proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Interagency Notice of Change in Director or Executive Officer is submitted regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The information is used by the FDIC to make an evaluation of the general character of individuals who will be involved in the management of depository institutions, as required by statute.

Dated: November 30, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–31548 Filed 12–3–99; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Westwood Homestead Financial Corporation Employee Stock Ownership Plan Trust, Cincinnati, Ohio; to retain voting shares of Westwood Homestead Financial Corporation, and thereby indirectly acquire Westwood Homestead Savings Bank, both of Cincinnati, Ohio.

Board of Governors of the Federal Reserve System, November 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31459 Filed 12–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., Creve Coeur, Missouri, and First Banks America, Inc., Clayton, Missouri; to acquire 100 percent of the voting shares of Lippo Bank, San Francisco, California.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Pinnacle Bancorp, Central City, Nebraska; to acquire 100 percent of the voting shares of The Burns National Bank of Durango, Durango, Colorado, and thereby indirectly acquire Western Bank, Gallup, New Mexico. **Comments on this application must be received by December 28, 1999.**

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Security Bank Holding Company ESOP and Security Bank Holding Company, both of Coos Bay, Oregon; to acquire 100 percent of the voting shares of Williamette Valley Bank (In Organization), Salem, Oregon.

Board of Governors of the Federal Reserve System, November 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31458 Filed 12–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST) December 13, 1999.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 8, 1999, Board member meeting.
2. Thrift Savings Plan activity report by Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 2, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–31657 Filed 12–2–99; 2:23 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 991 0077]

Exxon Corp., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft compliant that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Richard Liebeskind, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574 or 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 30, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'' or ''FTC'') has issued a complaint (''Complaint'') alleging that the proposed merger of Exxon Corp. (''Exxon'') and Mobil Corp. (''Mobil'') (collectively ''Respondents'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and has entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to have entered and be bound by a proposed consent order (''Proposed Order'') and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (''Order to Hold Separate''). The Proposed Order remedies the likely anticompetitive effects arising from Respondents' merger, as alleged in the Complaint. The Order to Hold Separate preserves competition in the markets for refining and marketing of gasoline, and in other markets, pending divestiture.

II. Description of the Parties and the Transaction

Exxon, which is headquartered in Irving, Texas, is one of the world's largest integrated oil companies. Among its other business, Exxon operates petroleum refineries that make various grades of gasoline and lubricant base stock, among other petroleum products, and sells these products to intermediaries, retailers and consumers. Exxon owns four refineries in the United States; those four refineries can process approximately 1.1 million barrels of crude oil and other feedstocks daily.[1] Exxon owns or leases approximately 2,049 gasoline stations nationally and sells gasoline to distributors or dealers that operate another 6,475 retail outlets throughout the United States. During fiscal year 1998, Exxon had worldwide revenues of approximately $115 billion and net income of approximately $6 billion.

Mobile, which is headquartered in Fairfax, Virginia, is another of the world's largest integrated oil companies. Among its other businesses, Mobile operates petroleum refineries in the United States, which make gasoline, lubricant base stock, and other petroleum products, and sells those products throughout the United States. Mobil operates four refineries in the United States, which can process approximately 800 thousand barrels of crude oil and other feedstocks per day. About 7,400 retail outlets sell Mobil-branded gasoline throughout the United States. During fiscal year 1998, Mobil had worldwide revenues of approximately $52 billion and net income of approximately $2 billion.

On or about December 1, 1998, Exxon and Mobil entered into an agreement to merge the two corporations into a corporation to be known as Exxon Mobil Corp. This merger is one of several consolidations in this industry in recent years, including the combination of British Petroleum Co. plc and Amoco Corp. into BP Amoco plc; the pending combination of BP Amoco plc and Atlantic Richfield Co. (which is the subject of pending investigation by the Commission); the combination of the refining and marketing businesses of Shell Oil Co., Texaco Inc., and Star Enterprises; the combination of the refining and marketing businesses of Marathon Oil Co. and Ashland Oil Co., and the acquisition of the refining and marketing businesses of Unocal Corp. by Tosco Corp.

III. The Investigation and the Complaint

The Complaint alleges that consummation of the merger would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) The marketing of gasoline in the Northeastern and Mid-Atlantic United States (including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York (collectively ''the Northeast''), and the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia (collectively the ''Mid-Atlantic''), and smaller areas contained therein); (2) the marketing of gasoline in five metropolitan areas in the State of Texas; (3) the marketing of gasoline in Arizona; (4) the refining and marketing of ''CARB'' gasoline (specially formulated gasoline required in California) in the State of California; (5) the bidding for and refining of jet fuel for the U.S. Navy on the West Coast; (6) the terminaling of light petroleum products in the Boston, Massachusetts, and Washington, DC, metropolitan areas; (7) the terminaling of light petroleum products in the Norfolk, Virginia, metropolitan area; (8) the transportation of refined light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.,* the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) (''inland Southeast''); (9) the transportation of crude oil from the north slope of the State of Alaska via the Trans Alaska Pipeline System (''TAPS''); (10) the importation, terminaling and marketing of gasoline and diesel fuel in the Territory of Guam; (11) the refining and marketing of paraffinic lubricant base oils in the United States and Canada; and (12) the worldwide manufacture and sale of jet turbine lubricants.

To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest or otherwise surrender control of: (1) All of Mobil's gasoline marketing in the Mid-Atlantic

[1] A ''barrel'' is an oil industry measure equal to 42 gallons. ''MBD'' means thousands of barrels per day.

(New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon's gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil's gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon's option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon's refinery located in Benicia, California (''Exxon Benicia Refinery''), and all of Exxon's gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area, and the ability to exclude a terminal competitor from using Mobil's wharf in Norfolk; (6) either Mobil's interest in the Colonial pipeline or Exxon's interest in the Plantation pipeline; (7) Mobil's interest in TAPS; (8) the terminal and retail operations of Exxon on Guam; (9) a quality of paraffinic lubricant base oil equivalent to the amount of paraffinic lubricant base oil refined in North America that is controlled by Mobil; and (10) Exxon's jet turbine oil business. The terms of the divestitures and other provisions of the Proposed Order are discussed more fully in Section IV below.

