interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the Consent Order in the agreement.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Draft Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Consent Order. It is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the orders in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–31778 Filed 12–26–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 011 0141]

Valero Energy Corporation, 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 complaint 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 18, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments filed in electronic form should be directed to: *consent agreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Peter Richman, FTC, Bureau of Competition, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2563.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat, 721, 15 U.S.C. 46(f), and Section 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 thirty (30) 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 December 18, 2001), on the World Wide Web, at *http://www.ftc.gov/os/2001/12/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''condfidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consent agreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(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 Valero Energy Corporation (''Valero'') and Ultramar Diamond Shamrock Corporation Corporation (''Ultramar'') (collectively ''Respondents'') 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, and has entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets (''Proposed Consent Order'') and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (''Hold Separate Order''). The Proposed Order remedies the likely anticompetitive effects arising from Respondent's proposed merger, as alleged in the Complaint. The Hold Separate Order preserve competition pending divestiture.

II. Description of the Parties and the Transaction

Valero, headquartered in San Antonio, Texas, is an independent domestic refining company. Valero is engaged in national refining, transportation, and marketing of petroleum products and related petrochemical products. Valero reported 2000 net income of $611 million on revenues of nearly $15 billion. Valero's revenues are generated almost exclusively in the United States from seven fuel refineries.

Ultramar is an independent North American refining and marketing company also headquartered in San Antonio, Texas. It is primarily engaged in the refining, marketing and transportation of petroleum products and petrochemicals. Ultramar reported 2000 net earnings of $444 million on operating of $17.1 billion. Ultramar operates seven refineries in the United States and Canada with a total throughput of 850,000 barrels per day, marketed through a network of over 5,000 branded retail stations.

Pursuant to and agreement an plan of merger dated May 6, 2001, Valero proposed to merge with Ultramar in a transaction valued at approximately $6 billion. Valero intends to acquire 100% of the voting stock of Ultramar. As a result of the merger, Valero will be one of the largest refiners in the United States.

III. The Investigation and the Compliant

The Complaint alleges that the merger of Valero and Ultramar 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, by substantially lessening competition in each of the following markets: (1) the refining and bulk supply of CARB 2 and CARD 3 gasoline for sale in Northern California; and (2) the refining and bulk supply of CARB 2 and CARB 3 gasoline in the State of California.

To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest the Ultramar Golden Eagle refinery located in Avon, California. Along with refinery assets, Respondents will divest bulk gasoline supply contracts and 70 Ultramar Northern California retail service stations. This will assure the new entrant a consistent CARB gasoline demand to assure that the entrant possesses the same incentives to produce CARB gasoline that Ultramar had pre-merger.

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 markets for asphalt refining and pipeline transportation, and terminaling or marketing of gasoline or other fuels in sections of the country other than those alleged in the Complaint. The Commission has concluded that the merger is unlikely to reduce competition significantly in markets other than those alleged in the Complaint.

The Commission conducted the investigation leading to the Complaint in collaboration with the Attorneys General of the States of California and Oregon. As part of this joint effort, Respondents have entered into State Decrees with these States settling charges that the merger would violate both state and federal antitrust laws.

The Complaint alleges that the merger would violate the antitrust laws in four product and geographic markets, each of which is discussed below. The analysis applied in each market generally follows the analysis set forth in the FTC and U.S. Dep't of Justice Horizontal Merger Guidelines (1997) (''Merger Guidelines'').

Count I—Refining Bulk Supply of CARB 2 and CARB 3 Gasoline for Sale in Northern California

Valero and Ultramar compete in the refining and bulk supply of CARB gasoline for sale in Northern California.[1] Refining and bulk supply of CARB 2 and CARB 3 gasoline are relevant products markets. CARB gasoline meets the specifications of the California Air Resources Board (''CARB''). CARB 2 automotive gasoline meets the current Phase 2 specifications in effect since 1996 and is the only gasoline that can be sold to California gasoline consumers. CARB 3 automotive gasoline meets the proposed Phase 3 specifications that are scheduled to go into effect on January 1, 2003. After that date, CARB 3 will be the only gasoline that can be sold to California gasoline consumers. Thus, there are no substitutes for CARB 2 gasoline today and there will be no substitutes for CARB 3 gasoline. In the current investigation and in past decisions, the Commission concluded that the refining and bulk supply of CARB 2 gasoline is a relevant market.[2]

