(30) days for receipt of comments by 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 agreement's proposed order.

This matter involves the advertising and promotion of Tropicana's ''Healthy Heart'' orange juice. According to the FTC complaint, Tropicana represented that (1) drinking three glasses of ''Healthy Heart'' a day for one month will raise good cholesterol by twenty-one percent and improve the ratio of good to bad cholesterol by sixteen percent; (2) drinking twenty ounces of ''Healthy Heart'' a day for one month will increase blood folate levels by forty-five percent and decrease homocysteine levels by eleven percent; and (3) drinking two glasses of orange juice a day for eight weeks will lower blood pressure an average of ten points. The complaint alleges that these claims are unsubstantiated. Tropicana also represented that the above three claims were clinically proven. The complaint alleges that this claim is false. Although Tropicana refers to three studies in its advertising, the studies are limited and do not support the claims made. The proposed consent order contains provisions designed to prevent Tropicana from engaging in similar acts and practices in the future.

Part I of the order requires Tropicana to possess competent and reliable scientific evidence before making the three challenged efficacy claims.

Part II requires Tropicana to possess competent and reliable scientific evidence before making certain representations that any food will affect: any biological marker or health-related endpoint by any specific amount; blood cholesterol levels, blood folate levels, blood homocysteine levels, or blood pressure; or the risk of developing heart disease, stroke, or cancer. Furthermore, Part II provides that a mere statement that a product contains a particular nutrient will not, by itself, be considered to be a health benefit claim covered by Part II.

Part III of the proposed order prohibits Tropicana from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Part IV permits any representation for any product that is permitted in labeling for such product pursuant to regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Parts V through VIII of the order require Tropicana to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of its current and future personnel for three years; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–12042 Filed 6–17–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9305]

Union Oil Company of California; Analysis of Proposed Consent Order 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 complaint 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 July 9, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Union Oil Company of California, Docket No. 9305,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Chong S. Park, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326–2372.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission Rules of Practice, 16 CFR 3.25(f), 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 June 10, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/06/index.htm.* A paper copy can be obtained from the FTC Public

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order (''Agreement'') with Union Oil Company of California (''Union Oil'') to resolve matters charged in an Administrative Complaint issued by the Commission on March 4, 2003 (''Complaint''). Pursuant to the Agreement, Union Oil provisionally has agreed to be bound by a proposed consent order (''Proposed Consent Order'').

The Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by Union Oil that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true. The Proposed Consent Order remedies alleged anticompetitive effects arising from Union Oil's conduct, as alleged in the Complaint.

I. The Commission's Complaint

The Complaint alleges that Respondent Union Oil engaged in a series of acts to subvert state regulatory standard-setting procedures relating to low emissions gasoline. To address California's serious air pollution problems, the California Air Resources Board (''CARB'') initiated proceedings in the late 1980s to set regulations and standards governing the composition of low emissions, reformulated gasoline (''RFG''). The Complaint alleges that Union Oil actively participated in CARB RFG rulemaking proceedings and engaged in a pattern of bad-faith, deceptive conduct, exclusionary in nature, that enabled it to undermine competition and harm consumers. The Complaint states that Union Oil also engaged in deceptive and exclusionary conduct through its participation in two private industry groups—the Auto/Oil Air Quality Improvement Program (''Auto/Oil'') and the Western States Petroleum Association (''WSPA''). According to the Complaint, Union Oil thereby illegally monopolized, attempted to monopolize, and otherwise engaged in unfair methods of competition in violation of Section 5 of the FTC Act in both the technology market for the production and supply of CARB-compliant ''summer-time'' gasoline, and the downstream ''summer-time'' gasoline product market.

Union Oil is a public corporation, organized in, and doing business under, the laws of California. Union Oil is a wholly-owned operating subsidiary of Unocal Corporation, a holding company incorporated in Delaware. Prior to 1997, Union Oil owned and operated refineries in California as a vertically-integrated producer, refiner, and marketer of petroleum products. In 1997, Union Oil sold its west coast refining, marketing, and transportation assets. Currently, Union Oil's primary business activities involve oil and gas exploration and production.

