commercially reasonable manner.

E. Defendants: (1) May establish prices and volume discounts for the purchase of STK DASD by IBM, provided, however, that such discounts are based upon actual volumes of STK DASD and upgrades purchased, rather than projected volumes, and may reflect credits obtained as a result of STK's failure to meet on-time delivery, quality, or product deliverable requirements; but (2) shall not enter into or carry out any agreement in which any prices or other terms applicable to IBM's purchases of STK DASD are contingent upon any prices or other terms offered by STK to any prospective end-user customer for STK DASD.

F. If demand for STK DASD exceeds supply, Defendants shall not enter into or carry out any agreement that favors allocation to IBM over other purchasers if STK cannot meet delivery commitments. In all such situations, STK will allocate production for shipment to IBM and to other customers based upon the delivery dates requested in purchase orders received by STK for STK DASD from IBM or other customers. For a given date, STK will allocate production for shipment to IBM and to other customers on a pro rata terabyte basis.

V. Licenses; Product Development

A. IBM shall grant STK licenses effective immediately to all hardware and software developments and enhancements that have been funded by IBM under the OEM agreement or modified OEM agreement or that IBM is obligated to fund under the modified OEM agreement to Iceberg, Kodiak, future versions or models thereof, IXFP, and Snapshot (hereinafter, ''Funded Enhancements''), which shall be at least equivalent in scope to the licenses set forth in Attachment A of this Final Judgment.

B. STK may pay hardware and software royalties to IBM. For STK's sales, shipments, licenses, or other distribution of STK DASD, hardware upgrades or components therefor, and IXFP and Snapshot software to persons other than IBM that are shipped or otherwise distributed prior to April 1, 1999, royalties for Funded Enhancements and derivative works thereof used with the following (but not including royalties for customer service that include the right to install basic enhancements and maintenance modifications, and software and microcode, other than IXFP and Snapshot, distributed separately from hardware or major enhancements or hardware that are not based on capacity) may not exceed the amounts set forth below:

1. STK shall make a nonrefundable payment to IBM of $4 million during 1998, payable in equal quarterly installments beginning January 1, 1998. This payment will initially be applied to any royalties that become due under the modified OEM agreement for shipments before April 1, 1999. Unused portions of this payment that do not exceed $2 million may be credited toward royalties due for shipments after March 31, 1999.

2. For sales, leases, licenses, or any other distribution by STK of STK DASD, STK DASD hardware upgrades, or components to customers other than IBM, STK may pay IBM up to: (a) $0.08 per megabyte through December 31, 1998; and (b) $0.067 per megabyte from January 1, 1999, through March 31, 1999;

3. For each copy of IXFP software licensed or otherwise distributed by STK to customers other than IBM for use on STK DASD, STK may pay IBM up to: (a) $5,400 through December 31, 1997; (b) $5,500 from January 1, 1998 through December 31, 1998; and (c) $3,000 from January 1, 1999, through March 31, 1999;

4. For each copy of Snapshot software licensed or otherwise distributed by STK to customer other than IBM for use on STK DASD, STK may pay IBM up to: (a) $18,000 through December 31, 1998; and (b) $10,000 from January 1, 1999, through March 31, 1999. Except as provided above, STK may pay hardware and software royalties to IBM under the provisions of the modified OEM agreement, including but not limited to, to provision that beginning April 1, 1999, the royalties for each STK DASD subsystem or controller sold, leased, licensed, or otherwise conveyed by STK to customers other than IBM will not exceed the lesser of $3,500 or five percent of the revenue received. Except as otherwise provided in the modified OEM agreement with respect to a change of control or termination for cause, all royalties will become fully paid-up no later than (a) when the sum of all payments made by STK on account of such royalties, including any portion of the initial $4 million payment that can be credited to royalties after March 31, 1999, but excluding royalties paid under Section V.B.2., V.B.3., and V.B.4. above, equals $18 million, or (b) on December 31, 2002, whichever first occurs.

