Commission is again revising the schedule in this investigation with respect to the publication of its final report, and announces that the report will be issued by June 30, 2000. In addition, after examining the volume and nature of the comments received, and following discussions with the Congressional committees concerned, the Commission has decided that a public hearing in the subject investigation will not be conducted, in order to allow the maximum time for work on its final report. The final report in the investigation will set forth the proposed legal provisions of a simplified tariff schedule; statistical annotations and notes would be separately considered for subsequent addition by the Committee for Statistical Annotation of Tariff Schedules (the so-called ''484(f) Committee'') pursuant to section 484(f) of the Tariff Act of 1930.

In order to assist in that statistical review, the 484(f) Committee requests the submission of written comments regarding the desirability of and possible procedures for ''sunsetting'' 10-digit statistical annotations to the HTS, in particular with respect to an appropriate period of time (such as 5 years) after which each annotation might be reviewed and/or deleted from the schedule. Interested persons or entities are invited to file comments concerning a possible ''sunset'' guideline; such comments should be general in nature, rather than being focused on particular statistical categories. Written statements should be filed as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on April 3, 2000, in order to be considered and made part of the record. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Questions regarding the investigation can be directed to the staff members listed above, and documents concerning the subject investigation have been placed on the Commission's web site for inspection and/or downloading. Printed copies of documents and submissions have been placed in the Secretary's docket section for inspection and copying.

By order of the Commission.

Issued: March 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6082 Filed 3–10–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Revision of the schedule of a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1999 (64 FR 46952), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan. On February 4, 2000 (65 FR 5660), the Commission published a notice in the **Federal Register** revising this schedule. This revised schedule provided for the Commission to make its final release of information on March 9, 2000, and the parties' final comments were due on March 13, 2000. In order to accommodate the late submission of questionnaire data obtained from a domestic producer pursuant to a stipulated order regarding an administrative subpoena issued by the Commission on January 4, 2000, the February 4, 2000, schedule is further revised.

The Commission's new schedule for the review is as follows: The Commission will not collect any additional information after March 10, 2000, and will make its final release of information to the parties on or about March 10, 2000; and final party comments are due on March 15, 2000.

For further information concerning the review, see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.35 and 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6083 Filed 3–10–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Anitrust Division

United States of America v. Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc., No. 1:00CV00305 (D.D.C., Filed February 17, 2000); 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 United States of America v. Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc., No. 1:00CV00305. On February 17, 2000, the United States filed a Complaint alleging that the acquisition by Miller Industries, Inc. on September 2, 1996, of all the issued and outstanding capital stock of its competitor Vulcan Equipment, Inc., a Mississippi corporation, and the acquisition by Miller Industries, Inc. on December 5, 1997, of all the issued and outstanding capital stock of its competitor Chevron, Inc., a

Pennsylvania corporation, violated Section 7 of the Clayton Antitrust Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, filed with a Stipulation at the same time as the Complaint, would require Miller Industries, Inc. and its wholly owned subsidiaries Miller Industries Towing Equipment, Inc., and Chevron, Inc., to grant to anyone requesting it a non-exclusive license, at unit royalties that are not to exceed specified amounts, under any one or more of five towing and recovery vehicle equipment patents, and to notify the Department of Justice prior to future acquisitions of towing and recovery equipment assets or patents having a value that exceeds $5 million. The Stipulation provides for these patent licenses to become available within ten (10) days following the filing of the Stipulation with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 207, 325 Seventh Street, NW, where copies may be obtained upon request and payment of a copying fee, and at the Office of the Clerk of the United States District Court for the District of Columbia.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, Suite 300, 325 Seventh Street, NW, Washington, D.C. 20530 (telephone: (202) 616–5935)

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation

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

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

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

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court. As part of this compliance, defendants shall not assign, transfer interest, or take any action, direct or indirect, that will impede or impair the value or ownership rights of the '737, '147, '509, '609, and '623 Patents (as those terms are defined in the proposed Final Judgment) before the proposed Final Judgment shall be effective.

(4) Pursuant to Section IV of the proposed Final Judgment, Defendants shall offer to any requesting third party a license or licenses, the terms of which shall comply with the terms set forth in the proposed Final Judgment and Exhibits A and B thereof; provided, however, that if the proposed Final Judgment has not been entered because Plaintiff has withdrawn its consent or the time for all appeals of any Court ruling declining entry of the proposed Final Judgment has expired, then the license(s) shall terminate effective upon withdrawal of consent of expiration of time for appeals. As provided in Exhibits A and B, licensees shall have the right to sell at any time products made within 60 days of termination caused by the withdrawal of the Plaintiff's consent or by the Court's declining to enter the proposed Final Judgment.

(5) Within ten (10) days of its filing of the proposed Final Judgment and every thirty days thereafter until entry of the Final Judgment, defendants shall provide Plaintiff an affidavit setting forth the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing the '737, '147, '509, '609, or '623 Patents, and shall describe in detail each contact with any such person during that period.

(6) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(7) In the event Plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(8) Defendants represent that the licenses ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the licensing provisions contained therein.

For plaintiff United States of America:

Susan L. Edelheit,

D.C. Bar No. 250 720, Assistant Chief, Civil Task Force Antitrust Division, U.S. Department of Justice, Suite 300, 325 7th Street, NW, Washington, D.C. 20530, (202) 514–5038.

Date Signed: February 16, 2000.

For Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc.

C. Loring Jetton, Jr.,

(202) 663–6738, D.C. Bar No. 083766

John Q. Rounsaville, Jr.,

(202) 663–6328, D.C. Bar No. 162305

William F. Adkinson, Jr.,

(202) 663–6530, D.C. Bar No. 411922

Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, DC 20037.

Date Signed: February 16, 2000.

Frank Madonia,

Executive Vice President and General Counsel, Miller Industries, Inc., 8503 Hilltop Drive, Ooltewah, TN 37363—0120, (423) 238–4171.

Date Signed: February 16, 2000.

Stipulation Approved for Filing:

Ordered this ____ day of ____________, 2000.

United States District Judge

Final Judgment

Whereas, Plaintiff, the United States of America (''United States''), having filed its Complaint in this action, and Plaintiff and Defendants, Miller Industries, Inc. and its wholly-owned subsidiaries Miller Industries Towing Equipment, Inc., and Chevron, Inc. (any one or more of which may be referred to as ''Miller Industries''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas the essence of this Final Judgment is the prompt and certain licensing of specified patents to one or more third parties;

And whereas Defendants, as alleged in the Complaint, as owners of all right, title, and interest in the L-Arm Patent (defined below), acquired all of the capital stock of Vulcan International, Inc., including all right, title, and interest in the Vulcan Improvement Patents (defined below), and thereafter acquired all of the capital stock of Chevron, Inc., including all right, title and interest in the Independent Wheel Lift Patent and the Backsaver Patent (defined below):

And whereas licensing of the specified patents is necessary to remedy the loss of competition resulting from Defendants' acquisition of control of competitors' assets as alleged in the Complaint;

And whereas Plaintiff takes no position as to the validity or enforceability of the patents at issue or as to whether they are or have been infringed by any third parties, and Plaintiff and Defendants agree that this Final Judgment shall have no impact whatsoever on any adjudication concerning the validity or enforceability of the patents at issue or any other patents assigned to or owned by Defendants;

And whereas Defendants have represented to Plaintiff that Miller Industries is the owner of the patents at issue, that the licensing and other terms and conditions ordered herein can and will be accomplished, and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I.

Jurisdiction

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

II.

Definitions

As used in this Final Judgment:

A. ''Miller Industries'' shall mean one or more of Miller Industries, Inc., a Tennessee corporation headquartered in Ooltewah, TN, and tits wholly-owned subsidiaries Miller Industries Towing Equipment, Inc., a Delaware corporation headquartered in Ooltewah, TN, and Chevron, Inc., a Pennsylvania corporation headquartered in Mercer, PA, and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''Produce,'' ''Producing,'' or ''Production'' shall mean to manufacture, make, have made, import into the United States, use, offer to sell, sell or otherwise dispose of

C. ''The '737 Patent'' (commonly referred to as the '' L-Arm Patent'') shall mean United States Patent Number 4,836,737 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

D. ''The '623 Patent'' shall mean United States Patent Number 4,637,623 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

E. ''The '509 Patent'' shall mean United States Patent Number 4,798,509 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

F. ''The '147 Patent'' (commonly referred to as the ''Independent Raise-and-Lower Patent'') shall mean United States Patent Number 5,061,147 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

G. ''The '609 Patent'' (commonly referred to as the ''Backsaver Patent'') shall mean United States Patent Number 5,628,609 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

H. The ''Century Design'' shall mean Miller Industries' wheel lift designs depicted in the engineering drawings attached as Exhibit D and E and which are embodied in Century Model Nos. 124002217 and 12400221, currently being marked by Miller Industries in the United States, as well as the wheel lift designs incorporated in the previously marketed Century Model Nos. 124001824 and 124001825.

I. ''The Improvement Patents'' (commonly referred to as the ''Vulcan Improvement Patents,'' covering such items as the horizontal and vertical ''pivot'' L-arm features) shall mean the '623 Patent and the '509 Patent.

J. The ''Licensed Claims of the Improvements Patents'' shall mean Claims 1–3, 6–10, 12, 15, 17, 18, 20 and 22 of the '623 Patent and Claims 1, 4–9, 11–14 and 16–19 of the '509 Patent. The Licensed Claims include such features as the horizontal and vertical ''pivot'' of the L-arm.