The Complaint alleges that during the CARB ''Phase 2'' RFG rulemaking proceedings in 1990–1994, Union Oil made a series of materially false and misleading statements. According to the allegations in the Complaint, Union Oil willfully and intentionally:

a. Represented to CARB and other participants that Union Oil's emissions research results showing, *inter alia,* the relationships between certain gasoline properties and automobile emissions, were ''nonproprietary,'' in ''the public domain,'' or otherwise were available to CARB, industry members, and the general public—without disclosing that Union Oil intended to assert its proprietary interests (as manifested in pending patent claims) in the results of this research;

b. Represented to CARB that a ''predictive model''—i.e., a mathematical model that predicts whether the emissions that would result from varying certain gasoline properties in a fuel are equivalent to the emissions resulting from a specified and fixed fuel formulation—would be ''cost-effective'' and ''flexible,'' without disclosing that Union Oil's assertion of its proprietary interests would undermine the cost-effectiveness and flexibility of such a model; and

c. Made statements and comments to CARB and other industry participants relating to the cost-effectiveness and flexibility of the regulations that further reinforced the materially false and misleading impression that Union Oil had relinquished or would not enforce any proprietary interests in its emissions research results.

According to the Complaint, Union Oil continued to conceal its intention to obtain a competitive advantage through the enforcement of its proprietary interests relating to RFG even after Union Oil received notice that the pending patent claims were allowed and issued. The Complaint alleges that Union Oil thereby led CARB and two private industry groups—Auto/Oil and WSPA (and their respective industry members)—to believe that Union Oil did not have, or would not enforce, any proprietary interests or intellectual property rights associated with its emissions research results.

The Complaint alleges that Union Oil's conduct caused CARB to adopt Phase 2 ''summer-time'' RFG regulations that substantially overlapped with Union Oil's concealed pending patent claims. But for Union Oil's deception, according to the Complaint, CARB would not have adopted RFG regulations substantially incorporating Union Oil's proprietary interests; the terms on which Union Oil was later able to enforce its proprietary interests would have been substantially different; or both.

The Complaint alleges that but for Union Oil's deceptive conduct, industry participants in Auto/Oil and WSPA would have taken actions including, but not limited to, (a) advocating that CARB adopt regulations that minimized or avoided infringement of Union Oil's patent claims; (b) advocating that CARB negotiate license terms substantially different from those that Union Oil was later able to obtain; and/or (c) incorporating knowledge of Union Oil's pending patent rights in their capital investment and refinery reconfiguration decisions to avoid and/or minimize potential infringement.

According to the Complaint, Union Oil did not announce the existence of its proprietary interests and patent rights relating to RFG until January 1995—shortly before the relevant CARB Phase 2 RFG regulations were to go into effect. The Complaint alleges that, by that time, the refining industry had spent billions of dollars in capital expenditures to modify their refineries to comply with the CARB Phase 2 RFG regulations, in reliance on Union Oil's representations that its research results were in ''the public domain.'' The Complaint states that once CARB and the refiners had become locked into the Phase 2 regulations, Union Oil commenced vigorous enforcement of its patent rights through litigation and licensing, and obtained four additional patents based on the same RFG research results.

Union Oil's misrepresentations, according to the Complaint, have harmed competition and led directly to the acquisition of monopoly power for the technology to produce and supply

California ''summer-time'' reformulated gasoline (mandated for up to eight months of the year, from approximately March through October). The Complaint alleges that Union Oil's conduct also permitted it to undermine competition and harm consumers in the downstream product market for ''summer-time'' reformulated gasoline in California. The Complaint alleges that without recourse, Union Oil's conduct would continue materially to cause or threaten to cause further substantial injury to competition and to consumers.

According to the Complaint, Union Oil's enforcement of its RFG patents has resulted, *inter alia,* in a jury determination of a 5.75 cents per gallon royalty on gasoline produced by major California refiners comprising approximately 90 percent of the current refining capacity of CARB-compliant RFG in the California market. The Complaint alleges that Union Oil also has publicly announced that it will license its RFG patent portfolio, with fees ranging from 1.2 to 3.4 cents per gallon, to ''non-litigating'' refiners.

The Complaint alleges that Unocal's conduct could result in an estimated annual cost of more than $500 million to the refining industry. According to the Complaint, Union Oil's own economic expert has testified under oath that 90 percent of any royalty would be passed through to consumers in the form of higher gasoline prices.

II. Terms of the Proposed Consent Order

The Commission has provisionally entered into an Agreement with Union Oil in settlement of the Complaint. As discussed below, the provisions of the Agreement are conditioned upon the completion of certain steps in Chevron Corporation's merger with Unocal Corporation, as contemplated by the Agreement and Plan of Merger dated as of April 4, 2005, among Unocal Corporation, ChevronTexaco Corporation, and Blue Merger Sub Inc.