C. For the duration of the modified OEM agreement, IBM shall offer to sell to STK IBM disk drives and IBM disk drive replacements for use in STK DASD that IBM has assisted in enhancing or developing under the OEM agreement, regardless of whether such STK DASD are shipped to other customers, provided that IBM makes such disk drives generally available. Such offers shall be made under terms

no less favorable to STK than IBM's standard non-price terms and conditions, and at a price no greater than the average of the five lowest prices paid by IBM's OEM customers who have committed to purchase comparable quantities during the same calendar quarter.

D. The provisions of this Section V shall terminate on December 31, 2002.

VI. IBM Purchase Volumes

A. For each calendar year during the period January 1, 1999, through December 31, 2002, IBM's total purchases of STK DASD (measured in terabytes) for use in the United States shall not exceed 67 percent of the volume of STK DASD (measured in terabytes) purchased by IBM during the calendar year 1998 for use in the United States, unless (1) STK has already shipped a total of at least the STK Minimum to STK's United States customers other than IBM during the preceding 12 months, or (2) IBM and STK obtain prior approval of the United States under the provisions of section VI.B. below.

B. IBM may purchase STK DASD without regard to the limitation of Section VI.A. above if approved by the United States Department of Justice. The United States may approve such purchases upon the submission of a written request to the Antitrust Division of the United States Department of Justice, supported by both Defendants, and setting forth the additional purchase volumes requested, the time period(s) for which the additional purchases are requested, and the reasons and circumstances related to the request. The United States will approve the request if it concludes that notwithstanding STK's failure to supply the STK Minimum to United States customers, IBM faces vigorous competition from STK in the United States for the development, production and marketing of DASD, and IBM's proposed additional purchases would not substantially lessen that competition. The United States will not unreasonably withhold approval, and if it does not deny a request in writing setting forth the reasons for the denial within 30 days of submission, the request will be deemed approved. If the United States denies a request, the Court may review the matter upon the filing of an application by both Defendants. The Court may overrule a denial by the United States of a request made before January 1, 2001, only if Defendants establish that notwithstanding STK's failure to supply the STK Minimum to United States customers, IBM faces vigorous competition from STK in the United States for the development, production and marketing of DASD, and IBM's proposed additional purchases would not substantially lessen that competition. The Court may overrule a denial by the United States of a request made on or after January 1, 2001, only if Defendants establish either (1) that notwithstanding STK's failure to supply the STK Minimum to United States customers, IBM faces vigorous competition from STK in the United States for the development, production and marketing of DASD, and IBM's proposed additional purchases would not substantially lessen that competition or (2) that because of technological advances, the entry of new competitors, or otherwise, a material change has occurred since the date of this Final Judgment in the competition in the United States for the development, production and marketing of DASD, such that IBM's proposed additional purchases would not substantially lessen such competition.

C. The provisions of this Section VI shall terminate on December 31, 2002.

VII. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege or doctrine:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a Defendant made to its principal office, shall be permitted:

1. Access during regular office hours of Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview or depose officers, employees, and agents of Defendants, who may have counsel present, regarding any such matters.

B. Defendants shall submit written reports with respect to matters contained in this Final Judgment as follows:

1. On the 30th day after the beginning of each calendar quarter, STK shall submit to the Antitrust Division of the United States Department of Justice a written report setting forth: (a) The total of IBM's purchases of STK DASD for use in the United States during the preceding quarter, measured in terabytes; (b) the total of IBM's distribution of STK DASD for use in the Untied States, through a means of distribution in which IBM did not acquire title to the STK DASD, during the preceding quarter, measured in terabytes; (c) the total of IBM Credit Corporation's purchases of STK DASD bearing STK's logo for use in the United States during the preceding quarter, measured in terabytes; (d) the total of STK's shipments of STK DASD to United States customers other than IBM pursuant to transactions in which IBM ordered such STK DASD as agent for such customers, during the preceding quarter, measured in terabytes; (e) the total of all other STK shipments of STK DASD to United States customers other than IBM during the preceding quarter, measured in terabytes.

2. Apart from the foregoing, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Defendants' principal office, Defendants shall submit such written reports, under other if requested, with respect to any matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the courts of legal proceedings to which the United States 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 Defendants to Plaintiff, Defendants represent and identify 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 Defendants mark 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 Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which a defendant is not a party.

