

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. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

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 February 5, 2010.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *BW Acquisition, LLC, and Teach and Save, LLC (as a controlling owner of BW Acquisition, LLC), both of Fountain Green, Utah*, to become bank holding companies by acquiring 57.7 percent of the voting shares of Utah Community Bancorp and thereby indirectly acquire Utah Community Bank, both of Sandy, Utah.

Board of Governors of the Federal Reserve System, January 8, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010-448 Filed 1-12-10; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

[File No. 091 0068]

### Agrium Inc. and CF Industries Holding, Inc.; Analysis of the Agreement Containing Consent Orders 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 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 22, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Agrium and CF Industries, File No. 091 0068” to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup>

<sup>1</sup>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.

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink (<https://public.commentworks.com/ftc/agriumcf>) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (<https://public.commentworks.com/ftc/agriumcf>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (<http://www.ftc.gov/>) to read the Notice and the news release describing it.

A comment filed in paper form should include the “Agrium and CF Industries, File No. 091 0068” 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 H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. 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.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtml>). As a matter of discretion, the Commission 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.shtml>).

The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

**FOR FURTHER INFORMATION CONTACT:**

Robert S. Tovsky (202-326-2634),  
Bureau of Competition, 600  
Pennsylvania Avenue, NW, Washington,  
D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission 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 23, 2009), on the World Wide Web, at (<http://www.ftc.gov/os/actions.shtml>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, 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. 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**

### **I. Introduction**

The Federal Trade Commission ("Commission" or "FTC") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Agrium Inc. ("Agrium"), that will completely remedy the anticompetitive effects that would likely result from Agrium's proposed acquisition of CF Industries Holdings, Inc. ("CF"). Under the terms of the Consent Agreement, Agrium is required to, among other things, divest anhydrous ammonia ("AA") terminals in Ritzville, Washington, and Marseilles, Illinois to Terra Industries Inc. ("Terra") or another Commission-approved purchaser. Agrium is also required to divest its rights to market and distribute the AA produced by Rentech at Rentech's East Dubuque, Illinois manufacturing plant back to Rentech.

The proposed Consent Agreement has been placed on the public record for thirty (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 proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

### **II. Description of the Parties and the Proposed Acquisition**

Agrium, a Calgary, Alberta-based company, is a major supplier of agricultural products and services in North and South America. It is also a leading global producer, distributor, and marketer of three primary groups of fertilizers: nitrogen, phosphate, and potash, as well as control release fertilizers and micronutrients. Agrium's operations in North America include four nitrogen fertilizer manufacturing plants and ten fertilizer storage and distribution terminals. Agrium's total net sales in 2008 were approximately \$10 billion.

CF Industries Holdings, Inc. is headquartered in Deerfield, Illinois, and is the holding company for CF Industries, Inc., a major producer and distributor of nitrogen and phosphate fertilizers. CF owns two nitrogen fertilizer manufacturing plants and twenty-two fertilizer storage and distribution terminals in North America. Its customers include cooperatives and independent fertilizer retailers primarily located in the eastern and western cornbelt states. CF's total net sales in 2008 were approximately \$3.9 billion.

On February 25, 2009, Agrium publicly announced that it had submitted a proposal to CF's board of directors to acquire CF for a total consideration of approximately \$3.6 billion. Since then, Agrium has repeatedly extended its tender offer and CF's Board of Directors has consistently rejected these offers. Most recently, Agrium increased its offer to approximately \$4.95 billion. This offer will expire on January 22, 2010. If CF accepts Agrium's tender offer, Agrium will hold 100 percent of the voting securities of CF, and CF will become a wholly owned subsidiary of Agrium.

### **III. The Proposed Complaint**

The proposed complaint alleges that Agrium's acquisition of CF, if consummated, may substantially lessen competition or tend to create a monopoly in the distribution and sale of AA in the Pacific Northwest ("PNW") and two geographic areas in Northern Illinois in violation of 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. Specifically, the acquisition would

eliminate actual, direct, and substantial competition between Agrium and CF in the relevant markets; increase Agrium's ability to exercise market power unilaterally in the relevant markets; and substantially increase the level of concentration in the relevant markets and enhance the probability of coordination in the two markets in Northern Illinois.