The Commission's decision to issue the Complaint and enter into the Agreement Containing Consent Orders was made after an extensive investigation in which the Commission examined competition and the likely effects of the merger in the markets alleged in the Complaint and in several other markets, including the worldwide markets for exploration, development and production of crude oil; markets for crude oil exploration and production in the United States and in parts of the United States; markets for natural gas in the United States; markets for a variety of petrochemical products; and markets for pipeline transportation, terminaling or marketing of gasoline or other fuels in sections of the country other than those alleged in the Complaint. The Commission has not found reason to believe that the merger would result in likely anticompetitive effects in markets other than the markets alleged in the Complaint.

The Commission conducted the investigation leading to the Complaint in coordination with the Attorneys General of the States of Alaska, California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Texas, Vermont, Virginia and Washington. As a result of that joint effort, Respondents have entered into agreements with the States of Alaska, California, Delaware, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia and Washington, and the District of Columbia, settling charges that the merger would violate both state and federal antitrust laws.

The Complaint alleges in 12 counts that the merger would violate the antitrust laws in several different lines of business and sections of the country, each of which is discussed below. The analysis applied in each market generally follows the analysis set forth in the FTC and U.S. Department of Justice *Horizontal Merger Guidelines* (1997) (*''Merger Guidelines''*). The efficiency claims of the Respondents, to the extent they relate to the markets alleged in the Complaint, are small and speculative compared to the magnitude and likelihood of the potential harm, and would not restore the competition lost as a result of the merger even if the efficiencies were achieved.

A. Count I—Marketing of Gasoline in the Northeast and Mid-Atlantic

Exxon and Mobil today are two of the largest marketers of gasoline from Maine to Virginia, and would be the largest marketer of gasoline in this region after the merger, but for the remedy specified in the Proposed Order. The merging companies are direct and significant competitors in at least 39 metropolitan areas in the Northeast and Mid-Atlantic;[2] in each of these areas, and in each of the States in the Northeast and Mid-Atlantic, the merger would result in a market that is at least moderately concentrated and would significantly increase concentration in that market.[3] Nineteen of these 39 metropolitan areas would be highly concentrated as a result of this merger.[4] On average, the four top firms in each metropolitan area would have 73% of sales; the top four firms in the Northeast and Mid-Atlantic as a whole (Exxon Mobil, Motiva,[5] BP Amoco, and Sunoco) would on average have 66% of each of these metropolitan areas.

The Complaint alleges that the marketing of gasoline is a relevant product market, and that metropolitan areas and areas contained within them are relevant geographic markets. The Commission used metropolitan statistical areas (''MSAs'') as a reasonable approximation of geographic markets for gasoline marketing in *Shell Oil Co.*, C–3803 (1998), and *British Petroleum Co.*, C–3868 (1999). As described below, the evidence in this investigation suggests that pricing and consumer search patterns may indicate smaller geographic markets than MSAs as defined by the Census Bureau. To that extent, using MSAs or counties to define geographic markets likely understates the relevant levels of concentration.[6]

The Commission has found reason to believe that the merger would

[2] Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, Portland, ME; Baltimore, MD; Barnstable-Yarmouth, Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Duchess, Nassau-Suffolk, New York, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazelton, State College, York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News, Richmond-Petersburg, VA; Burlington, VT. These areas are defined, variously, as ''Metropolitan Statistical Areas'' (''MSAs''), ''Primary Metropolitan Statistical Areas'' (''PMSAs''), and ''New England County Metropolitan Areas'' (''NECMAs'') by the Census Bureau.

[3] The Commission measures market concentration using the Herfindahl-Hirschman Index (''HHI''), which is calculated as the sum of the squares of the shares of all firms in the market. Merger Guidelines § 1.5. Markets with HHIs between 1000 and 1800 are deemed ''moderately concentrated,'' and markets with HHIs exceeding 1800 are deemed ''highly concentrated.'' Where the HHI resulting from a merger exceeds 1000 and the merger increases the HHI by at least 100, the merger ''potentially raise[s] significant competitive concerns depending on the factors set forth in Sections 2–5 of the Guidelines.'' *Merger Guidelines* § 1.51.

[4] Hartford, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Portland, ME; Barnstable-Yarmouth, MA; Bergen-Passaic, Jersey City, Monmouth-Ocean, Trenton, NJ; Albany-Schenectady-Troy, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Johnstown, State College, PA; Burlington, VT. In each of these MSAs, the increase in concentration exceeds 100 HHI points. ''Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in Sections 2–5 of the *Guidelines* make it unlikely that the merger will create or enhance market power or facilitate its exercise, in light of market concentration and market shares.'' *Merger Guidelines* § 1.51.

[5] Motiva LLC is the refining and marketing joint venture between Shell Oil Co., Texaco Inc. and Saudi Aramco, and sells gasoline under the ''Shell'' and ''Texaco'' names in the Eastern United States. Equilon LLC, a refining and marketing joint venture between Shell and Texaco, sells gasoline under the ''Shell'' and ''Texaco'' names in the Western United States.

[6] Exxon and Mobil compete in at least 134 counties in 39 MSAs in the Northeast and Mid-Atlantic; 61 of those counties are highly concentrated with significant increases in concentration; 56 are moderately concentrated with significant increases in concentration; and in only five counties (if defined as geographic markets) would the merger not result in increases in concentration exceeding *Guidelines* thresholds. *See FTC v. PPG Industries, Inc.*, 798 f.2d 1500, 1505 (D.C. Cir. 1986) (use of data in broader market to calculate market concentration is acceptable where market of concern would be more concentrated).

significantly reduce competition in the moderately and highly concentrated markets that would result from this merger. A general understanding of the channels of trade in gasoline marketing is necessary to understand the Commission's analysis of the competitive issues and of the Proposed Order. Gasoline is sold to the general public through retail gas stations of four types: (1) Company-operated stores, where the branded oil company owns the site and operates it using its own employees; (2) lessee dealer stores, where the branded company owns the site but leases it to a franchised dealer; (3) open dealers, who own their own stations but purchase gasoline at a DTW price from the branded company; and (4) ''jobber'' or distributor stores, which are supplied by a distributor.

Branded oil companies set the retail prices of gasoline at the stores they operate, and sometimes set those prices on a station-by-station basis. Lessee dealers and open dealers generally purchase from the branded company at a delivered price (''dealer tank wagon'' or ''DTW'') that the branded supplier likewise might set on a station-by-station basis. In Northeast and Mid-Atlantic, DTW prices charged by Exxon, Mobil and their major competitors are typically set using ''price zones'' established by the supplier. Price zones, and the prices used within them, take account of the competitive conditions faced by particular stations or groups of stations. There might be 10 or more price zones established by an individual oil company in a metropolitan area.