K. The ''Unlicensed Claims of the Improvements Patents'' shall mean Claims 4, 5, 11, 13–14, 16, 19 or 21 of the '623 Patent and Claims 2, 3, 10 or 15 of the '509 Patent. The Unlicensed Claims of the Improvement Patents embody the following features of the Improvement Patents: (1) the vertical locking pin device; (2) the elongated curved wheel retainer plate (sometimes referred to as ''the Scoop''); and (3) the wheel lift receiver placed completely above the cross-bar. The act of Producing products containing (a) a horizontal locking pin device, (b) a vertical alignment pin on the receiver used in combination with a horizontal locking pin device, or (c) two flat surfaces joined together to form the wheel retainer plate, or any combination of (a), (b), or (c), by a licensee under the Licensed Claims of the Improvement Patent shall not constitute an infringement of any of the Unlicensed Claims of the Improvement Patents.

III.

Applicability

The provisions of this Final Judgment apply to Miller Industries, its successors and assigns (including any transferee or assignee of any ownership rights to, control of, or ability to license the patents referred to in this Final Judgment), its subsidiaries, affiliates, directors, officers, managers, agents, and employees, 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.

IV

Licensing of Patents

A. Beginning no later than ten (10) business days after the filing pursuant to 15 U.S.C. 16(b) of this Final Judgment, Miller Industries shall offer to any third party a non-exclusive license in the form attached hereto as Exhibit A (with the exception of licenses that include the Improvement Patents) or Exhibit B (for licenses that include the Improvement Patents) under the following patents subject to license fees not to exceed the corresponding stated amount per unit:

Patent(s) to be licensed	Unit license fee not to exceed
'737 Patent	125.00
'147 Patent	150.00
'609 Patent	150.00
Licensed Claims of the Improvement Patents	150.00
'737 Patent & '147 Patent, Together	175.00
'737 Patent & '609 Patent, Together	175.00
'737 Patent & Licensed Claims of the Improvement Patents, Together	175.00

The Maximum Unit License Fee shall be adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

B. Such licenses shall be available for the life of the licensed patent. The Maximum Unit License Fee for a license covering more than one patent shall, in the event of the expiration of any covered patent, be modified to reflect the Maximum Unit License Fee for the remaining licensed patent or patents. The terms of Exhibit A or Exhibit B may be modified upon consent of both parties to the license.

C. In accomplishing the licensing ordered by this Section IV, Miller Industries shall retain the services of an Independent Auditor (a certified public accountant from a firm of good standing) who shall collect from each licensee reports and royalty payments as required by each license agreement made pursuant to this Final Judgment. Miller Industries shall instruct the Independent Auditor to provide Miller Industries no more frequently than on a quarterly basis the aggregate dollar amount of royalty payments collected under each category of license set forth in Paragraph A hereof, together with a report stating the name of each licensee making royalty payments and the aggregate number of units of licensed products reported by all licensees for that period. Miller Industries shall instruct the Independent Auditor not to provide or disclose any information or data that would allow Miller Industries to determine the number of units of licensed products produced by any particular licensee, but may permit the Independent Audit to disclose to it facts that constitute grounds for material breach under the terms of the license.

D. Any existing licensee of any one or more of the '147, '509, '609, '623 or '737 Patents may elect to modify its existing license to any such patent by substituting the terms and conditions of the licenses available pursuant to this Section IV on thirty (30) days' written notice to Miller Industries.

In accomplishing the licensing ordered by this Section IV, Miller Industries promptly shall make known, by usual and customary means, the availability of the licenses, including mailing within ten (10) days of filing pursuant to 15 U.S.C. 16(b) of this Final Judgment notices of the available licenses in the form of Exhibit C along with copies of this Final Judgment to all firms known to it that manufacture tow trucks, car carriers, or similar towing and recovery vehicles. Miller Industries shall provide any person making an inquiry regarding a possible license with a copy of this Final Judgment, including all exhibits thereto. At Plaintiff's request, Miller Industries shall furnish to Plaintiff copies of any executed licenses made pursuant to this Section IV.

F. Miller Industries shall retain the services of a Designated Expert, to be selected by Plaintiff in its sole discretion, who shall, at the request of any existing or prospective Licensee of the Improvement Patents (hereafter "Licensee"), determine whether a proposed design is an "Approved Proposed Design." A proposed design shall be an Approved Proposed Design if it falls within the Licensed Claims of the Improvement Patents and does not fall within the Unlicensed Claims. Miller Industries shall provide the Designated Expert with a copy of this Final Judgment and shall instruct him/her to use his/her best efforts to provide the Licensee with a written determination within 30 days after receipt of engineering drawings and other necessary information. A Licensee has no obligation to request a determination from the Designated Expert, and use of the Designated Expert is at a Licensee's sole discretion.

G. Miller Industries shall be bound by the Designated Expert's determination that a proposed design is an Approved Proposed Design, and shall not challenge as infringement of any Unlicensed Claim the Licensee's Production of products made in accordance with the specifications of an Approved Proposed Design.

H. Miller Industries shall instruct the Designated Expert to keep confidential all submissions and contact with any Licensee seeking a determination, and shall instruct the Designated Expert not to disclose to Miller Industries or any third party, unless required to do so by law, any information concerning the Licensee's request for a determination on any proposed design. However, Miller Industries may instruct the Designated Expert (1) to notify Miller Industries after a proposed design has been approved, of the identity of the firm submitting the design, and (2) after the Licensee has begun selling products made in accordance with an Approved Proposed Design, to provide Miller Industries with a description of the product and its features sufficient to enable Miller Industries to determine whether the product is made in accordance with the specifications of the Approved Proposed Design, subject to the Licensee's confirmation that the description to be disclosed reveals no confidential data or trade secrets.

I. Miller Industries will pay the Designated Expert's fees, up to maximum of five (5) thousand dollars, for his/her services in gaining sufficient familiarity with the licensed patents and the scope of the claims thereof to enable him/her to undertake to determine whether proposed designs are Approved Proposed Designs. The cost of the Designated Expert's determination of whether a given submitted proposed design is an Approved Proposed Design shall be borne by the Licensee.

J. Within fifteen days from the filing pursuant to 15 U.S.C. 16(b) of this Final Judgment, Miller Industries shall provide Plaintiff with the names of three candidates (each with sufficient expertise in patent interpretation to be able to make qualified determinations) who have no affiliation or relationship with Miller Industries or any other towtruck or car carrier manufacturer to serve as the Designated Expert. After reviewing these candidates, Plaintiff may request from Miller Industries the names of additional candidates to serve as Designated Expert, Miller Industries shall provide such additional names within fifteen days from receipt of such request. Should Plaintiff object to all candidates submitted by Miller Industries, Plaintiff may select a Designated Expert of its own choosing.

K. Miller Industries shall not challenge as infringement of its Unlicensed Claims, or of any other claims of any patents owned by or assigned to Miller Industries, the Production of a product embodying the Century Design by a licensee of the '737 Patent and the Licensed Claims of the Improvement Patents. Miller Industries shall also not challenge as infringement of any claims under the Improvement Patents the Production of a product with a wheel lift design made pursuant to the specification in the '609 Patent (the "Backsaver Design") by a licensee of the '609 Patent.

V

Limitations

A. Nothing in this Final Judgment shall be construed to restrict Miller Industries' ability to manufacture and sell products pursuant to the '737 Patent, the Improvement Patents, the '147 Patent, or the '609 Patent.

B. Notwithstanding Section IV of this Final Judgment, Miller Industries is not required to grant a license to any person to whom a license was previously granted under this Final Judgment that was terminated for material breach.

VI

Notification

A. Miller Industries shall provide advance notification to the Plaintiff (1) when it directly or indirectly acquires (other than in the ordinary course of business as defined in the HSR regulations) any assets of, or any interest (including any financial, security, loan, equity, or management interest) in, any manufacturer of towtrucks, car carriers, or other towing and recovery equipment, with the exception of any transaction where the total value of the assets or interest being acquired is less than five (5) million dollars; or (2) when it directly or indirectly (i) acquires any exclusive license or (ii) acquires or is assigned any ownership or security interest in a patent or patents relating to the manufacture of towtrucks, car carriers, or other towing and recovery equipment, with the execution of any transaction where the total value of the interest acquired in such patent rights is less than five (5) million dollars. For purpose of this paragraph, total value shall be determined as prescribed in 16 CFR § 801.00. If the transaction is covered by the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Miller Industries' obligation to provide notification under this Section shall be satisfied by compliance with the HSR Act.

B. Notification under this section shall be provided to the Plaintiff in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Notification shall be provided at least thirty (30) days prior to the acquisition of such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification representatives of the Plaintiff make a written request for additional information, Defendant shall not consummate the proposed transaction or agreement until twenty (20) days after substantial compliance with the request for such additional information. The Plaintiff may, however, grant defendant early termination of the waiting periods prescribed by this Section. This Section shall be broadly construed, and any ambiguity or uncertainty regarding the necessity of filing such notification under this Section shall be resolved in favor of filing notice.

VII

Affidavits

A. Miller Industries shall provide Plaintiff an affidavit within ten (10) days of the filing pursuant to 15 U.S.C. 16(b) of this Final Judgment, and every six (6) months thereafter until the life of each of '147, '509, '609, '623 and the '737 Patents has expired, as to the fact and manner of compliance with Section IV hereof. Each such affidavit shall set forth efforts made to accomplish licensing of the patents contemplated in his Final Judgment and shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing the patents to be licensed, and shall describe in detail each contact with any such person during that period.

B. Until one year after each of the '147, '509, '609, '623 and the '737 Patents have expired, Miller shall preserve all records of all efforts made to effect the licensing of each such patent.

VIII

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be further modified or terminated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant General in charge of the Antitrust Division, and on reasonable notice to Defendants made to their principal offices, shall be permitted:

1. Access during 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, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Defendants at their principal offices, Defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment.