AA is one of the three major forms of nitrogen fertilizer with the other two being urea and urea ammonia nitrate ("UAN"). Of the three nitrogen-based fertilizers, AA has the highest nitrogen content at 82 percent, while urea and UAN have 46 percent and 28 to 32 percent nitrogen content, respectively. AA also tends to be the least expensive nitrogen fertilizer on a per pound of nitrogen basis. Thus, AA can often be the most cost effective means to deliver nitrogen to the soil.

When deciding which type of nitrogen fertilizer to use, customers consider soil and topographical characteristics, equipment, and weather. AA is the most cost effective and efficient to use in dry areas where the topsoil is relatively thin. In moist conditions, there is a danger that AA will leach into the water table, thus becoming less effective, and that the heavy machinery required to apply AA would damage the field.

AA is applied as a fertilizer directly by injecting or "knifing" it into the soil. This process requires specialized equipment to transport, store, and apply the fertilizer. Customers who use AA have already made significant investments to acquire the necessary infrastructure and application equipment. Switching away from AA thus would require customers to: (a) abandon the investments they have already made to use AA; and (b) make additional investments to obtain the necessary infrastructure and application equipment to apply other nitrogen products. These investments are costly and switching from AA to one of the other nitrogen-based fertilizers would be time-consuming. Thus, existing customers are not likely to shift away from using AA.

The proposed complaint alleges that the three geographic areas in which to analyze the competitive effects of the transaction are the PNW and two adjacent areas in Northern Illinois. AA is transported from its site of production or from import terminals by barge, pipeline, rail, and truck to fertilizer storage terminals or, in limited situations, directly to fertilizer retailers. From there, AA is delivered by truck to local fertilizer retailers, where it is stored in smaller scale storage tanks.

The fertilizer retailers pump liquid AA from their storage tanks into smaller mobile nurse tanks. These nurse tanks are then towed to a farmer's field and hitched behind a tractor for application. Because fertilizer application seasons are highly compressed, fertilizer retailers expect a timely and reliable source of AA supply to meet customer demand during the peak of application season. As transportation costs can make it difficult for terminal owners to be price competitive and profitable, AA distributors must have adequate terminals or storage facilities within 100 to 140 miles of customer locations.

In the PNW, Agrium and CF are the only major suppliers of AA. Thus, the proposed acquisition would reduce the number of significant AA suppliers in the PNW from 2 to 1. In the two areas in Northern Illinois, Agrium and CF are two of only three significant suppliers of AA. As a result, the proposed acquisition would reduce the number of major AA suppliers in those areas from three to two.

As stated in the proposed complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. A new entrant would need: (1) sufficient AA storage capacity to supply customers; (2) a proper distribution infrastructure; and (3) a secure source of AA for the storage facility. For a new entrant to satisfy each of these steps requires significant sunk costs, onerous regulatory approvals and local permitting, and technical expertise. This does not take into account the cost and time it takes to achieve a significant market impact. Thus, it is unlikely that new entry or fringe expansion from another supplier would be timely, likely, or sufficient enough to thwart anticompetitive harm from the proposed acquisition.

#### **IV. The Terms of the Agreement Containing Consent Orders**

The Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition and preserve competition in each of the relevant markets. Under the terms of the Consent Agreement, Agrium would be required to divest: (1) the CF Ritzville, Washington AA terminal; (2) its Marseilles, Illinois AA terminal; and (3) its rights to market the AA produced by Rentech at Rentech's East Dubuque, Illinois, manufacturing plant. Agrium plans to divest the Ritzville and Marseilles terminals to Terra, but the proposed Decision and Order provides for a divestiture to another purchaser with a source of AA if Terra is unable to accomplish the divestitures. The

Order also provides that Rentech will receive the rights to distribute and market the AA produced in its own manufacturing facility in East Dubuque. Pursuant to a settlement agreement between Agrium and the Canadian Competition Bureau, Terra will acquire a 50 percent interest in Agrium's nitrogen fertilizer production plant in Carseland, Alberta. The Carseland divestiture will give Terra an unencumbered supply of AA for the Ritzville, Washington terminal.

The Order to Hold Separate and Maintain Assets requires Agrium to maintain the assets to be divested and operate the Ritzville Terminal independently until the respective divestitures are completed.