Distributors or jobbers typically purchase branded gasoline from the branded company at a terminal (paying a terminal ''rack'' price), and deliver the gasoline themselves to jobber-supplied stations at prices or transfer prices set by the distributor.[7]

In much of the Northeast and Mid-Atlantic, Exxon, Mobil and their principal competitors (Motiva, BP Amoco, and Sunoco) use delivered pricing and price zones to set DTW prices based on the level of competition in the immediately surrounding area. These DTW prices generally are unrelated to the cost of hauling fuel from the terminal to the retail store. Gasoline is a homogeneous product, and retail prices are observable (wholesale prices and retail sales volumes are also frequently known to firms in the industry). By monitoring the retail prices (and volumes) of their competitors in the immediate area, branded companies can and do adjust their DTW prices in order to take advantage of higher prices in some neighborhoods, without having to raise price throughout a metropolitan area as a whole.

The use of price zones in the manner described above indicates that these competitors set their prices on the basis of their competitors' prices, rather than on the basis of their own costs. This is an earmark of oligopolistic market behavior. Thus, Exxon, Mobil and their principal competitors have some ability to raise their prices profitably, and have a greater ability to do so when they face fewer and less price-competitive firms in highly local markets. The effects of oligopolistic market structures (where firms base their pricing decisions on their rivals' prices, and recognize that their prices affect their sales volume) have been recognized in this industry. *See Petroleum Products Antitrust Litigation*, 906 F.2d 432, 443, 444 (9th Cir. 1990) (examining California gasoline market from 1968 to 1973), *cert. denied sub nom. Chevron Corp.* v. *Arizona*, 500 U.S. 959 (1991):

> * * * (A)s the number of firms in a market declines, the possibilities for interdependent pricing increase substantially. In determining whether to follow a unilateral price increase by a competitor, a firm in a relatively concentrated market will recognize that, because its pricing and output decisions have an effect on market conditions and will generally be watched by its competitors, there is less likelihood that any shading would go undetected or be ignored. * * * On the other hand, the firm may recognize that the higher price (charged by its competitor) is one that would produce higher profits. It may therefore decide to follow the price increase, knowing that the other firms will likely see things the same way * * *

We recognize that such interdependent pricing may often produce economic consequences that are comparable to those of classic cartels.

Exxon and Mobil are each other's principal competitors in many of these markets, and the elimination of Mobil as an independent competitor is likely to result in higher prices.[8]

Market incumbents also use price zones to target entrants without having to lower price throughout a broader marketing area. With a large and dispersed network of stores, an incumbent can target an entrant by cutting price at a particular store, without cutting prices throughout a metropolitan area. By targeting price-cutting competitors, incumbents can (and have) deterred entrants from making significant investments in gasoline stations (which are specialized, sunk cost facilities) and thus from expanding to a scale at which the entrant could affect price throughout the broader metropolitan area.

While branded distributors historically have moderated the effects of zone pricing through arbitrage, distributors' ability to do so is increasingly limited to the Northeast and Mid-Atlantic by major branded companies' efforts to limit their distribution to direct channels, especially in major metropolitan areas. The merger would reduce interbrand competition through the elimination of one independent supplier; the Commission evaluated the effect of that reduction in interbrand competition in the context of the contemporaneous reduction in intrabrand competition that it found in these markets.

Entry appears likely to constrain noncompetitive behavior in the Northeast and Mid-Atlantic. New gas stations sites are difficult to obtain in the Northeast and Mid-Atlantic, and the evidence in this investigation suggests that entry through the construction of new stations is unlikely to occur in a manner sufficient to constrain price increases by incumbents. As in *British Petroleum Co.,* C–3868, the Commission has not seen substantial evidence that jobbers or open dealers are likely to switch to new entrants in the event of a small price increase. Therefore, the Commission has found it unlikely that a new entrant might enter a market by converting such stations in a manner that would meaningfully constrain the behavior of incumbents.

The merger is likely to reduce competition in Northeastern and Mid-Atlantic gasoline markets and could result in a price increase of 1% or more. A 1% price increase on gasoline sold in the Northeast and Mid-Atlantic (and in the Texas and Arizona markets discussed below) would cost consumers approximately $240 million annually. As described below, the Proposed Order seeks to preserve competition by requiring Respondents to divest all branded stations of Exxon or Mobil throughout the Northeast and Mid-Atlantic: (1) All Exxon branded gas

[7] The Commission has found evidence in its investigations in this industry indicating that some branded companies have experimented with rebates and discounts to jobbers based on the location of particular stations, thereby replicating the effect of price zone in the jobber class of trade.

[8] In finding reason to believe that this merger likely would reduce competition, the Commission has not, in the context of this investigation, concluded that these practices of themselves violate the antitrust laws or constitute unfair methods of competition within the meaning of section 5 of the FTC Act. Rather, evidence of market behavior provides the Commission with reason to believe that these moderately and highly concentrated markets are not fully competitive even prior to the merger, and therefore that the merger likely would reduce competition in these markets whether or not the post-merger was highly concentrated.

stations (company operated, lessee dealer, open dealer and jobber) in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and New York, and (2) all Mobil branded stations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia.

B. Count II—Marketing of Gasoline in Metropolitan Areas in Texas

Exxon and Mobil compete in the marketing of gasoline in several metropolitan areas in Texas, and in five of those metropolitan areas (Austin, Bryan/College Station, Dallas, Houston and San Antonio) the merger would result in a moderately or highly concentrated market. The evidence collected in the investigation indicates that market conditions in these Texas markets resemble those found in the Northeast and Mid-Atlantic, particularly in the use of delivered pricing and zone pricing to coordinate prices and deter entry. The Proposed Order therefore required Respondents to divest and assign Mobil's gasoline marketing business in these areas, as described below.

C. Count III—Marketing of Gasoline in Arizona

Mobile markets motor gasoline in Arizona. Exxon gasoline is marketed in Arizona by Tosco Corporation, which acquired Exxon's Arizona marketing assets and the businesses and the right to sell Exxon branded gasoline in 1994. Gasoline marketing in Arizona is moderately concentrated.