C. No information nor any documents obtained by the means provided in Sections VII or VIII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the 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 for 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 Plaintiff shall give ten (10) days notice to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

IX

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 violation hereof.

X

Termination

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

XI

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:______________________

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Exhibit A: License Agreement

[Exhibit A to be used for licensing United States Patent Number 5,061,147 (''The Independent Raise-and-Lower Patent''); United States Number 5,628,609 (''The Backsaver Patent''); United States Patent Number 4,836,737 (''The L-Arm Patent''); or a combination of the '737 Patent and either the '147 or '609 Patents. Please see Exhibit B for licenses relating to United States Patent Number 4, 798,509 & United States Patent Number 4,637,623 (collectively, the ''Improvement Patents'')]

This License Agreement is made by and between ___________ (''Licensee'') and MILLER INDUSTRIES, INC., or a designated subsidiary thereof (and its successors and assigns, collectively ''Licensor'').

Whereas, Licensor is the owner of [United States Patent Number 5,061,147; United States Patent Number 5,628,609; and/or United States Patent Number 4,836,737]

And whereas, Licensee desires to obtain a license from Licensor relating to said patent [or patents];

And whereas, Licensor desire to grant Licensee such a license;

Now, therefore, in consideration of the foregoing and of the mutual covenants which follow, the parties hereby agree that:

Article 1—Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.01. ''The '737 Patent'' shall mean United States Patent Number 4,836,737. [''the '147 Patent'' shall mean United States Patent Number 5,061,147; and/or ''the '609 Patent'' shall mean United States Patent Number 5,628,609.]

1.02. ''Royalty Bearing Products'' shall mean products made in accordance with the claims of the '737 Patent [the '147 Patent and/or the '609 Patent].

1.03. ''Independent Auditor'' shall mean a person or persons appointed by Licensor subject to the terms and conditions of Section IV of the Final Judgment in United States v. Miller Industries, Inc., Civ. 1:00CV00305 (D.D.C. 2000).

Article 2—License and Related Terms

2.01. *Patent License*. During the term of this Agreement, subject to the terms and conditions hereof, including, without limitation, the timely payment by Licensee to the Independent Auditor of the license fees provided for in Section 2.02 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, non-transferable (except as specifically provided in Section 5.05 hereof), right and license under the '737 Patent [*the '147 Patent and/or the '609 Patent*] to make, have made, import, use, offer to sell, sell or otherwise dispose of Royalty Bearing Products within the United States.

2.02. *Royalties.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor a royalty of $____[1] per unit for each Royalty Bearing Product Sold or Otherwise Disposed of by or for Licensee. The term ''Sold or Otherwise Disposed of'' includes Royalty Bearing Products sold, leased, placed in commercial service, or delivered by or on behalf of Licensee within the United States. In no event shall a licensee pay more than one royalty on a single unit of Royalty Bearing Product.

Article 3—Notice Provisions

3.01. Licensee shall make written reports to the Independent Auditor within 30 days of the end of each calendar quarter through the life of the '737 patent [*the '147 Patent and/or the '609 Patent*] stating in each such report the aggregate number of Royalty Bearing Products it has Sold or Otherwise Disposed of within the United States during such calendar quarter and upon which royalty is payable as provided in this Agreement. The first such report shall include all Royalty Bearing Products Licensee has Sold or Otherwise Disposed of between the date of this Agreement and the date of such report. The Independent Auditor shall report to the Licensor only such information as is permitted under Paragraph IV.C of the Final Judgment in United States v. Miller Industries, Inc., et al., Civ. 1;00CV00305 (D.D.C. 2000).

3.02. Concurrently with each report, Licensee shall pay to the Independent Auditor royalties at the rate specified in Article 2.02 of this Agreement on the Royalty Bearing Products included in the report.

3.03. Licensee shall keep accurate books and records in accordance with accepted accounting practices showing the Royalty Bearing Products it made, had made, imported, used, offered for sale, Sold or Otherwise Disposed of during the life of this License Agreement. Such records shall be in sufficient detail to enable the royalties payable to Licensor to be determined.

3.04. The Independent Auditor shall notify Licensor when, in his or her independent judgment, an audit is appropriate, and upon Licensor's approval shall conduct an audit. Upon request of the Independent Auditor, Licensee will permit its books and records pertinent to the determination of the royalties payable to Licensor to be examined to the extent reasonably necessary for the Independent Auditor to verify the reports provided by Licensee. In the event that the Auditor shall have questions that appear not to be answered by such books and records, the Auditor shall have the right to confer with representatives of the Licensee, including but not limited to the Licensee's Chief Financial Officer and Plant Manager. Such examination shall be made at the expense of the Independent Auditor and may be requested no more than once per year. The Independent Auditor, who shall be obligated to confidentiality, shall report to Licensor only the amount of royalty payable for the period under audit based upon a review of the books and records provided. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by less than 5% of the total applicable royalties for the period in question, Licensee shall pay the arrears and interest at a rate of 10% per annum, or the maximum allowable interest rate under the applicable state law, if it is lower. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by greater than 5% of the total applicable royalties for the period in question, Licensee shall pay the cost of the audit, the arrears, and interest at a rate of 10% per annum, or the maximum allowable interest rate under the applicable state law, if it is lower.

3.05. Nothing in this Agreement shall restrict the right of Licensor to seek redress for infringement of the [*patents to be licensed*] by Licensee occurring before the date of execution of this Agreement.

Article 4—Term and Termination

4.01. Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by both parties and shall remain in force for the life of the last licensed patent to expire or upon termination. Licensee may terminate this Agreement by giving Licensor at least 90 days' prior written notice of termination. Licensor may terminate this Agreement immediately, and refuse to grant Licensee a new license, if Licensee commits a material breach, as defined in Section 4.02 below.

4.02. Licensor may treat as a material breach: (i) Licensee's failure to make a report pursuant to Section 3.01 hereof, or to pay corresponding royalties due under such report pursuant to Section 3.02 hereof, provided that such failure is not cured or resolved within 30 days after Licensee received notice thereof; (ii) the Independent Auditor's determination, as a result of an audit conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period, provided that the underpayment is not cured or resolved within 60 days after Licensee is informed of the determination; (iii) the Independent Auditor's determination in two successive audits conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period, whether or not such

[1] Royalties shall not exceed the following: '737 Patent: $125.00 per unit; '147 Patent: $150.00 per unit; '609 Patent: $150.00 per unit; '147 and '737 Patents, together: $175.00 per unit; '609 and '737 Patents, together: $175.00 per unit.

These maximum limits on royalties shall be adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

underpayment is cured; or (iv) Licensee's failure to re-establish compliance with its obligations to maintain liability insurance under Section 5.10(b) hereof within 60 days of receiving notice from Licensor of its non-compliance. The provisions of Section 5.04 concerning Force Majeure shall apply to the curing or resolution of grounds for a material breach.

4.03. [*To be included only in all licenses granted before entry of the Final Judgment.*] Licensor shall have the option to terminate this Agreement if, in the matter United States v. Miller Industries, Inc. et al., either of the following events occur: (1) Plaintiff withdraws its consent to entry of the proposed Final Judgment, or (2) the Court declines to enter the proposed Final Judgment, and the time has expired for all appeals from any Court ruling declining such entry. Such termination shall be effective 60 days after Licensor notifies Licensee of the occurrence of event (1) or (2) under this Section 4.03.

4.04. In the event of termination, Licensee shall report under Section 3.01 hereof, and pay under Section 3.02 hereof, royalties on all Royalty Bearing Products that it has made or imported prior to termination. A terminated Licensee shall have the right at any time to sell or otherwise dispose of any Royalty Bearing Product on which royalties have been paid. Termination shall not affect Licensee's duty to pay royalty obligations hereunder, and shall not affect Licensor's right to request an audit covering any period during which Licensee has a right hereunder to make or import any product.

Article 5—Miscellaneous Provisions

5.01. *Limitations of Liability and Claims.*

(a) Licensor warrants that is owns the entire right, title, and interest to the [*patent(s) being licensed*] and has the ability to license the [*patent(s) being licensed*] but otherwise neither party makes any representations, extends any warranties of any kind, either express or implied, and each party specifically disclaims any implied warranty of merchantability or fitness for a particular purpose in relation to the teachings of the [*patent(s) being licensed*].

(b) The parties are under no obligation and shall not be required under this Agreement to bring or prosecute actions or suits against any third party for infringement of the [*patent(s) being licensed*].

5.02. *Relationship of the Parties.* The parties shall be independent contractors hereunder and neither party shall have the power or authority to bind the other party with respect to any third party. Except as specifically provided herein, each party shall bear its own costs and expenses.

5.03. *Effect of Agreement.* This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto. Any amendment hereof must be in writing and signed by both parties.

5.04. *Force Majeure.* Each party's performance hereunder is subject to interruption or delay due to causes beyond its reasonable control such as acts of God, acts of government, war or other hostility, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, and the like. In the event of such an interruption or delay, any relevant period of performance of the party affected shall be extended for a period of time equal to the period of the interruption or delay and any obligation of the party whose performance is not affected which corresponds to the interrupted or delayed performance shall be suspended for a period of time equal to the period of the interruption or delay. Any party whose performance hereunder is subject to such interruption or delay shall give prompt notice to the other party of the reason or reasons for the commencement of and of the conclusion of such interruption or delay.

5.05. *Assignment and Successors.* This Agreement shall inure to the benefit of and be binding upon the parties as well as subsidiaries, affiliates, and successors-in-interest of the parties hereto. Neither party nor any subsidiary, affiliate or successor-in-interest shall assign or transfer any of its rights, privileges or obligations hereunder without the prior written consent of the other party, except that Licensor may, without the consent of Licensee, assign this license in connection with the transfer of all or substantially all of its towing equipment manufacturing and distribution business. Nothing in this Agreement grants, or is intended to grant the right or authorization to grant, sublicenses of the [*patent(s) being licensed*]. Upon a permitted assignment of this Agreement, said assignee shall expressly agree in writing to be bound by all of the provisions of this Agreement. However, nothing in this Section shall permit a former licensee of the [patents being licensed] who has been terminated for material breach as defined in Section 4.02 to exercise any rights under this Agreement.