VIII. 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.

IX. Termination

This Final Judgment shall expire on the fifth anniversary of the date of its entry.

X. Public Interest

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated:

Attachment A

A. An STK Incidental Use License for any purpose.

B. For IKA Storage Systems, an STK Material Use License for any purpose.

C. For products other than IKA Storage Systems, an STK Material Use License for any purpose.

D. *STK Incidental Use License* means a nonexclusive, worldwide license to use (1) the ideas, concepts, and techniques contained in, (2) the structure, sequence and organization of, and (3) other nonliteral aspects of IBM Materials and their Derivative Works. Such license shall not include the right of STK to make a copy of any of the IBM Materials or any Derivative Work thereof owned by IBM which is substantially similar thereto and would constitute literal infringement under applicable copyright law.

E. *STK Material Use License* means a nontransferable, nonexclusive, worldwide, license to use, execute, reproduce, display, perform, transfer, distribute, sublicense, and prepare Derivative Works, of the IBM Materials and its Derivative Works. Such license includes the right of STK to authorize others to do any of the above, and also applies to associated audio and visual works. Except for the right to sublicense STK subsidiaries pursuant to Section 11.0 of the IDA, the right to sublicense under this definition is limited to granting sublicenses for microcode which include terms and conditions substantially similar to the STK Customer Agreement, to granting sublicenses for software other than microcode under the terms and conditions that STK uses for similar software of its own, and to granting sublicenses to third-party maintainers under reasonable terms and conditions. Nothing in this definition of STK Material Use License or elsewhere in the Modified OEM Agreement shall be construed, subject to the payment of royalities due, to prevent STK from distributing through OEMs other than IBM, Funded Enhancements that are incorporated in STK DASD, provided that nothing in the Final Judgment to which this definition is attached shall obligate IBM to grant to obligate IBM to permit STK to grant rights under such license to OEMs other than the right of STK to permit OEMs to distribute Funded Enhancements contained in STK products. In the event of a Change of Control, subject to the payment of royalties due and the acquiring entity's agreement to be bound by the Modified OEM Agreement, nothing in this license shall be construed to prevent the acquiring entity from developing, producing, or marketing Funded Enhancements incorporated in DASD.

F. *Change of Control* means the acquisition by an entity of more than 20 percent of the outstanding common shares of STK representing the right to vote for STK's board of directors, the sale of all or substantially all of the assets of STK, or any consolidation, merger, or other reorganization of STK in which STK is not the continuing or surviving corporation or pursuant to which shares of such common stock would be converted into cash, securities, or other property.

G. *Derivative Work* means a work that is based on a underlying work that would be a copyright infringement if prepared without the authorization of the copyright owner of the underlying work. Derivative works are subject to the ownership rights and licenses of others in the underlying work.

H. *Funded enhancements* means hardware and software developments and enhancements that have been funded by IBM under the OEM agreement of June 7, 1996 or the Modified OEM Agreement, or that IBM is obligated to fund under the Modified OEM Agreement.

I. *IBM* means International business Machines Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

J. *IBM Materials* means deliverables funded in accordance with the IBM Developer Agreement, attached as Exhibit 3 to the Modified OEM Agreement.

K. *IDA* means the IBM Developer Agreement, attached as Exhibit 3 to the Modified OEM Agreement.

L. *IKA Storage Systems* means Iceberg, Kodiak, and Arctic Fox storage systems, as defined in the IDA Description of Licensed Work (Attachment 2 to Exhibit 3 of the Modified OEM Agreement as Attachment).

M. *Modified OEM Agreement* means the agreement dated December 18, 1997, pursuant to which IBM has agreed to purchase STK DASD from STK and STK has agreed to sell STK DASD to IBM, including all attachments, exhibits, schedules, and other documents referenced therein, and all amendments, additions, updates, or modifications to any of the foregoing.