Pursuant to the agreement under which Exxon sold its Arizona assets to Tosco, Exxon retains the option of repurchasing the retail gasoline stores sold to Tosco in the event Tosco were to convert the stations from the ''Exxon'' brand to another brand (including another brand owned by Tosco). The merger creates the risk that competition between the merged company and Tosco (selling Exxon branded gasoline) could be reduced by restricting Tosco's incentive and ability to compete against Mobil by converting the stores to a brand owned by Tosco. The Proposed Order terminates Exxon's option to repurchase these stations.

D. Count IV—Refining and Marketing of CARB Gasoline

Exxon and Mobil both refine motor gasoline for use in California, which requires that motor gasoline used in that State meet particularly stringent pollution specifications mandated by the California Air Resources Board (''CARB,'' hence ''CARB gasoline''). More than 95% of the CARB gasoline sold in California is refined by seven firms (Chevron, Tosco, Equilon, ARCO, Exxon, Mobil and Ultramar Diamond Shamrock), all of which operate refineries in California. Those seven firms also control more than 90% of retail sales of gasoline in California through gas stations under their brands.

The Complaint alleges that the refining and marketing of CARB gasoline is a product market and line of commerce. Motorists of gasoline-fueled automobiles are unlikely to switch to other fuels in response to a small but significant and nontransitory increase in the price of CARB gasoline, and only CARB gasoline may be sold for use in California. As described below, the refining and marketing of gasoline in California is tightly integrated; refiners that lack marketing in California, and marketers that lack refineries on the West Coast, do not effectively constrain the price and output decisions of incumbent refiner-marketers.

California is a section of the country and geographic market for CARB gasoline refining and marketing because the refiner-marketers in California can profitably raise prices by a small but significant and nontransitory amount without losing significant sales to other refiners. The next closest refineries, located in the U.S. Virgin Islands and in Texas and Louisiana, do not supply CARB gasoline to California except during supply disruptions at California refineries, and are unlikely to supply CARB gasoline to California in response to a small but significant and nontransitory increase in price because of the price volatility risks associated with opportunistic shipments and the small number of independent retail outlets that might purchase from an out-of-market firm attempting to take advantage of a price increase by incumbent refiner-marketers.

To a much greater extent than in many other parts of the country, the seven refiner-marketers in California own their stations, and operate through company-operated stations, lessee dealers and open dealers, rather than through distributors.[9] The marketing practices described in the Northeast and Mid-Atlantic, *see* Section III.A above, are employed in California and are reinforced by the refiner-marketers' more complete control of the marketing channel. One effect of the close integration between refining and marketing in California in that refiners outside the West Coast cannot easily find outlets for imported cargoes of CARB gasoline, since nearly all the outlets are controlled by incumbent refiner-marketers. Likewise, the extensive integration of refining and marketing makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since individual independents lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply. The Commission's investigation indicated that vertical integration and the resulting lack of independent import customers, rather than the cost of imports, is the principal barrier to supply from outside the West Coast.

As measured by refinery capacity, the merger will increase the HHI for CARB gasoline refining capacity on the West Coast by 171 points to 1699, at the high end of the ''moderately concentrated'' range of the *Merger Guidelines.* The *Guidelines'* ''numerical divisions [of HHI ranges] suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive issues.'' *Id.* § 1.5.

CARB gasoline is a homogeneous product, and (as in the Northeast and Mid-Atlantic) wholesale and retail prices are publicly available and widely reported to the industry. Integrated refiner-marketers carefully monitor the prices charged by their competitors' retail outlets, and therefore readily can identify firms that deviate from a coordinated or collusive price.

Entry by a refiner or marketer is unlikely to be timely, likely, and sufficient to defeat an anticompetitive price increase because new refining capacity requires substantial sunk costs. Retail entry is likewise difficult and costly, particularly at a scale that would support supply from an out-of-market refinery.

The merger could raise the costs of CARB gasoline substantially, a 1% price increase would cost California consumers more than $100 million annually. To remedy the harm, the Proposed Order requires the Respondents to divest Exxon's Benecia refinery, which refines CARB gasoline, and Exxon's marketing in California, as described more fully below. This divestiture will eliminate the refining overlap in the West Coast market otherwise presented by the merger.

[9] Exxon is unique among these firms in operating primarily through jobbers in California. Exxon also differs from its competitors in that a substantial portion of its refinery output is not sold under the Exxon name, but is sold to non-integrated marketers and through other channels.

E. Count V—Navy Jet Fuel on the West Coast

The U.S. Navy requires a specific formulation of jet fuel that differs from commercial jet fuel and jet fuel used in other military applications. Three refiners, including Exxon and Mobil, have bid to supply the Navy on the West Coast in recent years. The merger will eliminate one of these forms as an independent bidder, raising the likelihood that the incumbents could raise prices by at least a small amount, since other bidders are unlikely to enter the market. The divestiture of Exxon's Benecia refinery, described below, resolves this concern.

F. Count VI—Terminaling of Light Petroleum Products in Metropolitan Boston and Washington

Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a pipeline or marine vessel, and then redelivers these products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. Terminals provide an important link in the distribution chain for gasoline between refineries and retail service stations. There are no substitutes for petroleum terminals for providing terminaling services.

Count VI of the Complaint identifies two metropolitan areas that are relevant sections of the country (*i.e.,* geographic markets) in which to analyze the effects of the merger on terminaling: Metropolitan Boston, Massachusetts and Washington, DC. Exxon and Mobil both operate terminals that supply both of these metropolitan areas with gasoline and other light petroleum products.

The Complaint charges that the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is highly concentrated, and would become significantly more concentrated as a result of the merger. Entry into the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.[10] Paragraphs VII and VIII of the Proposed Order therefore require Respondents to divest Mobil's Boston and Manassas, Virginia, terminals.

[10] The Commission has found reason to believe that terminal mergers would be anticompetitive on prior occasions. *E.g., British Petroleum Co.*, C–3868; *Shell Oil Co.*; *Texaco Inc.*, 104 F.T.C. 241 (1984); *Chevron Corp.*, 104 F.T.C. 597 (1984).