5.06. *Severability.* Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

5.07. *Non-Waiver.* Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision.

5.08. *Notices.* In order to be effective, all notices, requests, demands, agreements, consents, approvals, permissions and other communications required or permitted hereunder shall be in writing, shall be delivered personally, faxed, transmitted by courier or express service, or mailed, with proper charge prepaid, to the party for whom intended as set forth below, and shall be deemed to be given upon the date of actual receipt:

To Licensee:

To Licensor: President, Miller Industries, Inc., 8503 Hilltop Drive, Ooltewah, TN 37363.

(by other means)

The sending party shall have the burden of proving receipt. Either party may change any address to which notices and other communications are to be directed to it by giving notice of such change to the other party in the manner provided above.

5.09. *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Tennessee.

5.10. *Insurance.* During the term of this Agreement, Licensee shall maintain broad form general liability insurance, including blanket contractual, products and completed operations liability coverage, in the amount of two (2) million dollars. Within 30 days following execution of this Agreement, Licensee shall deliver to Licensor a Certificate of Insurance and, subsequently, any renewals thereof evidencing the insurance required by this Paragraph.

5.11. *Patent Marking.* Licensee shall mark each Royalty Bearing Product made, used, Sold or Otherwise Disposed of under this license with the following marking:

Manufactured and sold under license of United States Patent Nos. [*Patents(s) being licensed*].

5.12. *Trademarks and Trade Names.* The license herein granted conveys no right to Licensee to use or register any trademarks or trade names of the Licensor.

5.13. *Preservation of Licensor's Rights.* Licensor's grant of rights to License pursuant to this Agreement shall in no way restrict Licensor's right to manufacture and sell products pursuant to the [*patent(s) being licensed*].

In witness whereof, the parties have executed this Agreement by their authorized representatives.

[Licensee]

By__ ______________________________

Its__ ______________________________

Date__ ______________________________

[Licensor]

By__ ______________________________

Its__ ______________________________

Date__ ______________________________

Exhibit B: License Agreement

[Exhibit B to be used for licenses relating to United States Patent Number 4,798,509 and United States Patent Number 4,637,623 (collectively, the ''Improvement Patents''). The ''Alternative'' (in italics) relates to terms for licenses of the Improvement Patents together with the '737 L-Arm Patent.]

This License Agreement is made by and between____________(''Licensee'') and MILLER INDUSTRIES, INC., or a designated subsidiary thereof (and its successors, collectively ''Licensor'');

Whereas, Licensor is the owner of United States Patent Number 4,798,509 and United States Patent Number 4,637,623; [*and United States Patent Number 4,836,737*]

And whereas, Licensee desires to obtain a license from Licensor relating to said patents;

And whereas, Licensor desires to grant Licensee such a license;

Now, therefore, in consideration of the foregoing and of the mutual covenants which follow, the parties hereby agree that:

Article 1—Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.01. ''The '737 Patent'' shall mean United States Patent Number 4,836,737.

1.02. ''The '623 Patent'' and ''the '509 Patent'' shall mean respectively, United States Patent Number 4,637,623 and United

States Patent Number 4,798,509. (Collectively, the ''Improvement Patents'').

1.03. The ''Licensed Claims'' shall mean only Claims 1–3, 6–10, 12, 15, 17, 18, 20 and 22 of the '623 Patent and only Claims 1, 4–9, 11–14 and 16–19 of the '509 Patent. The act of Producing products containing (a) a horizontal locking pin device, (b) a vertical alignment pin on the receiver used in combination with a horizontal locking pin device, or (c) two flat surfaces joined together to form a wheel retainer plate, or any combination of (a), (b), or (c), shall not constitute an infringement of any unlicensed claim of the '623 Patent or the '509 Patent.

1.04. ''Royalty Bearing Products'' shall mean products made in accordance with the Licensed Claims of the '623 Patent or the '509 Patent. [ALTERNATIVE IF LICENSE IS FOR BOTH—ARM AND IMPROVEMENTS: ''Royalty Bearing Products'' shall mean products made in accordance with any claim or claims of the '737 Patent and the Licensed Claims of the '623 Patent or the '509 Patent].

1.05. ''Independent Auditor'' shall mean a person or persons appointed by Licensor subject to the terms and conditions of Section IV of the Final Judgment in *United States* v. *Miller Industries, Inc.,* Civ.1:00 CV00305 (D.D.C. 2000).

1.06. ''Produce,'' ''Producing,'' or ''Production'' means to manufacture, make, have made, import into the United States, use, offer to sell, sell or otherwise dispose of.

Article 2—License and Related Terms

2.01. *Patent License.* During the term of this Agreement, subject to the terms and conditions hereof, including, without limitations, the timely payment by licensee to the Independent Auditor of the license fees provided for in Section 2.02 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, non-transferable (except as specifically provided in Section 5.05 hereof), right and license under the '623 Patent and '509 Patent to make, have made, import, use, offer to sell, sell, or otherwise dispose of Royalty Bearing Products within the United States. This agreement does not provide Licensee with the right to make, have made, import, use, offer to sell, sell, or otherwise dispose of products that are made in accordance with (i) Claims 4, 5, 11, 13–14, 16, 19 or 21 of the '623 Patent; (ii) Claims 2, 3, 10 or 15 of the '509 Patent; or (iii) any claim of the '737 Patent.

2.02. *Royalties.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor a royalty of $____ per unit [1] for each Royalty Bearing Product Sold or Otherwise Disposed of by or for Licensee. The term ''Sold or Otherwise Disposed of'' includes Royalty Bearing Products sold, leased, placed in commercial service, or delivered by or on behalf of Licensee within the United States. In no event shall a Licensee pay more than one royalty on a single unit of Royalty Bearing Product.

Article 2—License and Related Terms

[ALTERNATIVE: LICENSE FOR L-ARM PLUS IMPROVEMENT PATENTS]

2.01. *Patent License.* During the term of this Agreement, subject to the terms and conditions hereof, including, without limitations, the timely payment by Licensee to the Independent Auditor of the license fees provided for in Section 2.02 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, non-exclusive, non-transferable (except as specifically provided in Section 5.05 hereof), right and license under the '737 Patent, '623 Patent and '509 Patent to make, have made, import, use offer to sell, sell, or otherwise dispose of Royalty Bearing Products within the United States. This agreement does not provide Licensee with the right to make, have made, import, use, offer to sell, sell, or otherwise dispose of products that embody or are made in accordance with Claims 4, 5, 11, 13–14, 16, 19 or 21 of the '623 Patent or Claims 2, 3, 10 or 15 of the '509 Patent.

2.02. *Royalties.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor a royalty of $____ per unit [2] for each Royalty Bearing Product Sold or Otherwise Disposed of by or for Licensee.. The term ''Sold or Otherwise Disposed of'' includes Royalty Bearing Products sold, leased, placed in commercial service, or delivered by or on behalf of Licensee within the United States. In no event shall a licensee pay more than one royalty on a single unit of Royalty Bearing Product.

Article 3—Notice Provisions

3.01. Licensee shall make written reports to the Independent Auditor within 30 days of the end of each calendar quarter through the life of each patent to be licensed, stating in each such report the aggregate number of Royalty Bearing Products it has Sold or Otherwise Disposed of within the United States during such calendar quarter and upon which royalty is payable as provided in this Agreement. The first such report shall include all Royalty Bearing Products Licensee has Sold or Otherwise Disposed of between the date of this Agreement and the date of such report. The Independent Auditor shall report to the Licensor only such information as is permitted under Paragraph IV.C of the Final Judgment in *United States* v. *Miller Industries, Inc., et al.,* Civ. 1:00 CV00305 (D.D.C. 2000).

3.02. Concurrently with each report, Licensee shall pay to the Independent Auditor royalties as the rate specified in Article 2.02 of this Agreement on the Royalty Bearing Products included in the report.

3.03 Licensee shall keep accurate books and records in accordance with accepted accounting practices showing the Royalty Bearing Products it made, had made, imported, used, offered for sale, Sold or Otherwise Disposed of during the life of this License Agreement. Such records shall be in sufficient detail to enable the royalties payable to Licensor to be determined.

3.04. The Independent Auditor shall notify Licensor when, in his or her independent judgment, an audit is appropriate, and upon Licensor's approval shall conduct an audit. Upon request of the Independent Auditor, Licensee will permit its books and records pertinent to the determination of the royalties payable to Licensor to be examined to the extent reasonably necessary for the Independent Auditor to verify the reports provided by Licensee. In the event that the Auditor shall have questions that appear not to be answered by such books and records, the Auditor shall have the right to confer with representatives of the Licensee, including but not limited to the Licensee's Chief Financial Officer and Plant Manager. Such examination shall be made at the expense of the Independent Auditor and may be requested no more than once per year. The Independent Auditor, who shall be obligated to confidentiality, shall report to Licensor only the amount of royalty payable for the period under audit based upon a review of the books and records provided. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by less than 5% of the total applicable royalties for the period in question, Licensee shall pay the arrears and interest at a rate of 10% per annum, or the maximum allowable interest rate under the applicable state law if it is lower. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by greater than 5% of the total applicable royalties for the period in question, Licensee shall pay the cost of the audit, the arrears, and interest at a rate of 10% per annum. or the maximum allowable interest rate under the applicable state law, if it is lower.