N. *STK* means Storage Technology Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

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 December 18, 1997, The United States filed a civil antitrust complaint alleging that an ''OEM agreement'' dated June 7, 1996, between International Business Machines Corporation (''IBM'') and Storage Technology Corporation (''STK'') unreasonably restrained competition in the United States and worldwide in the sale of disk storage subsystems (''DASD'') for mainframe computers, in violation of Section 1 of the Sherman Act (15 U.S.C. 1). Before entering into the OEM agreement, IBM and STK competed with each other, and with only two other major competitors, in the development, production, and marketing of mainframe DASD in the United States and worldwide. With the OEM agreement, however, IBM became STK's exclusive outlet for STK's mainframe DASD products, thereby eliminating competition between them for sales of mainframe DASD to end-users.

At the same time as it filed the Complaint, the United States also filed a Stipulation and a proposed Final Judgment in settlement of the suit. As described in greater detail below, the proposed that made the OEM agreement an exclusive arrangement between IBM and STK, and will provide positive incentives for STK to resume its position as an independent competitor in the market.

The United States, IBM, and STK 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. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and Mainframe DASD

IBM is incorporated in the State of New York and is headquartered in Armonk, New York. IBM is by far the world's largest supplier of mainframe computers and related products. For the year 1996, IBM posted worldwide revenues of about $75 billion. In 1995, the last full year in which the IBM and STK were separate competitors in the mainframe DASK market, IBM had mainframe DASD sales of over $2 billion, representing shipments of about 588 ''terabytc'' of data storage capacity. The terabyte—equivalent to the amount of data that can be stored in hundreds of millions of pages of paper—is a standard industry measure of sales volume. In 1995, IBM sold 275 terabytes of mainframe DASD, for over $1.2 billion, in the United States.

STK is a Delaware corporation headquartered in Louisville, Colorado. STK reported total worldwide revenues of about $2 billion in 1996. STK's core businesses are computer data storage and retrieval systems, especially those for mainframe computer systems. Other than mainframe DASD, STK's major products are automated tape library storage systems for mainframe computers, and it is the world's dominant supplier of these tape systems. STK's 1995 worldwide sales of mainframe DASD were over $300 million, representing shipments of about 155 terabytes. Its U.S. sales of mainframe DASD were about $190 million, representing shipments of 100 terabytes.

DASD are computer data storage systems that utilize rotating magnetic disks. As defined in the Complaint and proposed Final Judgment, ''mainframe DASD,'' are DASD specifically designed to attach to and operate with IBM's System 390 computers, predecessor and successor models, and other manufacturers' IBM-plug-compatible computers.[1] As described in the Complaint, mainframe DASD perform high-speed and high-capacity data storage and retrieval functions that are essential to the operation of mainframe computers, which is turn are commonly and widely used for mission-critical data processing by business, educational, governmental, and other organizations throughout the world.[2]

B. The OEM Agreement

On June 7, 1996, IBM and STK entered into an OEM agreement pursuant to which STK agreed to supply IBM, and IBM committee to purchase for resale purposes, mainframe DASD products developed and manufactured by STK.[3] The parties agreed to extend the arrangement through the end of 1999, subject to terms for renewal. Before the OEM agreement, STK sold its mainframe DASD products in direct competition with IBM's internally developed and manufactured mainframe DASD products. Under the OEM agreement, however, IBM became STK's exclusive outlet for its mainframe DASD, and this relationship displaced the competition that had previously existed between them.

The OEM agreement required IBM to purchase certain minimum volumes and to make substantial payments to STK if it failed to meet the minimum purchases. The OEM agreement committed IBM to purchase annual and quarterly minimum volumes of STK's DASD products. For each of the years 1997 and 1998, IBM had to purchase minimum volumes of 710 terabytes, and thereafter, the parties were to negotiate new volume terms. If IBM failed to purchase the minimum volumes, STK would be free to terminate the agreement, and IBM would be obligated to pay liquidated damages of $75 million for a termination based on IBM's failure to meet the 1997 minimum volumes and $27 million for a termination based on IBM's failure to meet the 1998 minimum volumes.