G. Count VII—Terminaling of Gasoline in Norfolk, Virginia

The Complaint charges that terminaling of gasoline and other light petroleum products is highly concentrated in the Norfolk, Virginia area. Exxon currently terminals gasoline in Norfolk, although Mobil does not. Mobil does terminal other light petroleum products there, and another terminaling firm, TransMontaigne, on occasion uses Mobil's wharf to receive gasoline shipments. Since TransMontaigne terminals gasoline in competition with Exxon, the merger would create or enhance Mobil's incentive to deny TransMontaigne access to Mobile's dock or increase the cost of such access, thereby limiting TransMontaigne's ability to compete against Exxon in the terminaling of gasoline. The Proposed Order remedies this effect of the merger.

H. Count VIII—Transportation of Refined Light Petroleum Products to the Inland Southeast

The inland Southeast receives essentially all of its refined light petroleum products (including gasoline, diesel fuel and jet fuel) from either the Colonial pipeline or the Plantation pipeline. These two pipelines largely run parallel to each other from Louisiana to Washington, DC, and directly compete to provide petroleum product transportation services to the inland Southeast. Mobil owns approximately 11 percent of Colonial and has representation on the Colonial Board of Directors. Exxon owns approximately 49 percent of Plantation, is one of Plantation's two shareholders, and has representation on Plantation's Board.

The proposed transaction would put the merged entity in a position to participate in the governance of both pipelines, and to receive confidential competitive information of each pipeline. Through its position as one of Plantation's two shareholders, Respondents could prevent Plantation from taking actions to compete with Colonial. As a result, the merger is likely substantially to lessen competition, including price and service competition, between the two pipelines. The Commission has twice previously recognized that control of overlapping interests in these two pipelines might substantially reduce competition in the market for transportation of light petroleum products to this section of the country. *Shell Oil Co.*, C–3803; *Chevron Corp.*, 104 F.T.C. 597, 601, 603. To prevent competitive harm from the merger, Section IX of the Proposed Order requires Respondents to divest to a third party or parties the Exxon or Mobil pipeline interest.

I. Count IX—Transportation of Alaska North Slope Crude Oil

Exxon and Mobil are two of the seven owners of the Trans Alaska Pipeline System (''TAPS''), which is the only means of transporting crude oil from the Alaska North Slope (''ANS'') to port in Valdez, Alaska. ANS crude is shipped primarily (but not exclusively) to refineries in California and Washington State. A relatively small amount of ANS crude is used within Alaska, and some ANS is sold to refineries in Asia. Exxon owns 20% of TAPS, while Mobil owns 3%. The owners of TAPS are entitled to capacity on the pipeline (which they can resell) in proportion to their ownership interests. Some TAPS owners—Mobil, in particular—have discounted their tariffs in an effort to attract additional shippers.

Exxon and Mobil both have available capacity on TAPS, *i.e.,* capacity not needed to carry their own production. Based on available capacity, the merger would increase the HHI by 268, to 5103. The merger would eliminate Mobil, a significant discounter on TAPS, as an independent firm, and reduce Exxon's incentives to discount TAPS tariffs. Entry is unlikely to defeat this price increase, since a second crude oil pipeline is highly unlikely to be built. In the absence of the Proposed Order, the merger could raise costs to purchasers of ANS crude oil by $3.5 million annually. The Proposed Order eliminates this risk by requiring the Respondents to divest Mobil's interest in TAPS.

J. Count X—Terminaling and Marketing of Gasoline and other Light Petroleum Products in Guam

Gasoline and diesel fuel are supplied into Guam, primarily from Singapore, into terminals on Guam owned by Mobil, Exxon and Shell, who are the principal marketers of gasoline on Guam. Terminal capacity is essential to light petroleum products marketing on Guam. Consumers of gasoline have no alternative but to buy gasoline on Guam. Accordingly, the relevant market to analyze the transaction is the importation, terminaling and marketing of gasoline on Guam. Mobil and Exxon are the two largest marketers on Guam. The market is highly concentrated. The merger will raise the HHI by more than 2800 points to 7400, measured by station count; Exxon Mobil would have 36 of Guam's 43 stations, or 84% of stations.

The market is subject to coordination. There are three companies, and the merger would reduce their number to two. The product is homogeneous, and prices are readily observed. New entry is unlikely to defeat an anticompetitive price increase. An entrant would require sufficient terminal capacity and enough retail outlets to be able to buy gasoline at the tanker-load level, or 350,000 barrels. Terminal capacity of this scale is unavailable in Guam. In 1988 a firm attempted to enter Guam relying on publicly available terminaling; it exited within seven years, and sold its four stations to Mobil.

Section III of the Proposed Order restores competition by requiring Respondents to divest Exxon's terminal and retail assets on Guam.

L. Count XI—Paraffinic Base Oil in the United States and Canada

Paraffinic base oil is a refined petroleum product that forms the foundation of most of the world's finished lubricants. Base oil is mixed with chemical additives and forms finished lubricants, such as motor oil and automatic transmission fluid. Most base oil is used to make products that lubricate engines, but base oil can be mixed with additives to create a large variety of finished products like newspaper ink or hydraulic fluid.[11]

Currently Exxon produces 45.9 MBD of paraffinic base oil in North America. Mobil controls 23.8 MBD of base oil production. A combined Exxon-Mobil would control 35 percent of the base oil produced in North America. As the largest base oil producer in the United States and Canada, Exxon already dominates the base oil market. With the addition of Mobil's sizeable capacity, Exxon would have even greater control over base oil pricing.

Exxon is the price leader in base oil in the United States and Canada. Other base oil producers do not expand production to take advantage of Exxon price increases. Imports do not increase when United States prices increase because transportation costs are too great. Entry into the base oil market requires large capital investments and would be unlikely to have any effect within the next two years.

The Proposed Order remedies the likely effects of the likely merger by requiring Respondents to surrender control of a quantity of base oil production equivalent to Mobil's production in the United States.

M. Count XII—Jet Turbine Oil

Jet turbine oil (also known as ester-based turbine oil) is used to lubricate the internal parts of jet engines used to power aircraft. Exxon and Mobil dominate the sales of jet turbine oil, with approximately equal shares that, combined, account for 75% of the worldwide market (defined broadly), and approach 90% of worldwide sales to commercial airlines.

Entry into the development, production and sale of jet turbine oil is not likely to occur on a timely basis, in light of the time required to develop a jet turbine oil and to obtain the necessary approvals and qualifications from the appropriate military and civilian organizations. The merger would eliminate the direct competition between Exxon and Mobil, and create a virtual monopoly in sales to commercial airlines. The Proposed Order remedies the effect of the merger by requiring Respondents to divest Exxon's jet turbine oil business.

IV. Resolution of the Competitive Concerns

On November 30, 1999, the Commission provisionally entered into the Agreement Containing Consent Orders with Exxon and Mobil in settlement of a Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Order to Hold Separate.

A. General Terms

Each divestiture or other disposition required by the Proposed Order must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission, and must be completed within nine months of executing the Agreement Containing Consent Orders (except that the divestiture of the Benicia Refinery and Exxon marketing in California must be completed within twelve months of executing the Agreement Containing Consent Orders).

Respondents are required to provide the Commission with a report of compliance with the Proposed Order every sixty (60) days until the divestitures are completed, and annually for a period of 20 years.

In the event Respondents fail to complete the required divestitures and other obligations in a timely manner, the Proposed Order authorizes the Commission to appoint a trustee or trustees to negotiate the divestiture of either the divestiture assets or of ''crown jewels,'' alternative asset packages that are broader than the divestiture assets. The crown jewel for the Exxon Northeastern Marketing Assets is Mobil's marketing in the same area; for the Mobil Mid-Atlantic Marketing Assets, Exxon's marketing in the same area;[12] for the Exxon California Refining and Marketing Assets, the Mobil California Refining and Marketing Assets; for the Mobil Texas Marketing Assets, the Exxon Texas Marketing Assets; for Mobil's interest in TAPS, Exxon's interest in TAPS; for the paraffinic base oil to be sold, Mobil's Beaumont Refinery; and for Exxon's Jet Turbine Oil Business, Mobil's Jet Turbine Oil Business. In each case, the crown jewel is a significantly larger asset package than the divestiture assets.

Respondents have also agreed to the entry of an Order to Hold Separate and Maintain Assets, and the Commission has entered that Order. Under the terms of that Order, until the divestitures of the Benicia Refinery, marketing assets, base oil production and jet turbine oil business have been completed, Respondents must maintain Mobil's Northeastern, Mid-Atlantic and Texas fuels marketing businesses, Mobil's California refining and marketing businesses, and Exxon's ester based turbine oil business as separate, competitively viable businesses, and not combine them with the operations of the merged company. Under the terms of the Proposed Order, Respondents must also maintain the assets to be divested in a manner that will preserve their viability, competitiveness and marketability, and must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair the marketability or viability of the assets to be divested. The Proposed Order and the Hold Separate Order specify these obligations in greater detail.

To avoid conflicts between the Proposed Order and the State consent decrees, the Commission has agreed to extend the time for divesting particular assets if all of the following conditions are satisfied: (1) Respondents have fully complied with the Proposed Order; (2) Respondents submit a complete application in support of the divestiture of the assets and businesses to be divested; (3) the Commission has in fact approved a divestiture; but (4)

[11] Other types of base oil, including naphthenic and synthetic base oils, are not substitutes for paraffinic base oil because the users of paraffinic base oil would not switch to other base oils in the event of a small but significant, nontransitory increase in price for paraffinic base oils.

[12] The ''crown jewel'' divestiture would include the exclusive right to use the Exxon or Mobil name (as the case may be) in the pertinent States for at least 20 years. If Respondents fail to divest both the Exxon Northeast Marketing Assets and the Mobil Mid-Atlantic Marketing Assets, the Commission may direct the trustee to divest all of Exxon's marketing from Maine to Virginia.

Respondents have certified to the Commission within ten days after the Commission's approval of a divestiture that a State has not approved that divestiture. If these conditions are satisfied, the Commission will not appoint a trustee or impose penalties for an additional sixty days, in order to allow Respondents either to satisfy the State's concerns or to produce an acquirer acceptable to the Commission and the State.[13] If at the end of that additional period, the State remains unsatisfied, the Commission may appoint a trustee and seek penalties for noncompliance.

B. Gasoline Marketing in the Northeast and Mid-Atlantic

Sections IV and V of the Proposed Order are intended to preserve competition in gasoline marketing in the Northeast and Mid-Atlantic by requiring Respondents to divest to an acquirer approved by the Commission all retail gasoline stations owned by Exxon (or leased by Exxon from another person) in Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, Connecticut, and New York (Proposed Order ¶ IV.A), and to assign to the acquirer of those stations all dealer leases and franchise agreements and all supply contracts with branded jobbers (¶ IV.B). The Proposed Order defines ''Existing Lessee Agreements'' and ''Existing Supply Agreements'' broadly, to include the totality of the relationship between Respondents and the dealers and distributors to be assigned.[14] Respondents will divest and assign similar interests in all Mobil stations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia (¶¶ V.A–B). The assignment of dealer leases and franchise agreements is intended not to effect a material change in the rights and obligations of the parties to those leases and franchise agreements. Exxon and Mobil will divest approximately 676 owned or leased stores and assign supply agreements for 1,064 additional stores in the Northeast and Mid-Atlantic.

To effectuate the divestiture of stations and assignment of franchise agreements, Respondents shall enter into an agreement with the acquirer under which Respondents shall allow the acquirer to use the Exxon or Mobil name, as the case may be, for up to 10 years (with the possibility of further use of the name by mutual agreement thereafter) (¶¶ IV.C, V.C.). Pursuant to that agreement, the acquirer will have the exclusive right to use the Exxon or Mobil name, as the case may be, in connection with the sale of branded gasoline and diesel fuel in these states, and will have the right to accept Exxon or Mobil credit cards and to sell other Exxon or Mobil branded products (e.g., motor oil) at gas stations in these states. The acquirer will have the right to expand the Exxon or Mobil network in these states, as the case may be, by opening new stores or converting stores to the Exxon or Mobil branch (¶¶ IV.C, IV.F, V.C, V.F).

It is the Commission's contemplation that the acquirers will seek to transition the existing Exxon and Mobil networks to their own brands.[15] The Proposed Order requires the respective Exxon and Mobil packages to be divested to a single acquirer (although both packages may be divested to the same acquirer). The divestiture and assignment of large packages of retail gasoline stations should allow the acquirer the ability to efficiently advertise a brand, develop credit card and other marketing programs, persuade distributors to market the acquirer's brand, and otherwise compete in the sale of branded gasoline.