3.05 Nothing in this Agreement shall restrict the right of Licensor to seek redress for infringement of the [patents to be licensed] by licensee occurring before the date of execution of this Agreement.

Article 4—Term and Termination

4.01. Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by both parties and shall remain in force for the life of the last licensed patent to expire or upon termination. Licensee may terminate this Agreement by giving Licensor at least 90 days' prior written notice of termination. Licensor may terminate this Agreement immediately, and refuse to grant Licensee a new license, if Licensee commits a material breach, as defined in Section 4.02 below.

4.02. Licensor may treat as a material breach: (1) Licensee's failure to make a report pursuant to Section 3.01 hereof, or to pay corresponding royalties due under such report pursuant to Section 3.02 hereof, provided that such failure to not cured or resolved within 30 days after Licensee receives notice thereof; (ii) the Independent Auditor's determination, as a result of an audit conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period, provided that the underpayment is

[1] The royalty shall not exceed $150 per unit, adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

[2] The royalty shall not exceed $175 per unit, adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

not cured or resolved within 60 days after Licensee is informed of the determination; (iii) the Independent Auditor's determination in two successive audits conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period whether or not such underpayment is cured; or (iv) Licensee's failure to re-establish compliance with its obligations to maintain liability insurance under Section 5. 10(b) hereof within 60 days of receiving notice from Licensor of its non-compliance. The provisions of Section 5.04 concerning Force Majeure shall apply to the curing or resolution of grounds for a material breach.

4.03. [To be included only in all licenses granted before entry of the Final Judgment.] Licensor shall have the option to terminate this Agreement if, in the matter United States v. Miller Industries, Inc. et al., either of the following events occur: (1) Plaintiff withdraws its consent to entry of the proposed Final Judgment, or (2) the Court declines to enter the proposal Final Judgment, and the time has expired for all appeals from any Court ruling declining such entry. Such termination shall be effective 60 days after Licensor notifies License of the occurrence of event (1) or (2) under this Section 4.03.

4.04. In the event of termination, License shall report under Section 3.01 hereof, and pay under Section 3.02 hereof, royalties on all Royalty Bearing Products that it has made or imported prior to termination. A terminated Licensee shall have the right at any time to sell or otherwise dispose of any Royalty Bearing Product on which royalties have been paid. Termination shall not affect Licensee's duty to pay royalty obligations hereunder, and shall not affect Licensor's right to request an audit covering any period during which Licensee has a right hereunder to make or import any product.

Article 5—Miscellaneous Provisions

5.01. *Limitations of Liability and Claims.*

(a) Licensor warrants that it owns the entire right, title, and interest to the [patent(s) being licensed] and has the ability to license the [patent(s) being licensed] but otherwise neither party makes any representations, extends warranties of any kind, either express or implied, and each party specifically disclaims any implied warranty of merchantability or fitness for a particular purpose in relation to the teachings of the [patent(s) being licensed].

(b) The parties are under no obligation and shall not be required under this Agreement to bring or prosecute actions or suits against any third party for infringement of the [patent(s) being licensed].

(c) Licensor warrants that, should Licensee (in its own discretion) obtain an ''Approved Proposed Design'' from the Designated Expert pursuant to Section IV of the Final Judgment in United States v. Miller Industries, Licensor will not challenge as infringement of any unlicensed claim of the '509 or '623 Patents the Licensee's production of products made in accordance with the specifications of an Approved Proposed Design.

5.02 *Relationship of the Parties.* The parties shall be independent contractors hereunder and neither party shall have the power or authority to bind the other party with respect to any third party. Except as specifically provided herein, each party shall bear its own costs and expenses.

5.03. *Effect Agreement.* This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto. Any amendment hereof must be in writing and signed by both parties.

5.04. *Force Majeure.* Each party's performance hereunder is subject to interruption or delay due to causes beyond its reasonable control such as acts of God, acts of government, war or other hostility, the elements, fire, explosion, power failure, industrial or labor dispute, and the like. In the event of such an interruption or delay, any relevant period of performance of the party affected shall be extended for a period of time equal to the period of the interruption or delay and any obligation of the party whose performance is not affected which corresponds to the interrupted or delayed performance shall be suspended for a period of time equal to the period of the interruption or delay. Any party whose performance hereunder is subject to interruption or delay shall give prompt notice to the other party of the reason or reasons for the commencement of and of the conclusion of such interruption or delay.

5.05. *Assignment and Successors.* This Agreement shall inure to the benefit of and be binding upon the parties as well as subsidiaries, affiliates, and successors-in-interest of the parties hereto. Neither party nor any subsidiary, affiliate or successor-in-interest shall assign or transfer any of its rights, privileges or obligations hereunder without the prior written consent of the other party, except that Licensor may, without the consent of Licensee, assign this license in connection with the transfer of all or substantially all of its towing equipment manufacturing and distribution business. Nothing in this Agreement grants, or is intended to grant the right or authorization to grant, sublicenses of the [patent(s) being licensed]. Upon a permitted assignment of this Agreement, said assignee shall expressly agree in writing to be bound by all of the provisions of this Agreement. However, nothing in this Section shall permit a former licensee of the [patents being licensed] who has been terminated for material breach as defined in Section 4.02 to exercise any rights under this Agreement.

5.06. *Severability.* Should any provision of this Agreement be held to be void, invalid unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

5.07. *Non-Waiver.* Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision.

5.08. *Notices.* In order to be effective, all notices, requests, demands, agreements, consents, approvals, permissions and other communications required or permitted hereunder shall be in writing, shall be delivered personally, faxed, transmitted by courier or express service, or mailed, with proper charge prepaid, to the party for whom intended as set forth below, and shall be deemed to be given upon the date of actual receipt:

To Licensee:

To Licensor: President, Miller Industries, Inc., 8503 Hilltop Drive, Ooltewah, TN 37363.

(by other means)

The sending party shall have the burden of proving receipt. Either party may change any address to which notices and other communications are to be directed to it by giving notice of such change to the other party in the manner provided above.

5.09 *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Tennessee.

5.10. *Insurance.* During the term of this Agreement, Licensee shall maintain broad form general liability insurance, including blanket contractual, products and completed operations liability coverage, in the amount of two (2) million dollars. Within 30 days following execution of this Agreement, Licensee shall deliver to Licensor a Certificate of Insurance and, subsequently, any renewals thereof evidencing the insurance required by this Paragraph.

5.11. *Patent Marking.* Licensee shall mark each Royalty Bearing Product made, used, Sold or Otherwise Disposed of under this license with the following marking:

Manufactured and sold under license of United States Patent Nos. [Patent(s) being licensed].

5.12. *Trademarks and Trade Names.* The license herein granted conveys no right to Licensee to use or register any trademarks or trade names of the Licensor.

5.13. *Preservation of Licensor's Rights.* Licensor's grant of rights to Licensee pursuant to this Agreement shall in no way restrict Licensor's right to manufacture and sell products pursuant to the [patent(s) being licensed].

In witness whereof, the parties have executed this Agreement by their authorized representatives.

[Licensee]

By ____________________

Its ____________________

Date ____________________

[Licensor]

By ____________________

Its ____________________

Date ____________________

Exhibit C: Notification of Available Licenses

Miller Industries, Inc. and Miller Industries Towing Equipment, Inc. (''Miller Industries'') have consented to the entry of the attached proposed Final Judgment to resolve a civil suit brought by the Antitrust Division of the Department of Justice. Under the proposed Final Judgment, Miller Industries is required to offer to any third party a non-exclusive license to make and sell products covered by one or more of the following United States Patents. Terms and maximum unit royalty rates for such licenses are specified below and in greater detail in Exhibit A to the Final Judgment:

No. 4,836,737 (the '737 Patent, also known as the L-Arm Patent): $125.00
No. 5,061,147 (the '147 Patent, also known as the ''Independent Raise-and-Lower Patent''): $150.00
No. 5,628,609 (the '609 Patent, also known as the ''Backsaver'' Patent): $150.00
The L-Arm and the Independent Raise-and-Lower Patents, together: $175.00
The L-Arm and the Backsaver Patents, together: $175.00

The proposed Final Judgment also requires Miller Industries to offer to any third party a non-exclusive license to certain improvements in the L-Arm, wheel lift designs covered by United States Patent Nos. 4,637,623 and 4,798,509 (respectively the '623 and '509 Patents, also known as the ''Improvement Patents''). Miller Industries will license the features under these Improvement Patents that allow the L-Arm wheel lift to pivot horizontally and vertically. Terms and maximum unit royalty rates for such licenses are specified below and in greater detail in Exhibit B to the Final Judgment:

Licensed Claims of the Improvement Patents: $150.00
Licensed Claims of the Improvement Patents and the L-Arm Patent, together: $175.00