Under the OEM agreement, IBM was also required to pay STK ''recovery payments,'' which increased proportionately with lower levels of purchases by IBM, but declined to zero as the purchases approached 400 terabytes in 1996 and 1500 terabytes in 1997 and 1998. For example, if IBM sold only the minimum 710 terabytes in 1997, it would owe STK up to $60 million in recovery payments for falling 790 terabytes short of the 1500. These recovery payments also took into account the proportion of IBM's total sales of STK's DASD products versus IBM's sales of its own DASD, so that the higher the proportion of STK products sold by IBM, the lower the recovery payments. The OEM agreement also required IBM to contribute $100 million over three years to help fund STK's on-going efforts and plans to improve the performance and capabilities of its mainframe DASD products.

Although the OEM agreement did not expressly provide that IBM would be STK's exclusive mainframe DASD distributor, it contained provisions that made independent sales by STK so unattractive economically that it gave IBM *de facto* exclusively. The OEM agreement provided that if STK sold mainframe DASD to anyone other than IBM, IBM would be freed from its purchase volume commitments, its obligation to make recovery payments or pay liquidated damages upon failure to achieve those commitments, and its duty to help fund STK's product development programs—obligations that in total were worth hundreds of millions of dollars to STK. Due to these prohibitive contractual consequences, internal STK documents referred to STK sales of mainframe DASD to anyone other than IBM as ''forbidden'' under the OEM agreement.[4] Shortly after entering into the OEM agreement, STK stopped all efforts to sell mainframe DASD to customers other than IBM; and STK became completely dependent on its former competitor to sell STK mainframe DASD to end-users.

C. The OEM Agreement Violates Section 1 of the Sherman Act

The Complaint alleges that the OEM agreement unlawfully restrained competition in the mainframe DASD market in the United States and worldwide, in violation of Section 1 of the Sherman Act. Mainframe DASD is a relevant antitrust market because there are no substitute products to which mainframe DASD purchasers would turn even if prices of mainframe DASD were to increase substantially.[5] The

[1] These mainframe computers are distinguishable from other computers in that they all operate with IBM mainframe computer operating systems, principal examples of which are IBM's OS–390, MVS, VSE, and VM operating systems. Some ''mainframe DASD'' attaches to and operates with other types of computers as well.

[2] Data search times measurable in milliseconds and high data-transfer rates make DASD suitable for on-line transaction processing, large volume batch processing, and other applications in which rapid access to large amounts of data is important.

[3] The OEM agreement was not subject to the prenotification requirements of § 7a of the Clayton Act, 15 U.S.C. 18a.

[4] To protect STK in the event it unintentionally entered into transactions that would trigger these severe financial penalties, STK insisted that it be allowed to make up to 12 otherwise ''forbidden sales'' over the life of the agreement. Another exception allowed STK to sell its mainframe DASD to others without penalty so long as STK first sold it to IBM and then repurchased it from IBM.

[5] Although other types of data storage devices exist—for example, tape, optical and electronic memory products—because of performance or cost differences, none of these other products are effective substitutes for DASD. Conversion to a non-mainframe computer system is also not an effective way to substitute away from mainframe DASD

Continued

OEM agreement greatly increased the level of concentration in a market that was already highly concentrated. In 1995, the last full year in which IBM and STK competed against each other, IBM had a worldwide market share of about 36 percent (based on total shipments of about 558 terabytes), while STK's share was about 10 percent (shipments of about 155 terabytes). The Herfindahl-Hirschman Index, a standard measure of market concentration, increased by 720 points, to a post-agreement level of 3767, as a result of the OEM agreement.[6] The reduction of competition from the OEM agreement has not been alleviated by new entry into the manufacture and marketing of mainframe DASD, and because such new entry would be extremely difficult and time-consuming, it is unlikely to occur in the foreseeable future.

The Complaint further alleges that the OEM agreement removed a significant competitive force from the marketplace. STK had been the low price bidder for numerous DASD sales, and IBM and STK products had been the top two choices for many customers. Competition from STK had contributed to the substantial erosion in prices of mainframe DASD in the years immediately prior to the OEM agreement. In this marketplace setting, the OEM agreement eliminated direct and significant competition between IBM and STK and deprived mainframe DASD customers of the benefits of that competition. As a consequence of the OEM agreement, the rapid decline in the price of mainframe DASD eased, and the parties' output of mainframe DASD fell below levels they had projected prior to the agreement. Thus, the OEM agreement has been anticompetitive and its violates Section 1 of the Sherman Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment bars IBM and STK from including in an OEM agreement terms that would prevent STK from selling mainframe DASD in competition with IBM. The modifications to the OEM agreement remove the provisions that made the agreement a *de facto* exclusive arrangement.[7] As a result, STK will suffer no economic penalty if it sells to customers other than IBM. The elimination of these restrictions makes the relationship between IBM and STK non-exclusive, and provides an incentive to STK to begin selling mainframe DASD as an independent competitor. Furthermore, the proposed Final Judgment creates additional incentives for STK to begin selling DASD independently by limiting the amount of mainframe DASD that STK may sell through IBM, unless STK sells significant amounts of mainframe DASD on its own. The purpose of these limitations, which are described in detail below, is to make it economically attractive for STK to seek out business from customers other than IBM. In setting these limitations, the proposed Final Judgment does not preclude STK sales though IBM that may arise under a non-exclusive OEM arrangement between them, but adds a positive incentive for STK to re-enter the mainframe DASD market as a seller independent of IBM.

Section IV of the proposed Final Judgment enjoins the anticompetitive contractual arrangements that have prevented STK from selling mainframe DASD independently of IBM. Except in limited specified contexts common in normal supply contracts,[8] Section IV prohibits IBM and STK from entering into or maintaining any agreement as to price, volume, or other terms that would be contingent upon either the level of IBM's mainframe DASD purchases from STK, or the level of STK's sales to customers other than IBM. The provisions of the OEM agreement that imposed upon IBM minimum purchase commitments and obligated it to pay recovery payments and liquidated damaged if those commitments were not met, and that established contractual penalties to STK for making mainframe DASD sales to customers other than IBM, are prohibited by Section IV.

Section V of the proposed Final Judgment contains technology licensing provisions designed to ensure that STK will not be prevented from independently marketing mainframe DASD improvements that STK had developed with IBM funding. These provisions require IBM to grant STK a license to all mainframe DASD hardware or software product improvements funded by IBM or for which it provided assistance under the OEM agreement. The license is subject to STK's payment of reasonable royalties, however, to allow IBM an appropriate return on its contributions.

Section VI.A. of the proposed Final Judgment provides a positive incentive for STK to compete against IBM, by requiring that STK must sell DASD on its own as a condition of making unconstrained sales to IBM. Under Section VI.A., beginning on January 1, 1999, IBM's U.S. purchases from STK in a calendar year may not exceed 67 percent of IBM's U.S. purchases in 1998, unless STK has shipped over the preceding twelve months a substantial volume of mainframe DASD to U.S. customers other than IBM. If STK fails to sell the specified amount to customers other than IBM, it may make additional sales to IBM only if the parties obtain prior approval from the United States pursuant to Section VI.B. The United States will grant or deny such approval on the basis of whether vigorous competition from STK has been restored, and whether such competition would be substantially lessened as a result of additional purchases by IBM. Section VI.B. also sets out a process and standard for judicial review should IBM or STK contest a denial by the United States.[9]

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because of the substantial costs and risk of switching to an alternative computer platform.

[6] The HHI is well accepted as a 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 highly concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (rev. 1997).

[7] See modified OEM agreement dated December 18, 1997, a redacted copy of which is attached hereto as a determinative document under the APPA. The redactions are necessary to avoid disclosure of competitively sensitive information. An unredacted copy will be made available to the Court upon request.

[8] The proposed Final Judgment allows IBM to provide STK with monthly and quarterly forecasts of its purchases, in order to enable STK to anticipate capacity requirements to fill IBM orders, while imposing strict limits on the extent to which IBM may actually bind itself to make purchases (Section IV.D.); permits IBM and STK to set prices for IBM purchases that reflect volume-based discounts and any credits obtained as a result of STK's failure to meet on-time delivery, quality, or product deliverable requirements (Section IV.E.); and allows STK to pay IBM specified unit based royalties for its sales of DASD to other customers, which would enable IBM to recover a portion of its investments in STK DASD product improvements (Section V).