The North Coast (Northern California and Northwest refineries) constitutes a relevant geographic market for the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in Northern California. The North Coast refiners can profitably raise prices in Northern California by a small but significant and nontransitory amount without losing significant sales to other bulk suppliers. Five California refiners (Chevron Texaco (Chevron), Equilon (Shell/Texaco), Phillips (Tosco), Ultramar, and Valero) supply more than 94% of the CARB gasoline consumed in Northern California; Kern Oil (Bakersfield, California) and Tesoro (Anacortes, Washington) supply virtually all the remainder during normal market operations. The next closest refineries, located in the Los Angeles area, are unlikely to supply CARB gasoline to Northern California in response to a small but significant and nontransitory increase in price because of the transportation costs to ship from Southern California.

The North Coast market would be highly concentrated following the proposed merger.[3] Based on current CARB refining capacity, the proposed merger would increase concentration for the refining of CARB 2 gasoline by Northern California and Northwest refineries by more than 750 points to an HHI level above 2,700. Based on forecasted CARB 3 refining capacity, the proposed merger would increase concentration for the refining and bulk supply of CARB 3 gasoline by Northern California and Northwest refineries by more than 1,050 points to an HHI level above 3,050.

Entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects arising from the proposed merger. Building a new refinery is extremely unlikely due to the severe environmental constraints and substantial sunk costs. Imports of CARB gasoline from outside California are unlikely because of substantial import barriers, including (1) geographic isolation from potential outside sources; (2) cost and difficulty of producing CARB gasoline; (3) lack of potential customers because of the extensive integration of refining and marketing that has eliminated most independent gasoline marketers and retailers; and (4) price risk stemming from spot market volatility in Northern California.

The efficiency claims of the Respondents, to the extent they relate to these markets, are not cognizable under the Merger Guidelines, are small compared to the magnitude of the potential harm, and would not restore the competition lost by the merger even if the efficiencies were achieved.

The Complaint charges that the proposed merger would likely substantially reduce competition in refining the bulk supply of CARB gasoline for sale in Northern California, thereby increasing wholesale prices of CARB gasoline by (1) eliminating direct competition between Valero and Ultramar; (2) increasing the likelihood that the combined company will unilaterally raise prices, and (3) increasing the ability and likelihood of coordinated interaction between the combined company and its competitors in Northern California. The proposed merger would create a highly concentrated market in Northern California. The combined company would control between 40 and 45% of CARB gasoline refining capacity in Northern California. Under the Merger Guidelines, these figures trigger a presumption that ''the merger will create or enhance market power or facilities its exercise * * *'' Merger Guidelines § 1.51(c). These anticompetitive effects could result either from unilateral action by the combined firm or from coordinated interaction among the remaining refiners. Valero's post-merger market share supports a presumption under the Merger Guidelines that it would have the ability and incentive to unilaterally reduce supply in Northern California and raise prices. It could do this in a variety of ways, including reducing or eliminating capacity expansions at the Bay Area refineries, running the refineries at below capacity, or exporting gasoline out of the market.

The merger increases the likelihood of coordinate interaction in Northern California by reducing the number of

[1] A bulk supply market consists of firms that have the ability to deliver large quantities of gasoline on a regular and continuing basis, such as pipelines or local refineries.

[2] *Shell Oil Co.*, C–3803 (1998); *Exxon*, C–3907 (2000); (*Chevron*), C–4023 (Proposed Order 2001).

[3] The Commission measures market concentration using the Herfindahl-Hirschman Index (''HHI''), which is calculated as the sum to the squares of the shares of all firms in the market. FTC and Department of Justice Horizontal Merger Guidelines (''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.'' Merger Guidelines § 1.51.

significant refiners in the market from five to four. The market exhibits characteristics that are conducive to coordinated interaction, including (1) homogenous product; (2) small number of market participants; (3) high concentration; (4) recognition by participants that individual output decisions impact the market; (5) difficult entry conditions that insulate the market from outside supply; (6) vertical integration that eliminates potential low-cost competitors and creates a finite and identifiable collusive group; and (7) industry practices and conditions that allow the collusive group to easily detect and punish cheating on the tacit agreement.