In order to remedy the alleged anticompetitive effects, Union Oil has agreed to take several actions. First, it will cease and desist from any and all efforts, and will not undertake any new efforts to: (a) Assert or enforce any of Union Oil's Relevant U.S. Patents against any person; (b) recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents; or (c) collect any fees, royalties or other payments, in cash or in kind, for the practice of any of the Relevant U.S. Patents, including but not limited to fees, royalties, or other payments, in cash or in kind, to be collected pursuant to any License Agreement. These obligations become effective as of the ''Merger Effective Date,'' which is defined as the earlier of (1) the date that the certificate of merger for the Merger is filed with the Secretary of State of Delaware or such later time as specified in such certificate of merger, or (2) the date that Chevron Corporation acquires control of Unocal Corporation, as ''control'' is defined by 16 CFR 801.1(b).

Second, the Proposed Consent Order requires that, within thirty (30) days following the Merger Effective Date, Union Oil shall file, or cause to be filed, with the United States Patent and Trademark Office, the necessary documents pursuant to 35 U.S.C. 253, 37 CFR 1.321, and the Manual of Patent Examining Procedure to disclaim or dedicate to the public the remaining term of the Relevant U.S. Patents. The Proposed Consent Order further requires that Union Oil shall correct as necessary, and shall not withdraw or seek to nullify, any disclaimers or dedications filed pursuant to the Proposed Consent Order.

Third, the Proposed Consent Order requires that, within thirty (30) days following the Merger Effective Date, Union Oil shall move to dismiss, with prejudice, all pending legal actions relating to the alleged infringement of any Relevant U.S. Patents, including but not limited to the following actions pending in the United States District Court for the Central District of California: *Union Oil Company of California* v. *Atlantic Richfield Company, et al.,* Case No. CV–95–2379–CAS and *Union Oil Company of California* v. *Valero Energy Corporation,* Case No. CV–02–00593 SVW.

Paragraph V of the Proposed Consent Order requires Union Oil to distribute a copy of the Proposed Consent Order and the Complaint in this matter to certain interested parties, including (1) any person that Union Oil has contacted regarding possible infringement of any of the Relevant U.S. Patents, (2) any person against which Union Oil is, or was, involved in any legal action regarding possible infringement of any of the Relevant U.S. Patents, (3) any licensee or other Person from which Union Oil has collected any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents, and (4) any person that Union Oil has contacted with regard to the possible collection of any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents.

Paragraph V also requires Union Oil to distribute a copy of the Proposed Consent Order and the Complaint to Union Oil's present and future officers and directors having responsibility for any of its obligations under the Proposed Consent Order, and to employees and agents having managerial responsibility for any of its obligations under the Proposed Consent Order.

Paragraphs VI, VII and VIII of the Proposed Consent Order contain standard reporting, access, and notification provisions designed to allow the Commission to monitor compliance with the order. Paragraph IX provides that the Proposed Consent Order shall terminate twenty (20) years after the date it becomes final.

III. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. 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 Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make final the Agreement's Proposed Consent Order.

By accepting the Proposed Consent 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 Consent Order, and to aid the Commission in its determination of whether it should make final the Proposed Consent Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Statement of the Federal Trade Commission

The Federal Trade Commission has voted unanimously (4–0–1, with Chairman Majoras recused) to accept two linked consent agreements that resolve both the Commission's monopolization case against Unocal Corporation's subsidiary Union Oil Company of California and any antitrust concerns arising from Chevron Corporation's pending acquisition of Unocal. The key element in the settlements, which will become effective when the acquisition is completed, is Chevron's agreement not to enforce certain Union Oil patents that potentially could have increased gasoline prices in California by over

$500 million a year (or almost six cents per gallon). This agreement provides the full relief that the Commission sought in its administrative litigation with Union Oil and also addresses the only possible objection to the Chevron/Unocal acquisition.

On April 4, 2005, Chevron agreed to acquire Unocal in a transaction valued at approximately $18 billion. Chevron and Unocal both have extensive oil and gas operations. However, nearly all of Unocal's operations are in the so-called ''upstream'' segment of the business—namely, the exploration and production of crude oil and natural gas. Unocal has no refineries or gasoline stations in the United States or anywhere else in the world, and has few other ''downstream'' operations. As a result, virtually all of the competitive overlaps between the two firms are in unconcentrated upstream markets, and the merger thus creates no competitive risk. For example, Chevron and Unocal combined have only 2.7 percent of world crude oil production, 0.77 percent of world crude oil reserves, 11.3 percent of U.S. crude oil production, and 11.4 percent of U.S. crude oil reserves.[2] *We want to emphasize that the merger will have no impact whatsoever on concentration at the retail or refinery levels.* It is clear from all we have seen that Chevron's primary motivation is to gain access to Unocal's upstream oil reserves.