The acquirer will nonetheless be allowed to continue to offer the Exxon or Mobil name, as the case may be, to dealers and jobbers in order to allow the acquirer to preserve the network to the greatest extent feasible and to comply with the requirements of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 et seq. (''PMPA''). Thus, the acquirer will be able to continue to offer Exxon or Mobil branded fuel, as the case may be, to dealers and jobbers that are today selling Exxon or Mobil branded fuel and displaying those brands. Over time, the acquirer in its business judgment may choose to convert the business it acquires to its own brand name, subject to the requirements of law or with the consent of the dealers and jobbers in question.

To effectuate the divestiture and allow the acquirers an opportunity to convert dealers and jobbers to a new brand, the Proposed Order prohibits Respondents from using the pertinent brand in the sale of gasoline for at least five (5) and as much as twelve (12) years from the date of divestiture in the region in question (i.e., Respondents will not be able to sell gasoline under the Exxon name in New York or New England, where they are divesting and assigning Exxon stations, dealers and jobbers). In addition, Respondents will be prohibited from offering to sell branded fuels for resale at divested or assigned sites for a period of seven (7) years (¶¶ IV.G, V.G).

Respondents' obligations to preserve the assets to be divested and assigned include the obligation to maintain the relationships with dealers and jobbers pending divestiture or assignment. Respondents have agreed to meet this obligation by, among other things, establishing a fund of $30 million to be paid to distributors who accept assignment of their supply agreements to the acquirer. The terms of that incentive program are set forth in Appendix A to the Proposed Order.

C. Marketing of Gasoline in Texas

To remedy the reduction in competition in the five metropolitan areas in Texas alleged in Count II of the Complaint, Paragraph VI of the Proposed Order requires Respondents to divest and assign Mobil's marketing businesses in those five metropolitan areas. Mobil's marketing assets in those metropolitan areas include interests of Mobil in partnerships with TETCO Inc. and Southland Corp. The Proposed Order requires that Respondents divest Mobil's interest in its partnership with TETCO to TETCO or to another acquirer approved by the Commission, in either event only in a manner approved by the Commission. The Proposed Order also requires Respondents to assign their Existing Supply Agreements to Assignees approved by the Commission, on the same terms as discussed with regard to Northeastern and Mid-Atlantic marketing, Part IV.B above. Respondents will divest approximately 10 owned or leased Mobil stores and assign supply agreement for Mobil's distributor-supplies stores in Texas.

D. Marketing of Gasoline in Arizona

To remedy the reduction in competition in the marketing of gasoline in Arizona alleged in Count III of the Complaint, Paragraph XI of the Proposed Order requires Exxon to surrender its right to reacquire stores sold to Tosco.

[13] The consent decree between Respondents and the States of Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Vermont and Virginia provides that a State that objects to a proposed acquirer must petition the court before which the decree is pending to rule on the suitability of the proposed acquirer. In the event such a motion is made, Respondents' time to divest under the Proposed Order is tolled until the matter is resolved.

[14] The assigned relationship does not include business format franchises for the sale of ancillary products (*e.g.,* restaurant franchises) other than gasoline and diesel fuel.

[15] For that reason, the agreement entered into between Respondents and the acquirer(s) may provide for an increasing fee for the use of the name after five years. The terms of that agreement will be subject to Commission approval.

E. Refining and Marketing of CARB Gasoline for California and Navy Jet Fuel for the West Coast

To remedy the reduction in competition in the refining and marketing of CARB gasoline and navy jet fuel alleged in Counts IV and V of the Complaint, Paragraph II of the Proposed Order requires Respondents to divest Exxon's Benicia refinery and Exxon's owned gas stations in California, and to assign Exxon's lessee contracts and jobber supply contracts in California to an acquirer approved by the Commission (¶¶ II.A, II.B). The divestiture of Exxon's Benicia refinery, with Exxon's California marketing, will not significantly reduce the amount of gasoline available to non-integrated marketers, since the refinery likely will continue to produce that gasoline and need outlets for its sale. Respondents will divest approximately 85 owned or leased Exxon stores and assign supply agreements for approximately 275 additional stores in California.

As part of its divestiture of the refinery, Respondents shall (at the acquirer's option) enter into a supply contract with the acquirer for a ratable quantity of Alaska North Slope (''ANS'') crude oil up to 100 thousand barrels per day (an amount equivalent to the refinery's historic usage). Exxon is one of the three principal producers of ANS crude oil (the other two are BP Amoco and ARCO).

The divestiture and assignment of the Exxon stations is generally under the same terms as described regarding the Northeast and Mid-atlantic, see Section IV.B above, except that in four PMSAs (San Francisco, Oakland, San Jose and Santa Rosa) Respondents will terminate their dealers' contracts and divest the real estate to the acquirer without authorizing the acquirer to use the Exxon name. Because Mobil does not market branded gasoline in these PMSAs, Exxon can effectuate a ''market withdrawal'' in these MSAs under the PMPA, 15 U.S.C. 2801 *et seq.*

In considering an application to divest and assign Exxon's California refining and marketing businesses to an acquirer, the Commission will consider the acquirer's ability and incentive to invest and compete in the businesses in which Exxon was engaged in California. The Commission will consider, *inter alia,* whether the acquirer has the business experience, technical judgment and available capital to continue to invest in the refinery in order to maintain CARB gasoline production even in the event of changing environmental regulation.

F. Count VI—Terminaling of Light Petroleum Products in Metropolitan Boston and Washington

To remedy the reduction of competition in terminaling of light petroleum products in metropolitan Boston and Washington, Paragraphs VII and VIII require Respondents to divest Mobil's East Boston, Massachusetts, and Manassas, Virginia, light petroleum products terminals, thereby eliminating the effect of the merger in these markets.

G. Count VII—Terminaling of Light Petroleum Products in the Norfolk, Virginia Area

To remedy the reduction of competition in terminaling of light petroleum products in metropolitan Norfolk, Virginia, Paragraph IX requires Respondents to continue to offer TransMontaigne access to Mobil's wharf on the same terms as have been offered historically, for as long as Respondents own the wharf.

H. Count VIII—Transportation of Light Petroleum Products to the Inland Southeast

To remedy the reduction of competition in transportation of light petroleum products to the inland Southeast, the Proposed Order requires Respondents to divest either Exxon's interest in Plantation or Mobil's interest in Colonial, and, pending divestiture, not to exercise their voting rights in connection with ownership or board representation on Colonial, thereby eliminating the effect of this merger in this market.