The merger could raise the costs of CARB gasoline to Northern California consumers substantially; even a one cent per gallon price increase would cost Northern California consumers more than $60 million annually. To remedy the harm, the Proposed Order requires the Respondents to divest Ultramar's Golden Eagle refinery, which refines CARB gasoline, and 70 Ultramar retail service stations supplied from the Golden Eagle refinery, as described more fully below. This divestiture will eliminate the refining and bulk supply overlap in the North Coast market otherwise presented by this merger.

Count II—Refining and Bulk Supply of CARB Phase 2 and CARB Phase 3 Gasoline for Sale in California

Valero and Ultramar compete in refining and bulk supply of CARB gasoline for sale in California. As explained in Count I, only CARB gasoline can be sold legally in California. Refining and bulk supply of CARB 2 and CARB 3 gasoline are relevant product markets.

The West Coast constitutes a relevant antitrust geographic market for refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in California. The West Coast refiners can profitably raise prices by a small but significant and nontransitory amount without losing significant sales to other refiners. Seven California refiners (BP (Arco), Chevron Texaco (Chevron), Equilon (Shell/Texaco), ExxonMobil, Phillips (Tosco), Ultramar, and Valero) supply more than 97% of the CARB gasoline consumed in California; Kern Oil (Bakersfield, California) and Tesoro (Anacortes, Washington) supply virtually all the remainder during normal market operations.

The seven refiner-marketers also account for more than 95% if retail gasoline sales in California through their branded retail stations. One effect of the close integration between refining and marketing in California is 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, marketing and bulk storage makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since the few remaining independent marketers lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply.

Other than the California refineries and one Washington refinery, no other refineries regularly produce CARB gasoline in significant quantities. The next closest refineries, located in the U.S. Virgin Islands, Texas and Louisiana, do not supply CARB gasoline to California except during significant price spikes caused by supply disruptions at California refineries. These refineries are unlikely to supply CARB gasoline to California except during significant price spikes caused by supply disruptions at California refineries. These refineries are unlikely to supply CARB gasoline to California in response to a small but significant and nontransitory increase in price due to (1) transportation costs from other refineries; (2) limited access to marine and bulk storage facilities; (3) lack of potential customers because of the extensive integration of refining and marketing that has eliminated most independent gasoline marketers and retailers; and (4) price risk stemming from spot market volatility in California.

The West Coast market for the refining and bulk supply of CARB 2 gasoline would be at the upper end of the moderately concentrated range following the proposed merger. Based on current refining capacity, the proposed merger would increase concentration for the refining of CARB 2 gasoline by California and Washington refineries by more than 325 points to an HHI level above 1,750. Based on forecasted CARB 3 refining capacity, the proposed merger would result in a highly concentrated market, increasing concentration for the refining and bulk supply of CARB 3 gasoline by California and Washington refineries by more than 390 points to an HHI level above 1,850.

Entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects arising from the proposed merger. Building a new refinery is unlikely due to the severe environmental constraints and substantial sunk costs. Imports of CARB gasoline from outside California are unlikely because of the substantial import barriers listed above.

The efficiency claims of the Respondents, to the extent they relate to these markets, are not cognizable under the Merger Guidelines, are small compared to the magnitude of the potential harm, and would not restore the competition lost by the merger even if the efficiencies were achieved.

The Complaint charges that the proposed merger would likely reduce competition in refining and bulk supply of CARB gasoline for sale in California, thereby increasing wholesale prices of CARB gasoline by (1) eliminating direct competition between Valero and Ultramar; and (2) increasing the ability and likelihood of coordinated interaction between the combined company and its competitors in California. This market exhibits the same characteristics conducive to coordinated interaction identified in Count I. The proposed merger reduces the number of CARB gasoline refiners in California and increases concentration, thereby increasing the likelihood of coordination.

The merger could raise the costs of CARB gasoline to all California consumers substantially; even a one cent per gallon price increase would cost California consumers more than $150 million annually. To remedy the harm, the Proposed Order requires the Respondents to divest the refining and marketing assets identified above in Count I. This divestiture will eliminate the refining and bulk supply overlap in the West Coast market otherwise presented by this merger.