[9] The proposed Final Judgment imposes on Defendants the burden of proof in such proceedings. For the period up to January 1, 2001, the proposed Final Judgment permits the Court to overrule a denial by the United States of a request for additional IBM purchases only if Defendants establish that, notwithstanding STK's failure to supply the STK Minimum to United States customers, IBM faces vigorous and ongoing competition from STK in the United States for the development, production and marketing of DASD, and IBM's proposed additional purchases would not substantially lessen that competition. Beginning

Other provisions of the proposed Final Judgment are also aimed at fostering STK's competitive independence from IBM. Section IV.C. prohibits IBM and STK from avoiding the proscriptions of the Judgment by entering into a sales agency or distribution agreement that would not entail actual IBM purchases of mainframe DASD. Section IV.D restricts STK's reliance on IBM purchases by limiting the extent to which IBM volume forecasts and purchase orders may become binding. Section IV.E. limits the parties' ability to set IBM's prices on terms other than actual amounts purchased. Section IV.F. requires STK to allocate fairly production between the needs of IBM and that of other STK customers in the event of supply constraints. Finally, Section V.C. guarantees that IBM will continue to sell IBM disk drives used in STK's mainframe DASD products, at competitive prices and terms, so long as IBM makes such drives generally available to other purchasers.

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 attorneys' 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 Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendants 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: John F. Greaney, Chief, Computers & Finance Section, Antitrust Division, United States Department of Justice, Suite 9500, 600 E Street, N.W., Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, proceeding to a full trial on the merits of its Complaint. The United States is satisfied, however, that the relief contained in the proposed Final Judgment should reestablish and maintain viable and effective competition in the mainframe DASD market that has otherwise been adversely affected by the OEM agreement. Thus, the proposed Final Judgment will benefit competition substantially to the same extent that the government could have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint, including the uncertainty over whether a remedy imposed after a long delay would be efficacious.

The United States also considered a claim for damages arising from increased prices paid by the United States for its purchases of mainframe DASD as a result of the reduction of competition caused by the OEM agreement. However, calculation and proof of such damages to the United States is likely to be complex and difficult, and the litigation necessary to secure the damages would be costly and protracted. During the pendency of the litigation, moreover, the OEM agreement would remain in effect, depriving the United States and all other mainframe DASD purchasers of the benefit of STK as an independent competitive source of supply. Purchases by the United States constitute only a modest percentage of all domestic DASD purchases. The United States concluded, therefore, that the public interest is better served overall by securing the immediate, certain, and substantial relief set forth in the proposed Final Judgment.

VII. Determinative Documents

One determinative document within the meaning of the APPA—the IBM–STK agreement dated December 18, 1997, which modifies the July 7, 1996, agreement in conformity with the terms of the proposed Final Judgment—was considered by the United States in formulating the proposed Final Judgment. A redacted copy of this document is attached hereto, is being filed with the Court, and will be available for public inspection.[10]

Dated: December 18, 1997.

Weeun Wang,
James J. Tierney,
Sanford M. Adler,
Richard I. Irvine,
Don Allen Resnikoff,
Molly L. DeBusschere,
J. Roberto Hizon,
Attorneys, Antitrust Division, U.S. Department of Justice, Computers & Finance Section, Suite 9500, 600 E Street, N.W., Washington, D.C. 20530, (202) 307–6200.

United States Memorandum Regarding Antitrust Consent Decree Procedures

The United States files this Memorandum to set forth the procedures regarding entry of the proposed Final Judgment, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA''). The APPA applies only to antitrust cases brought by the United States.

1. On December 18, 1997, the United States filed a proposed Final Judgment and a Stipulation between the plaintiff and defendant in which both parties agreed to entry of the proposed Final Judgment.

2. The United States also filed a Competitive Impact Statement relating to the proposed Final Judgment, pursuant to the APPA, 15 U.S.C. 16(b).

on January 1, 2001, the proposed Final Judgment expands the review criteria beyond whether STK is a vigorous DASD competitor in the United States. Here, the proposed Final Judgment also permits the Court to overrule a denial by the United States if the Defendants establish that, because of technological advances, the entry of new competitors, or other material competitive changes, IBM's proposed additional purchases would not substantially lessen competition in the United States in the development, production or marketing of mainframe DASD.