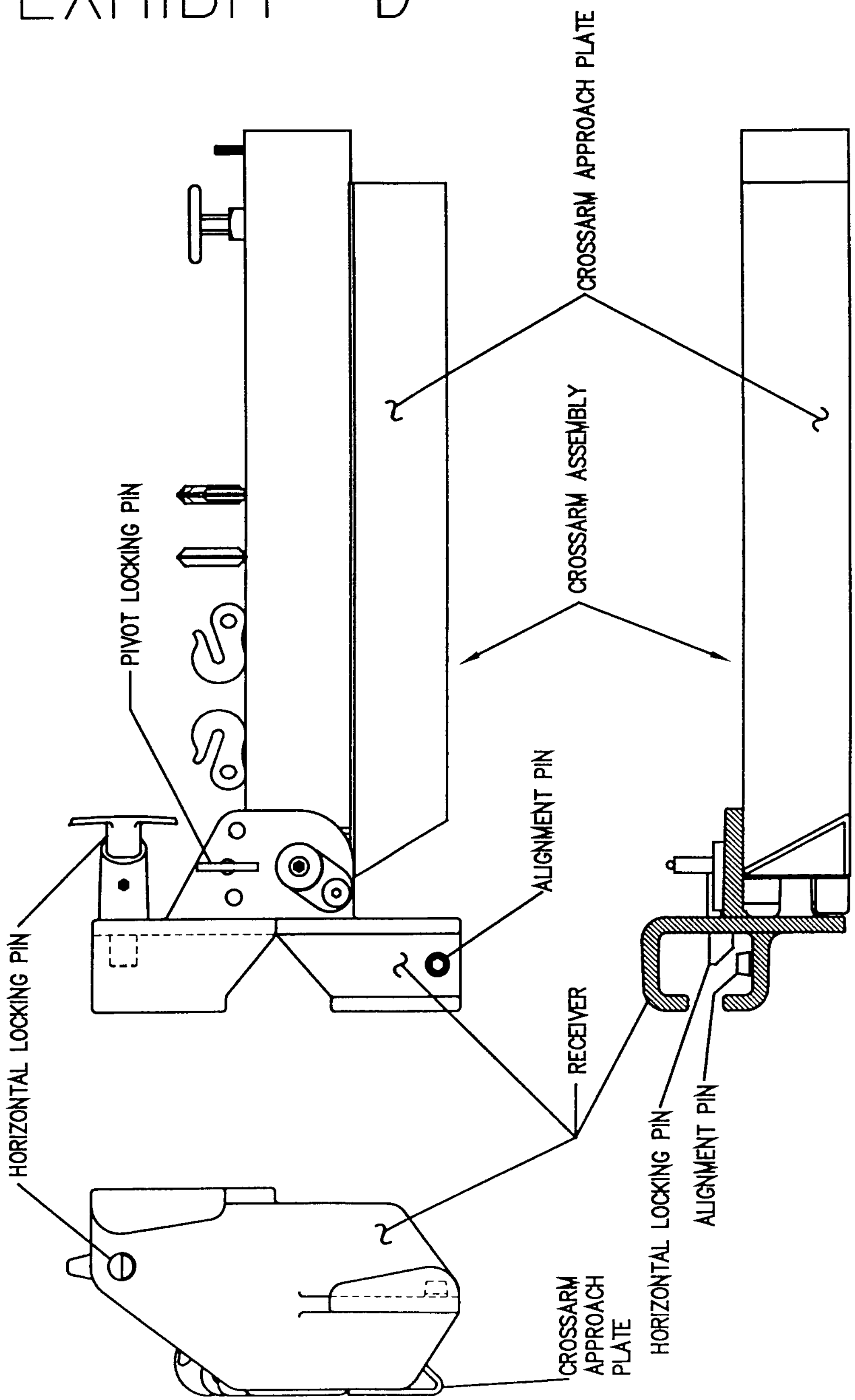
These Improvement Patents ('623 and '509), originally owned by Vulcan International, Inc., embody improvements to the L-Arm wheel lift found on Vulcan products. Under the terms of this license, licensees will be able to use all features covered by the Improvement Patents (such as the horizontal and vertical pivoting of the L-arms) except for three features: (1) The vertical locking pin device, (2) the elongated curved wheel retainer plate, and (3) the wheel lift receiver placed completely above the cross bar.

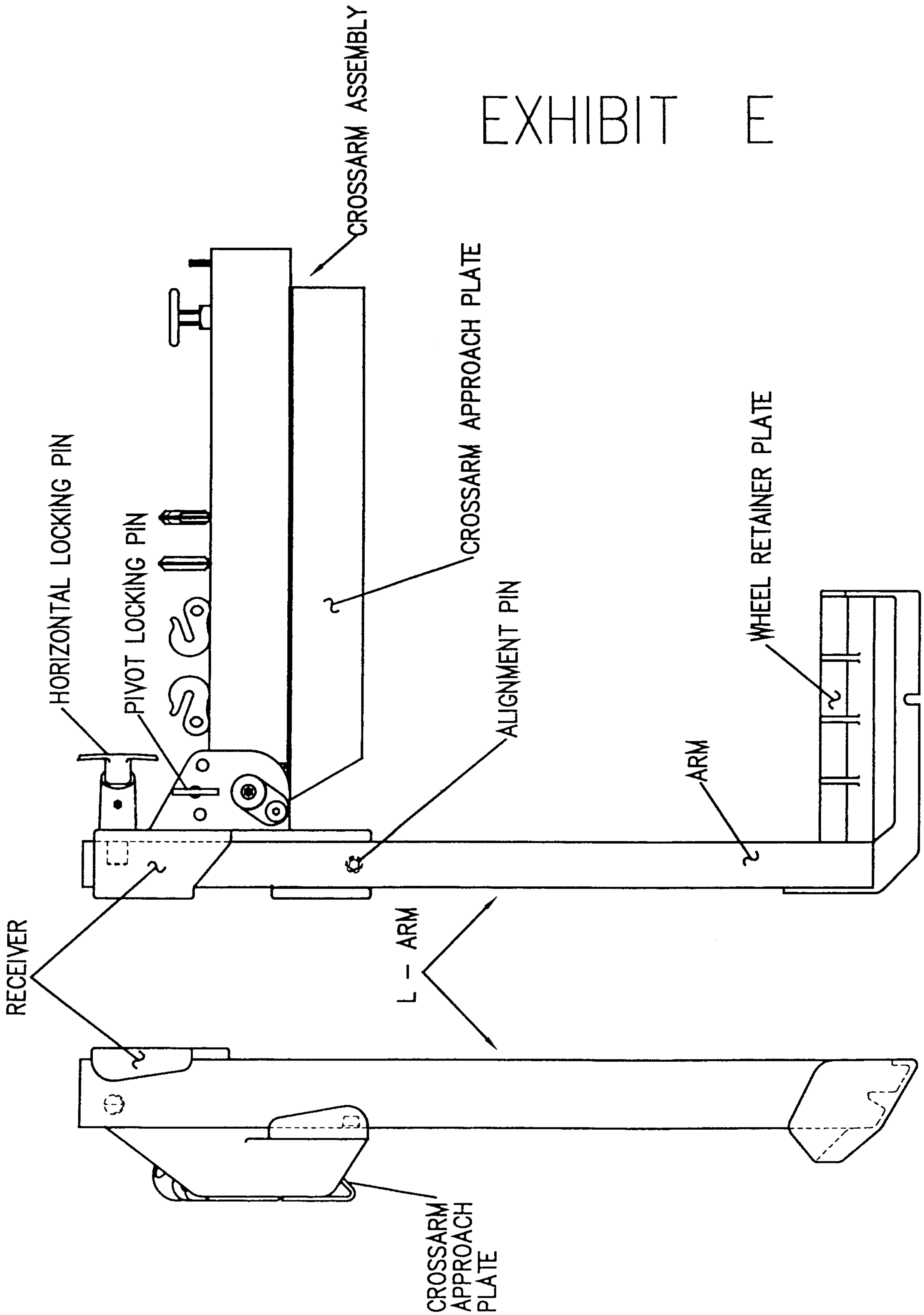
Licensees under the Licensed Claims of the Improvements Patents will be able to make and sell many wheel lift devices covered by the claims being licensed, including Miller Industries' Century design, drawings of which are attached as Exhibits D and E to the Final Judgment. Licensees under the Licensed Claims of the Improvement Patents may also develop and produce their own independent designs, so long as these do not include the three patented features mentioned above that are not being licensed.

BILLING CODE 4410–11–M

EXHIBIT D

CROSSARM ASSEMBLY





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If they want additional assurance that Miller Industries cannot charge their independent designs with infringement of the Unlicensed Claims of the Improvement Patents, licensees may, before marketing a product incorporating their independent design, elect to obtain a determination by an independent expert. Miller Industries will pay for the time that it takes the independent expert to become familiar with the Improvement Patents, and the licensee will pay for the expert's time required, after his/her familiarization, to make the determination. The independent expert's determination that a design is covered by the license under the Improvement Patents will be binding on Miller Industries. The independent expert will be required to keep the licensee's request for a determination, and the design for which the determination is requested, confidential from Miller Industries until the licensee begins selling products based on the design approved by the independent expert.

Section IV of the Final Judgment describes the requirements for these licenses. The licenses are available now and will continue to be available throughout the ten-year life of the Final Judgment. The licenses are uncancelable by Miller Industries during the life of the licensed patents, except on the ground of material breach (for instance, for non-payment of royalties), and in the unanticipated event that the Court declines to enter the proposed Final Judgment. In the event of license cancellation, a licensee will retain the right to sell at any time licensed products manufactured pursuant to the terms of the license.

Please contact Mr./Ms. ___________ at Miller Industries [phone number] if you are interested in obtaining a license.

Competitive Impacts Statement

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

I. Nature and Purpose of the Proceeding

On February 17, 2000, the United States filed a civil antitrust Complaint in this Court charging that Defendant Miller Industries, Inc., violated Section 7 of the Clayton Act, 15 U.S.C. 18, when it acquired ownership of two horizontal competitors, Vulcan Equipment, Inc. (''Vulcan'') and Chevron, Inc. (''Chevron''). Miller Industries acquired Vulcan in September 1996 and acquired Chevron in December 1997.

The Complaint charges that these acquisitions substantially lessened competition in the markets for the design, manufacture, and sale of the two major categories of towing and recovery vehicles generally used to service passenger cars and light trucks in the United States: light-duty towtrucks and light-duty car carriers. Prior to their acquisition, Vulcan and Chevron were proven innovators that had patented and successfully marketed key functional improvements in light-duty towtrucks and light-duty car carriers, and were two of the three most significant competitors faced by Miller Industries [1] in these markets. The acquisitions eliminated head-to-head competition that benefitted consumers, establishing Miller Industries as the dominant firm in the light-duty towtruck and light-duty car carrier markets with the ability unilaterally to raise prices or reduce quality. The acquisitions also increased Miller Industries' ownership of valuable patent rights, and reduced the number of firms with the right to offer towing and recovery vehicles incorporating the important technology covered by those patents. Finally, by reducing the number of competitors, these acquisitions increased the likelihood of anticompetitive coordinated behavior to raise prices or reduce quality.