IV. Resolution of the Competitive Concerns

A. CARB Gasoline Refining and Bulk Supply

The Commission has provisionally entered into the Agreement Containing Consent Orders with Valero and Ultramar in settlement of the Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Hold Separate Order for the divestiture of certain assets described below. The Commission will appoint R. Shermer & Company, Inc. as the hold separate trustee.

To remedy the lessening of competition in refining and bulk supply of CARB 2 and CARB 3 gasoline alleged in Counts I and II of the Complaint, Paragraph II of the Proposed Order requires Respondents to divest Ultramar's Golden Eagle refinery and 70 Ultramar-owned and operated gas stations supplied from the Golden Eagle refinery to an acquirer approved by the Commission. (¶ II.A.) The retail divestiture is ordered to maintain the likelihood that the owner of the Golden Eagle refinery will have incentives to produce CARB gasoline and other petroleum products equivalent to Ultramar's pre-merger incentives. The divestiture of Ultramar's Golden Eagle refinery, with associated Ultramar retail assets, will not significantly reduce the amount of gasoline available to non-integrated marketers, since the refinery will likely continue to produce CARB gasoline and other products and will need outlets for its sale.

Divestiture of the Golden Eagle refinery will effectively restore the competitive status quo ante in both markets. Valero and Ultramar are the only major refiners in California with excess capacity above their direct marketing needs. This excess (or ''swing'') capacity helps to dampen price spikes during shortages resulting from refinery shutdowns. Elimination of this swing production would lead to greater and longer price spikes during refinery outages. The divestiture will eliminate the combined company's ability and incentive to unilaterally reduce production and raise prices. In addition, Valero and Ultramar are the primary suppliers of unbranded wholesale gasoline to independent marketers and, in Northern California, they compete directly for this business. These unbranded marketers provide lower-cost competition to the branded refiner-marketers. The divestiture will insure that the remaining independent marketers have two vigorous competitors for their business, thus helping them to survive and continue to provide a lower-cost alternative for consumers. This competition, in turn, will increase the incentive for Valero and the acquirer to supply more CARB gasoline, thus, increasing swing capacity. The divestiture will complicate the ability of the Northern California refiners to coordinate their production because there will be more refiners than there would be without the divestiture. Valero and the acquirer will likely have different incentives than the integrated refiner-marketers and may be less willing to coordinate output decisions with the refiner-marketers. Although the divestiture will have the most direct effect in Northern California, it will also help competition in California as a whole; since supplies are longer in Northern California, CARB gasoline typically flows north to south. Maintaining production in Northern California will therefore result in more product availability throughout the state.

In considering an application to divest the Ultramar Golden Eagle refinery and associated marketing assets to an acquirer, the Commission will consider the acquirer's ability and incentive to invest and compete in the businesses in which Ultramar 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.

B. Other Terms

Paragraphs III–VII of the Proposed Order detail certain general provisions. Pursuant to Paragraph III, if Respondents fail to comply with the divestiture ordered in Paragraph II, the Commission may appoint a trustee to effectuate the divestiture of the Golden Eagle Refinery and the 70 retail stations, or substitute a package containing Ultramar's two California refineries and all of Ultramar's company-operated retail stations. Paragraph IV requires the Respondents to provide the Commission with a report of compliance with the Proposed Order every sixty days until the divestitures are completed.

Paragraph V provides for notification to the Commission in the event of any changes in the corporate Respondents. Paragraph VI requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Finally, to avoid conflicts between the Proposed Order and the State consent decrees, Paragraph VII provides that if a State fails to approve any of the divestitures contemplated by the Proposed Order, then the period of time required under the Proposed Order for such divestiture shall be extended for sixty days.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) 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 a Hold Separate Order. Comments received during this thirty day comment period will become part of the public record. After thirty (30) 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 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, and 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.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–31779 Filed 12–26–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Times and Dates: 8:30 a.m.–4:45 p.m., January 10, 2002. 8:30 a.m.–12 noon, January 11, 2002.

Place: Charleston Riverview Hotel (formerly Radisson Hotel Charleston) 170 Lockwood Drive, Charleston, South Carolina 29403, telephone (843) 723–3000, fax (843) 723–0276.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE