



Department of Justice

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(202) 514-2007
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**JUSTICE DEPARTMENT IMPLEMENTS NEW NOTICE PROVISIONS OF
THE NATIONAL COOPERATIVE PRODUCTION AMENDMENTS OF 1993**

WASHINGTON, D.C. -- The Department of Justice today released a statement by Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division, regarding amendments that extend the provisions of the National Cooperative Research Act of 1984 to include joint ventures for production and redesignate the NCRA as the National Cooperative Research and Production Act of 1993 (NCRPA).

The NCRA permitted parties participating in joint research and development ventures to limit their possible antitrust damage exposure to actual--as opposed to treble--damages if they filed notifications with the Attorney General and the Federal Trade Commission (FTC).

Under the NCRPA, parties to a joint venture for production also will be entitled to obtain the same protection by filing a notification with the Attorney General and the Commission.

Bingaman's statement, in which the FTC concurs, identifies the offices to which notifications should be delivered, and

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advises parties on how to facilitate publication by the Department of the Federal Register notice the act requires.

The complete text of Bingaman's statement follows:

"On June 10, 1993, President Clinton signed into law H.R. 1313, the National Cooperative Production Amendments of 1993 (Pub. L. No. 103-42). These amendments extend the provisions of the National Cooperative Research Act of 1984 (NCRA), which afford certain antitrust protections to joint research and development ventures, to joint ventures for production as well, and redesignate the NCRA as the National Cooperative Research and Production Act of 1993 (NCRPA). By improving the legal climate surrounding cooperative production activities, the NCRPA is intended to facilitate innovative and efficient joint ventures for production, as did the NCRA with respect to joint research and development ventures.

"The NCRPA clarifies the application of the antitrust rule of reason to research, development, and production joint ventures and provides special attorneys' fee rules in any antitrust case challenging such a joint venture. The act also provides parties to such ventures the opportunity to limit any possible monetary damages that might be sought from them in actions brought under the antitrust laws to actual--as opposed to treble--damages. However, under new Section 7 of the act, the damage limitation provision does not apply to a joint venture's production of a product, process, or service unless (1) the principal facilities

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for such production are located in the United States or its territories, and (2) each person who controls any party to such venture (including such party itself) is a United States person or a foreign person from a country whose law accords antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

"The legislative history of H.R. 1313 indicates that the phrase 'whose law' in Section 7(2) is intended to include 'not only a country's domestic antitrust law but also all international agreements and other binding obligations to which that country and the United States are parties. Accordingly, a country that is a party to an international agreement with the United States that provides national treatment satisfies the requirements of section 7(2). This would include treaties of Friendship, Commerce and Navigation (FCNs); Bilateral Investment Treaties (BITs); Free Trade Agreements; and various OECD instruments.' H.R. Rep. No. 103-94, 103rd Cong., 1st Sess. 20 (1993).

"The rule-of-reason and attorneys' fee provisions of the act automatically apply to all joint ventures covered by the act. However, the act's damage protection depends on the filing of a notification with the federal antitrust enforcement agencies. In order to obtain damage protection, any party to a joint venture covered by the act may, not later than 90 days after entering

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into a written agreement to form the venture, file simultaneously with the Attorney General and the Federal Trade Commission a written notification disclosing the identities of all parties to the venture and the nature and objectives of the venture. In the case of a joint venture one of whose purposes is the production of a product, process, or service, the notification must contain additional information: the nationality of all parties and the identity and nationality of all persons who control any party to the venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

"All notifications filed under the act should make clear the identity of all parties to the venture. The legislative history of the NCRA indicates that the list of parties should include 'the real parties in interest,' see Joint Explanatory Statement of the Committee of Conference on S. 1841, H.R. Rep. No. 98-1044, 98th Cong., 2d Sess. 19 (1984). All notifications should also include a description of the nature and objectives of the venture, including a concise statement of its purposes.

"Parties filing notifications of joint ventures for production should state clearly that a purpose of their venture is production. They should also provide the nationality of all parties and the identity and nationality of all persons controlling such parties. The meaning of 'control' of any party is not defined by the act. The legislative history of the act indicates that 'control' is intended to mean having the power to

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direct the management or policies of a person. This controlling influence may be exercised either directly or indirectly and the means used can vary. For example, it may be exercised through the ownership of voting securities, through a contractual right, or through participation on the board of directors. See H.R. Rep. No. 103-94, supra, at 19; S. Rep. No. 103-51, 103rd Cong., 1st Sess. 11 (1993).

"In the case of a corporation, parties should provide the name, place of incorporation and location of principal executive offices. In the case of an unincorporated firm, comparable identifying information should be provided. See S. Rep. No. 103-51, supra, at 13.

"In general, the manner and extent of the notification is left to the parties; they are to exercise their own discretion in determining the quantity and form of the information required adequately to describe the nature and objectives of their venture, see H.R. Rep. No. 98-1044, supra, at 18-19. Parties should be aware, however, that the damage protection of the act is dependent on the adequacy of their notification. Such additional notifications as are appropriate to extend the act's protection to new or different activities undertaken by a joint venture also may be filed. In order to maintain the protection of the act, a joint venture must file a notification disclosing any change in its membership within 90 days of the change.

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"Written notifications filed pursuant to the act should be delivered to each of the following offices:

Evaluation Office
Bureau of Competition
Room 392
Federal Trade Commission
Washington, D.C. 20580

and

Director of Operations
Antitrust Division
Room 3214
Department of Justice
Washington, D.C. 20530

"The act further provides that the Attorney General or the Commission shall, not later than 30 days after receiving notification of a joint venture, publish in the Federal Register a notice that identifies the parties to the venture and describes in general terms its area of planned activity. Prior to publication, the notice must be made available to the parties. Any person who files a notification may withdraw it before notice is published in the Federal Register, but a notification so withdrawn will not confer the act's protection on the parties to the joint venture involved. The Department of Justice will publish all Federal Register notices under the act. Submission of the following, along with a notification, will facilitate prompt publication of a notice under the act:

"1. A draft Federal Register notice that identifies the parties to the venture and that describes in general terms the area of planned activity of the venture.

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"2. Evidence that the party filing the notification has been authorized by each party to the joint venture to review on its behalf the notice that is to be published in the Federal Register, or, alternatively, the names and addresses of other persons to whom the notice should be made available prior to publication.

"3. An extra copy of the notification materials to the Antitrust Division.

"The Federal Trade Commission concurs in this statement."

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