I. Count IX—Transportation of Crude Oil from the Alaska Slope

To remedy the reduction of competition in transportation of crude oil from the Alaska North Slope to Valdez, Alaska, and intermediate points, Paragraph X of the Proposed Order requires Respondents to divest Mobil's interest in TAPS (including Mobil's interest in terminal storage at Valdez and, at the acquirer's option, Mobil's interest in the Prince William Sound Oil Spill Response Corporation), thereby eliminating the effect of this merger in this market.

J. Count X—Importation, Terminaling and Marketing of Light Petroleum Products in Guam

To remedy the reduction in competition in the importation, terminaling and marketing of light petroleum products in Guam, Paragraph III of the Proposed Order requires Respondents to divest Exxon's terminal and marketing in Guam. Essentially all of Exxon's gasoline marketing in Guam consists of approximately 11 company-operated retail gasoline stores, which can be divested without the right to use the Exxon's brand. The Proposed Order therefore does not provide for the use of the ''Exxon'' brand in Guam. The Proposed Order does provide that the divestiture of the terminal include Exxon's rights in its joint terminaling arrangements with Shell and, at the acquirer's option, Exxon's liquefied propane gas (''LPG'') storage facilities. The divestiture would thereby eliminate the effect of this merger in this market.

K. Count XI—Paraffinic Base Oil

The Proposed Order requires Respondents to relinquish control of an amount of base oil equivalent to the amount controlled by Mobil, in order to remedy the effect of combining Exxon's and Mobil's base oil production. First, Respondents must offer to change several terms in Mobil's contract with Valero, in order to relinquish control over Valero's base oil production. The terms Respondents must offer are confidential, and are contained in a confidential appendix to the order.

Second, Respondents must enter into a long-term supply agreement (or agreements) with not more than three firms to supply those firms with an aggregate of 12 MBD of base oil from the merged firm's three refineries in the Gulf Coast area. The purchaser(s) of this base oil would purchase this base oil for ten years, under a price formula agreed to by the parties (and approved by the Commission) that is not tied to a United States base oil price (*e.g.,* the formula might be tied to a benchmark price for crude oil). The purchaser(s) could use the base oil or resell it. Since the price term will be unrelated to any U.S. base oil price, Respondents would not be able to influence the price of this base oil. This sales agreement would put the purchaser(s) in the same position as competing base oil producers.

By changing Mobil's contract with Valero and entering into a Gulf off-take agreement, Mobil's share of the base oil market will effectively be given to Valero and some new entrant(s) in base oil market or other suitable acquirers. The status quo in the base oil market will be maintained.

If Respondents do not offer the aforementioned terms to Valero within six months and do not enter into base oil supply contracts with suitable entities within nine months, they must divest Mobil's Beaumont, Texas refinery.[16]

[16] A divestiture of Mobil's Beaumont refinery would give the acquirer six percent of North

Continued

L. Count XII—Jet Turbine Oil

To remedy the effects of the merger in the market for jet turbine oil, the Proposed Order requires Respondents to divest Exxon's jet turbine oil business. The Proposed Order defines Exxon's jet turbine oil business, which must be divested, to include, among other things, an exclusive, perpetual license to use identified Exxon patents in the field of jet turbine oil, other intellectual property, research and testing equipment, and Exxon's jet turbine oil manufacturing facility at Bayway, New Jersey.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. The commission, pursuant to a change in its rules of practice, has also issued its complaint in this matter, as well as the Offer to Hold Separate. Comments received during this sixty day comment period will become part of the public record. After sixty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

American base oil production and complete control of a low-cost base oil refinery. The buyer would be free to make any capital investments to expand capacity it chose to make. The Commission does not believe, on the facts of this investigation, that a divestiture of the refinery is strictly necessary to maintain competition in the paraffinic base oil market. The Commission might normally believe that divestiture of a refinery was necessary in order to allow the acquirer to have the ability to expand production and develop new products. However, the current trend toward producing higher grade based oils for use in finished products that need to be replaced less often (i.e., new products that significantly reduce drain intervals), suggests that the demand for base oil is likely to contract, making the need for expansion less significant on the particular facts here.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–31563 Filed 12–3–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR)

Guidelines for Videotaped Documentation of Episodes of Medical Care

AGENCY: General Services Administration.

ACTION: Guidelines for Videotaped Documentation of Episodes of Medical Care.

SUMMARY: The members of the Interagency Committee on Medical Records (ICMR) voted to approve the following guidelines which we recommend for adoption throughout the federal health care system:

Videotapes are not part of the medical record. When an episode of health care is to be documented by videotape (*e.g.,* surgical procedures, medical evaluation, or telemedicine consultation), the patient must provide written consent for the taping (unless the consultation is for the documentation of abuse or neglect). Consent should be done if the person can be identified. The episode of care should be documented in accordance with standard operating procedures (official written and/or electronic records). The videotape should be erased after standard documentation is complete, unless the videotape is required for a specified interval for a specific reason (*e.g.*, documentation of procedures in preparation for board certification, or documentation of abuse/neglect). The provider should indicate in final documentation whether or not the image was erased, or where the videotape will be maintained.

Exceptions to the prohibition against retaining videotapes may be permitted for cases with educational value. Tapes are not filed by any type of personal identifier. If they are, then all Privacy Act regulations should be followed. Any agency which chooses to keep such images on file for educational purposes must develop appropriate policies and standard operating procedures.

These guidelines do not apply to electronic images such as radiographs and digital photographs, for which documentation processes are already in place.

ADDRESSES: Interested persons are invited to submit comments regarding this guideline. Comments should refer to the guideline by name and should be sent to: CDR Steven S. Kerrick; National Naval Medical Center, Department of Opthamology, Bethesda, MD 20889–5000.

Dated: November 16, 1999.

CDR Steven S. Kerrick,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 99–31514 Filed 12–3–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Thomas E. O'Toole, M.P.H., Acting Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Rd., NE. Atlanta, GA 30333, telephone (404) 639–6270, email tto@cdc.gov. Please note that a signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

System and Method for Distributed Data Storage and Update in a Computer Network

The invention discloses a system for distributed storage and maintenance of records in a network of computer nodes. A computer user creates a record at a node of the network; this becomes the control node, or home system. This user specifies a list of recipients containing the nodes that maintain a current copy of the record. The user also specifies a mesh, which includes a subset of the