The request for relief in the Complaint seeks: (1) A judgment that the acquisitions violate Section 7 of the Clayton Act; (2) injunctive or other appropriate relief to restore competition; (3) an award of costs to the Government; and (4) such other relief as the Court may deem just proper.

Shortly before the Complaint was filed, the parties reached a proposed settlement that would substantially restore competition in the United States light-duty towtruck and light-duty car carrier markets, primarily by requiring Miller Industries to grant a non-exclusive license to use certain items of important patented technology to any third party that requests such a license.

Along with the Complaint, the parties filed a Stipulation and proposed Final Judgment setting out the terms of the settlement. Pursuant to the obligations imposed in these documents, beginning within ten days of the time that they are filed with the Court, Miller Industries must offer to any third party a non-exclusive license under as many as five different patents. The proposed Final Judgment specifies the maximum unit royalties payable under these compulsory licenses, and also contains model licenses setting forth other terms. Miller Industries is required to continue to offer these licenses during the ten-year life to the proposed Final Judgment. the licenses are not cancelable by Miller Industries during the life of any licensed patent, unless the licensee commits a material breach as defined in the license (*e.g.,* non-payment of royalties), or the proposed Final Judgment is not entered by the Court. The proposed Final Judgment also requires Miller Industries to notify the Government prior to making future acquisitions of competitive assets valued above a certain dollar amount.

The plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, unless the plaintiff has theretofore withdrawn its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the proposed Final Judgment and punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Illegal Transactions

Defendant Miller Industries, Inc. is a Tennessee corporation. Its wholly owned subsidiary, Miller Industries Towing Equipment, Inc., is a Delaware corporation. Both maintain their principal place of business in Ooltewah, Tennessee. Defendant Chevron, a wholly owned subsidiary of Defendant Miller Industries, Inc., is a Pennsylvania corporation with its principal place of business in Mercer, Pennsylvania.

Miller Industries designs, manufactures, and markets many well known brands of light-duty towtrucks and light-duty car carriers, including those carrying the Century, Vulcan, Chevron, Holmes, Challenger, and Champion brands.

On September 2, 1996, Defendant Miller Industries, Inc., acquired, in exchange for shares of its capital stock having an approximate value of $8.2 million, all of the outstanding capital stock of Vulcan, one of its major competitors in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers, thereby obtaining control of Vulcan's assets, including several patents of great competitive value in the light-duty towtruck and light-duty car carrier markets. The transaction was not subject to the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a, (''HSR Act'') because the dollar value of the transaction was below $15 million.

Miller Industries continues to market products under the Vulcan label, but Vulcan's production facilities have been dismantled and its operations integrated with those of Miller Industries. Title to the patents formerly owned by Vulcan has passed to Defendant Miller Industries Towing Equipment, Inc.

[1] When used herein, the term ''Miller Industries'' refer to any one or more of the defendants.

On December 5, 1997, Defendant Miller Industries, Inc. acquired, for $10 million cash, all of the capital stock of Chevron, another of its major competitors in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers, thereby obtaining control of Chevron's assets, including valuable patents in the light-duty towtruck and light-duty car carrier markets. This transaction also was not subject to the notification requirements of the HSR Act. Although many of Chevron's functions have now been integrated with Miller Industries, Defendant Chevron, Inc. survives as a wholly owned Miller Industries subsidiary and continues as the owner of record of the patents it held before its acquisition.

B. Product and Geographic Markets

Light-duty towtrucks and light-duty car carriers are the principal types of vehicles used by towing companies, garages, and other towing service providers in the United States to recover and transport immobilized or unattended illegally parked passenger cars and light trucks. Manufacturers design, construct, and assemble specialized equipment components, such as booms, winches, and bed-tilting mechanisms, for mounting on standard truck chassis supplied by automotive suppliers such as GM, Ford, Dodge, or Navistar. The installed price of the equipment used to construct a light-duty to towtruck is generally between twelve to fifteen thousand dollars, and between eleven and fourteen thousand dollars for a light-duty car carrier.

Towing and recovery vehicle fleets generally include both light-duty towtrucks and light-duty car carriers because each possesses characteristics that make it more efficient than the other in certain situations. Light-duty towtrucks, which lift a disabled vehicle by its front or back tires to tow it, maneuver better in confined spaces such as parking garages and narrow city streets and are generally more effective in difficult recovery situations. Light-duty car carriers have flat beds that can be titled to permit a disabled vehicle to be winched up onto the truck bed and carried. Light-duty car carriers are preferred for removing vehicles that are particularly susceptible to damage, and are generally more efficient in transporting a disabled vehicle over substantial distances. Also, a light-duty car carrier may be equipped with an ''underlift'' that permits it to tow a second vehicle in addition to the one on its bed, enabling it to remove two disabled vehicles simultaneously.

Removal and recovery of larger disabled vehicles, such as buses, heavy trucks, or construction equipment, requires the service of larger and more powerful vehicles, which also generally have different equipment. These heavier removal and recovery vehicles also cost more to purchase and operate.

Because of the distinct characteristics of light-duty towtrucks and light-duty car carriers, respectively, prospective buyers would not respond to a small but significant increase in the price of either one by substituting the other, or by substituting any other type of towing and recovery vehicle. Light-duty towtrucks and light-duty car carriers each comprises a separate relevant product market and, as there is no significant importation, the United States comprises the relevant geographic market in which the competitive effects of these acquisitions must be assessed.

C. Patent Barriers

Miller Industries owned valuable patented technology prior to its acquisitions of Vulcan and Chevron, and acquired additional important patents when it acquired these two companies. These patent rights relate to: (1) Improved wheel lift design technology, and (2) the ''independent raise and lower'' (''IRL'') technology.

1. The Wheel-Lift Patents

A wheel lift is a device mounted on the rear end of a light-duty towtruck or light-duty car carrier that cradles and supports from beneath the front or back tires of a disabled vehicle in order to apply the lifting power required to raise it into towing position, and to tow it. Nearly a decade ago, Miller Industries acquired the patents rights to a greatly improved wheel lift design called the L-Arm Wheel Lift (U.S. Patent No. 4,836,737) when it acquired Century Wrecking Company. Century had previously granted a paid-up royalty license under this patent to competitor Jerr-Dan Corporation.

Before being acquired by Miller Industries, Vulcan had invented significant improvements to the basic patented L-Arm Wheel Lift, and obtained the ''Vulcan Improvement Patents'' (U.S. Patent Nos. 4,637, 623 and 4,798,509). The key features of these improvements allow the L-Arm device to pivot both horizontally and vertically, providing for easier deployment of the wheel lift. Miller Industries and Vulcan entered into a cross license agreement under which Vulcan obtained a license under Miller Industries' L-Arm patent and Miller Industry obtained a license to use the most significant features of the Vulcan Improvement patents.

There is no established, commercially available alternative to the L-Arm or the Vulcan Improvement Patents. Prior to Miller Industries' acquisition of Vulcan, three competitors (Miller Industries, Jerr-Dan, and Vulcan) had the right to compete with products incorporating the L-Arm wheel lift, and two (Miller Industries and Vulcan) had the right also to compete with products incorporating the most significant features of the Vulcan Improvement Patents. Vulcan reserved for itself the exclusive rights to other features of the improvements, such as the use of a vertical looking pin device and the elongated curved plate.

Chevron, lacking rights to the above-described patents, in an effort to design around them, developed and obtained Patent No. 5,628,609 on the ''Backsaver'' wheel lift. Miller Industries nevertheless sued Chevron and charged that this Backsaver design infringed its L-Arm patent, but Miller Industries acquired Chevron before this issue was adjudicated.

2. The IRL Patent

A light-duty car carrier can be equipped with an ''underlift,'' that is a wheel lift (which can be, but need not be, an L-Arm wheel lift) mounted on its back end that can be used to tow another disabled vehicle once one disabled vehicle has been loaded atop its bed. Prior to its acquisition by Miller Industries, Chevron had developed and patented a greatly improved design for mounting a wheel lift as an underlift on a light-duty car carrier so that it could be raised into towing position, and lowered from it, independently of the tilting truck bed. The right to use this IRL feature (covered by U.S. Patent No. 5,061,147), which significantly facilitates removal and transportation of two vehicles simultaneously by a light-duty car carrier, is a substantial benefit to competitors in the United States light-duty car carrier market. Designing around the patent is difficult, time consuming, and expensive.

D. Harm to Competition as a Consequence of the Merger

Even before it acquired Vulcan and Chevron, Miller Industries was the nation's largest supplier of light-duty towtrucks and the second largest supplier of light-duty car carriers, with 45% and 23% shares of total revenues in those markets, respectively. With these acquisitions, Miller increased its market shares dramatically, so that after the acquisitions it accounted for approximately 73% of total revenues for

U.S. sales of light-duty towtrucks and about 47% of total revenues for U.S. sales of light-duty car carriers, and significantly increased concentration in both markets. As measured by the commonly used Herfindahl-Hirschman Index (HHI),[2] concentration of the light-duty towtruck market, which stood at an HHI of about 2650 before these acquisitions, rose by about 3000 points to an HHI of about 5650 after the acquisitions. Concentration of the light-duty car carrier market, which stood at an HHI of about 2380 before these acquisitions, rose by about 1200 points to an HHI of about 3580 after the acquisitions.

Miller Industries' acquisitions of Vulcan and Chevron also eliminated two significant and effective competitors, both of which had successfully developed and marketed valuable innovations in product design that had provided Miller Industries' products with important competition, and both of which would likely have continued to innovate had they remained independent. The acquisitions also reduced the number of firms able to offer products incorporating the L-Arm wheel lift and the most competitively significant features of the Vulcan Improvement Patents, and substantially increased Miller Industries' ownership of patent rights important for effective competition in the light-duty towtruck and light-duty car carrier markets. Miller Industries now faces competition in these markets from only one large competitor and a number of small firms.

As a result of the acquisitions, Miller Industries became the dominant firm in the light-duty towtruck and light-duty car carrier markets with the ability unilaterally to raise prices or reduce quality. In addition, by reducing the number of competitors, these acquisitions increased the likelihood of anticompetitive coordinated behavior to raise prices or reduce quality.

Successfull entry is difficult and unlikely, in large part because the L-Arm as well as other patented wheel lift designs owned by Miller Industries are critical for effective competition in both of these markets. It would take a new entrant considerable time, expenditure, and effort to develop product designs that did not infringe Miller Industries' patents—if it could be done at all—as well as establish the necessary distribution network and gain customer acceptance of its products.

[2] A definition and explanation of HHI is provided in Appendix A to the Complaint.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects of Miller Industries' acquisitions of Vulcan and Chevron, primarily by requiring compulsory licensing of the above-described patents to any present competitor or entrant at reasonable royalties.

A. Patent Licenses

The proposed Final Judgment directs Miller Industries to offer, until the expiration of the ten-year term of the decree, to any third party requesting it a non-exclusive license for any one or more of: (1) The L-Arm patent, (2) certain specified claims of the Vulcan Improvement Patents, that allow the L-Arm to pivot horizontally and vertically, (3) the Backsaver patent, and (4) the IRL patent.

All licenses will be uncancelable by Miller Industries until the last of the licensed patents has expired, unless the licensee materially breaches (as defined in the license, *e.g.,* for non-payment of royalties) its terms.

The proposed Final Judgment requires Miller Industries to retain the services of an Independent Auditor to collect royalty payments and provide Miller Industries with the Payments along with reports that do not disclose competitively sensitive sales information about a licensee.

Licenses will be for the full subject matter scope of the L-Arm, Backsaver, IRL patents, and for specified claims of the Vulcan Improvement Patents (the ''Licensed Claims''). These Licensed Claims cover the horizontal and vertical pivoting features and are the claims that Vulcan had licensed to Miller Industries before Vulcan was acquired. The claims of the Vulcan Improvement Patents that are not licensed (the ''Unlicensed Claims'') are also specified and described in the Final Judgment. These cover the same features that, prior to its acquisition by Miller Industries, Vulcan had reserved for its own exclusive use.

To clarify the features covered by the Licensed Claims, and to facilitate the production by licensees of wheel lifts embodying these features, the proposed Final Judgment makes clear that the wheel lift design now used in Miller Industries' Century model towtruck is covered by the Licensed Claims and its not precluded from licensees' use by the Unlicensed Claims. The engineering drawings for the Century model wheel lift design are appended to the proposed Final Judgment as Exhibits D and E.

The Proposed Final Judgment also includes another option to facilitate licensing of the Licensed Claims and promote product innovation. Licensees that wish to incorporate the features of the Licensed Claims into their own wheel lift designs—rather than use the Century model design—may seek assurance that their designs fall within the Licensed Claims and do not infringe the Unlicensed Claims. Miller Industries shall retain a Designated Expert, to be selected at the sole discretion of the Government, who will at the request of an existing or prospective licensee, determine whether a licensee's proposed design falls within Licensed Claims. Miller Industries will be bound by a determination by the Designated Expert that a design falls within the Licensed Claims and will not subsequently challenge that design as an infringement of any Unlicensed Claim of the Vulcan Improvement Patents. The proposed Final Judgment provides that Miller Industries will pay, up to a specified maximum amount, the cost for the Designated Expert to review the licensed patents and gain sufficient familiarity to be able to assess specific design proposals offered by licensees. Any licensee that opts for such a determination will bear the additional cost of the Designated Expert's determination regarding its particular design. The proposed Final Judgment imposes requirements designed to assure that information about the proposed design remains confidential with the Designated Expert until products embodying the design are actually sold.

Each licensee and prospective licensee under the Vulcan Improvement patents may use the services of the Designated Expert, but no one is required to use them. Miller Industries is required to grant each request for a license, and a licensee of the Licensed Claims may choose simply to design and market its product. Of course, a licensee choosing this option would not be protected against the risk of a possible claim of infringement and the costs inherent therein.

The proposed Final Judgment is intended to restore competition and promote further innovation in the markets for light-duty towtrucks and light-duty car carriers. This will benefit customers by providing them with lower prices, better quality, and a greater variety of products. The L-Arm, the Licensed Claims of the Vulcan Improvements, the IRL patent, and the Backsaver Patent are important for effective competition in the markets for light-duty towtrucks and car carriers. Licensing these designs will also lower entry barriers and allow many firms to offer products with these important features.

The proposed Final Judgment requires broad licensing to promote the wide dispersion and use of this intellectual property. This licensing, offered to all firms now in the industry and to firms that may enter in the future, will likely enable small firms to become more effective competitors, will likely lessen Miller Industries' market dominance, and will substantially ease entry barriers in the future. Broad licensing and use of the intellectual property, now concentrated in Miller Industries' hands, will promote further innovation and improvements in light-duty towtruck and light-duty car carrier technology. Given the configuration of the markets here, and the fact that these acquisitions were completed some years ago, the broad licensing scheme required by the proposed Final Judgment is the most effective form of relief in this case and offers the prospect of substantially increasing competition in the affected markets.

Since the decree requires Miller to license all comers during the term of the decree for the life of the patents, it was necessary to prevent Miller from exercising market power over the price or terms of such licenses or from delaying, through lengthy negotiations, implementation of the compulsory licensing requirement. Therefore, the decree requires that licenses be at reasonable royalty rates not to exceed certain maximum amounts and contains model licenses that set forth the basic terms. However, the decree allows Miller Industries and a licensee to reach a mutual agreement to lower royalty rates or to vary other license terms.

B. Notification of Future Acquisitions

The proposed Final Judgment also requires Miller Industries to notify the Department of Justice prior to acquiring any assets of or interest in a manufacturer of towing and recovery equipment, or any patent relating to the manufacture of towing and recovery equipment, when the value of the acquisition is over $5 million. This provision supplements the statutory notification provisions of the HSR Act, under which parties generally need not file a notification if the dollar value of their transaction is below $15 million. This decree provision was included because the acquisitions of Vulcan and Chevron lessened competition even though the dollar value of these transactions fell below the HSR Act's notification threshold. It will give the Department of Justice the opportunity to assess, before the acquisitions are consummated, the likely competitive effects of any future Miller Industries' asset acquisitions greater than $5 million in value in the towing and recovery vehicle markets.

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 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 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 for a period of at least sixty 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 in writing within sixty 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 written 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 its entry. The written 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: Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over the 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, a full trial on the merits. The United States is satisfied, however, that the broad licensing required by the decree is the most effective form of relief in this case, where the challenged acquisitions were completed some years ago and given the configuration of these markets. The proposed relief will provide and promote competition in the design, manufacture and sale of towtrucks, and will significantly ease barriers to entry.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

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

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issuers at trial. 15 U.S.C. 16(e).

As the Court of Appeals for the District of Columbia Circuit held, the APPA permits the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.[3] Rather,

[3] 119 Cong. Rec. 24598 (1973); see also United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive

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

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508 at 71,980 9W.d. Mo. 1977). Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public. ''United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660,666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability:

[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' [5]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and the Act does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against the cases.'' Microsoft, 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself'', and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For plaintiff United States of America.

Respectfully submitted,

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John W. Poole,

D.C. Bar No. 56944.

William Stallings,

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Dated: February 23, 2000, Washington, DC.

Certificate of Service

This certifies that on this day I caused a true copy of the foregoing Competitive Impact Statement to be served by first class mail, postage prepaid, upon counsel for defendants, as indicated below:

C. Loring Jetton, Jr., Esquire, Wilmer, Cutler & Pickering, 2445 M Street, Northwest, Washington, DC 20037–1420, Counsel for Defendants Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc.

Dated: February 23, 2000.

Kurt Shaffert.

[FR Doc. 00–5536 Filed 3–10–00; 8:45 am]

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Impact Statement and Response to Comments files pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and the further proceeding would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S.C.C.A.N. 6535, 6538.

[4] United States v. Bechtel, 648 F.2d at 666 (internal citations omitted) (emphasis added); see United v. BNS, Inc., 858 F. 2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F. 2d 558, 565 (2d Cir. 1983).

[5] United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983), quoting Gillette, 406 F. Supp. at 716; United States v. Alcan Aluminium, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of Rechartering

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Recharting of MACOSH.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. app. I), and after consultation with the General Services Administration (GSA), I have determined that rechartering the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act of 1970 (OSH Act), 84 Stat. 1590, 29 U.S.C. 651 *et seq.*). Authority to establish this Committee, which addresses maritime matters, is found in sections 6(b) and 7(b) of the OSH Act; section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and by other general agency authority in Title 5 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Office of Maritime Standards, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue, N.W., Washington, DC 20210; Telephone: (202) 693–2255.

SUPPLEMENTARY INFORMATION:

I. Background

The Committee will advise OSHA on matters relevant to the safety and health of workers in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts using consensual rulemaking techniques, where appropriate, as well as standard rulemaking procedures.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act and OSHA's regulations covering advisory committees (29 CFR Part 1912). The Committee charter will be filed 15 days from the date of this publication.