[10] Certain confidential business information contained in the modified OEM agreement, but not significant to consideration of the proposed Final Judgment by the United States, has been redacted from the filed and publicly available copies. Due to the length of the modified OEM agreement, it will not be published in the **Federal Register**.

3. The APPA requires the United States to publish the proposed Final Judgment and Competitive Impact Statement in the **Federal Register** and in newspapers 60 days prior to entry of the Final Judgment. The Notice will inform members of the public that they may submit comments about the Final Judgment to the United States Department of Justice, Antitrust Division.

4. The United States will consider any comments it receives, respond to them, and publish the comments and responses in the **Federal Register**.

5. Pursuant to the APPA, at the expiration of the 60-day period, the United States will file with the Court the comments, its responses, and a Motion For Entry of The Final Judgment, unless it withdraws its consent to entry of the Final Judgment pursuant to Paragraph 2 of the December 18 Stipulation.

6. When the United States files its Motion For Entry of The Final Judgment, pursuant to the APPA the Final Judgment may be entered with or without further hearing, if the Court determines that entry is in the public interest.

Dated: December 18, 1997.

Weeun Wang,

James J. Tierney,

Sanford M. Adler,

Richard I. Irvine,

Don Allen Resnikoff,

Molly L. DeBusschere,

J. Roberto Hizon,

Attorneys, Antitrust Division, U.S. Department of Justice, Computers & Finance Section, Suite 9500, 600 E Street, N.W., Washington, D.C. 20530, (202) 307–6200.

Certificate of Service

The undersigned certifies that he is a paralegal employed by the Antitrust Division of the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on December 18, 1997, he caused true copies of:

1. Complaint;
2. Stipulation;
3. proposed Final Judgment;
4. Competitive Impact Statement;
5. Plaintiff's Memorandum Regarding Antitrust Consent Decree Procedures;

and this certificate of service, to be served upon the persons at the place and addresses stated below, which are the last known addresses:

Counsel for International Business Machines Corporation

Evan R. Chessler, Esq., Cravath, Swaine & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019 (by facsimile (212–474–3700) and by overnight courier).

Counsel for Storage Technology Corporation

J. Edd Stepp, Jr., Esq., Gibson, Dunn & Crutcher 333 South Grand Avenue Los Angeles, CA 90071 (by facsimile (213–229–6466) and by overnight courier).

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C. this _____th day of December, 1997.

J. Cory Allen,

Paralegal, Antitrust Division, U.S. Department of Justice, Computers & Finance Section, Suite 9500, 600 E Street, N.W., Washington, D.C. 20530, (202) 307–6200.

[FR Doc. 98–522 Filed 1–8–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 6, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR's) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Department Clearance Officer, Todd R. Owen (202) 219–5096 ext. 143) or by E-Mail at Owen-Todd@dol.gov. Individuals who use a telecommunication device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern Time, Monday–Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Certificate of Electrical/Noise Training, MSHA Form 5000–1.

OMB Number: 1219–0001 (extension).

Frequency: On Occasion.

Affected Public: Businesses and other for profit; small business or organizations.

Number of Respondents: 3,800.

Estimated Time Per Respondent: 4.36 hours.

Total Burden Hours: 16,584.

Total annualized capital/startup costs: 0.

Total operating/maintaining costs: $389,049.

Description: MSHA Form 5000–1, Certificate of Electrical/Noise Training, is required to be used by instructors to report to MSHA for certification those persons who have satisfactorily completed either a coal mine electrical training program or a noise training course.

Agency: Pension and Welfare Benefits Administration.

Title: Summary Plan Description Requirements under the Employee Retirement Income Security Act (ERISA).

OMB Number: 1210–0039 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; individuals.

Number of Respondents: 194,235.

Estimated Time Per Respondent: Approximately 6 hours to develop the Summary Plan Descriptions (SPD's); preparation of a summary of such changes (SMM) will average 1 hour; and an estimated 2 minutes for reproduction and mailing of the document.

Total Burden Hours: 1,128,919.

Total annualized capital/startup costs: 0.

Total annual costs (in thousands): $82,242.

Description: As required by ERISA, this existing regulation provides plan