The only potential competitive concern with Chevron's proposed acquisition of Unocal involved patents held by Union Oil—the same group of patents involved in the Commission's monopolization case against Union Oil. In order to explain why this is so, it is necessary first to discuss the issues in this monopolization case.

The Commission's administrative complaint against Union Oil charged that the firm had illegally acquired monopoly power in the technology market for producing certain low-emission gasoline mandated by the California Air Resources Board (CARB) for sale and use in California for up to eight months of the year. According to the complaint, Union Oil misrepresented to CARB that certain gasoline research was non-proprietary and in the public domain, while at the same time it pursued a patent that would enable it to charge substantial royalties if the research results were used by CARB in the development of regulations. The complaint further asserted that Union Oil similarly misled its fellow members of private industry groups, which were also participating in the CARB rulemaking process. As a result, if Union Oil were permitted to enforce its patent rights, companies producing this low-emission CARB gasoline would be required to pay royalties to Union Oil, the bulk of which would be passed on to California consumers in the form of higher gasoline prices. The Commission estimated that Union Oil's enforcement of these patents could potentially result in over $500 million of additional consumer costs each year. The complaint sought an order requiring Union Oil to cease and desist from all efforts to assert these patents against those manufacturing, selling, distributing, or otherwise using motor gasoline to be sold in California. In the settlement announced today, Unocal and Chevron have agreed to all of this requested relief.

The consent orders also resolve any possible antitrust objections to the merger. Although Unocal does not engage in any refining or retailing itself, it had claimed the right to collect patent royalties from companies that did so (including Chevron). If Chevron had unconditionally inherited these patents by acquisition, it would have been in a position to obtain sensitive information and to claim royalties from its own horizontal downstream competitors. We have reason to believe that this scenario would likely have an adverse effect on competition and, in any event, would inevitably have required an extensive inquiry and possible litigation.

For example, Union Oil regularly collects detailed reports from licensees about their production of CARB gasoline and other refinery operations. If Chevron had continued these license agreements after inheriting Union Oil's patents, it would have received information not otherwise available to members of the industry. Chevron could have used this information to facilitate coordinated interaction and detect any deviations. Chevron might also have been able use the patents to discourage maverick behavior. Our present knowledge suggests that the likely competitive harm from this potential coordination and discipline would outweigh any likely efficiency gains from the vertical integration of a merged Chevron-Unocal. Now, a further inquiry into that belief is not necessary.

The settlement of these two matters is thus a double victory for California consumers. The Commission's monopolization case against Unocal was complex and, with possible appeals, could have taken years to resolve. The stakes were high, and substantial royalties could have been paid in the meantime—with an immediate impact on consumers. If the Commission lost the case, the dollar costs to consumers ultimately would have been immense. At the same time, a challenge against the acquisition of Unocal by Chevron would itself be a complex case, with high stakes and an uncertain outcome. The settlement provides the full relief sought in the monopolization case and resolves the only competitive issue with the proposed merger. With the settlement, consumers will benefit immediately from the elimination of royalty payments on the Union Oil patents, and potential merger efficiencies could result in additional savings at the pump.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[2] Sources for the underlying data include the Energy Information Administration, U.S. Department of Energy, U.S. Crude Oil, Natural Gas, and Liquids Table 2003 Annual Report, Table B5, *available at http://www.eia.doe.gov,* the FTC Bureau of Economics Staff Study, ''The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement,'' August 2004, Table 5–3, *available at http://www.ftc.gov/os/2004/08/040813/mergersinpetrolberpt.pdf,* and the Oil and Gas Journal.

[FR Doc. 05–12043 Filed 6–17–05; 8:45 am]
BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Area Poverty Research Centers; Office of the Assistant Secretary for Planning and Evaluation (ASPE)—Area Poverty Research Centers

Announcement Type: Grant—Initial.

CFDA Number: 93.239.

Due Date for Letter of Intent: July 11, 2005.

Due Date for Applications: August 4, 2005.

Executive Summary: Funds are provided for Area Poverty Research Center cooperative agreements for qualified institutions to provide a focused agenda expanding our understanding of the causes, consequences and effects of poverty in local geographic areas or specific substantive areas, especially in states or regional areas of high concentrations of poverty. These cooperative agreements are intended to create a research opportunity for scholars and institutions otherwise unlikely to participate extensively in HHS programs to support the Nation's poverty research effort.