#### **A. Key Provisions of the Decision and Order**

The proposed Decision and Order will allow for effective divestiture of the key assets that today allow CF to provide an independent competitive presence to Agrium in the relevant markets, and therefore will preserve the market structure. Paragraph II of the Decision and Order provides that Agrium divest the Ritzville Terminal and Carseland Facility Interest to Terra within forty-five days of Agrium's acquisition. This paragraph further states that in the event that the Ritzville Terminal divestiture cannot be made to Terra, Agrium will have one-hundred-twenty days from the date the Decision and Order becomes final to divest these assets to a Commission-approved acquirer that has a secure and stable, independent, long-term source of AA.

Paragraph III of the Decision and Order provides that Agrium divest the Marseilles Terminal to Terra within forty-five days of Agrium's acquisition of CF. If this does not occur, the Order requires that Agrium divest the Marseilles Terminal to a Commission-approved acquirer within one-hundred-twenty days from the date the Decision and Order becomes final. Paragraph IV requires Agrium to terminate its rights to distribute AA produced by Rentech pursuant to the Agrium/Rentech Distribution Agreement no later than five days after Agrium acquires CF.

The Decision and Order defines the scope of the assets to include the attributes of an ongoing business, such as necessary real property, tangible personal property, inventories, contracts, records of the business, accounts receivable permits, and all applicable regulatory registrations, permits, and applications. Pursuant to Paragraphs II.G and III.G of the proposed Decision and Order, Agrium also is required to provide necessary

transition services to Terra or another Commission-approved acquirer. The purpose of this provision is to allow for a smooth transition of the terminal operations to the acquirer.

Paragraph V of the proposed Decision and Order requires that the Parties keep private, except where necessary under the agreement, confidential business information related to the divested terminals. Paragraph VI of the proposed Decision and Order provides for appointment of a divestiture trustee. Paragraph VII of the Decision and Order provides mechanisms for the retention of Ritzville Terminal and Marseilles Terminal employees by the Commission-approved acquirer.

Paragraph VIII of the proposed Decision and Order requires that the Parties provide the Commission with "advance written notification" of any intent to acquire assets or interests in terminals that store AA in any area affected by the proposed divestitures. Paragraphs IX-X define reporting obligations. Paragraph XI requires Agrium to provide the Commission access to company information and employees for purposes of determining or securing compliance with the Decision and Order. Paragraph XII states that the Decision and Order shall terminate ten years after the date on which the Order becomes final.

#### **B. Key Provisions of the Order to Hold Separate and Maintain Assets**

The Order to Hold Separate and Maintain Assets ("Hold Separate Order") requires that Agrium maintain the Marseilles Terminal, Ritzville Terminal, and Carseland Facility assets until such time as the assets are divested. The Hold Separate Order requires that Agrium establish a system to maintain confidential information until the divestitures are completed. It also gives the Commission the option to appoint a Monitor to ensure that Agrium complies with all of its obligations and performs all of its responsibilities as required by the Decision and Order and the Hold Separate Order. The Hold Separate Order incorporates the traditional provisions that allow the Monitor broad oversight of the assets, and requires the Monitor to report to the Commission on a regular basis. The Hold Separate Order also requires Agrium to maintain the Ritzville Terminal assets as an independent business pending divestiture. After the acquisition, the Commission can require Agrium to appoint a Manager to run the terminal on an independent basis pending the divestiture of the assets. Finally, the Hold Separate Order allows the Commission to appoint a Hold Separate

Trustee to operate the assets if the assets are not divested by the deadline set by the Commission.

The purpose of this analysis is to invite public comment on the proposed Consent Agreement, in order to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement nor is it intended to modify the terms of the proposed Consent Agreement in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2010-410 Filed 1-12-10; 8:45 am]

**BILLING CODE 6750-01-S**

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0086]

### General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Form 1364, Proposal To Lease Space

**AGENCY:** Acquisition Policy Division, GSA.

**ACTION:** Notice of request for comments regarding a reinstatement of an information collection requirement for an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision to the reinstatement of a previously approved information collection requirement regarding GSA Forms 1364/1364A, Proposal to Lease Space (Not Required by Regulation). This form is used to obtain information about property being offered for lease to house Federal agencies. In the past, GSA also used a 1364A which requested information regarding how tenant improvements were financed by a prospective lessor. The new version of form combines the former 1364 and 1364A, and it also collects other financial aspects contained in an offer for analysis and negotiation into lease contracts (e.g. real estate taxes, adjustments for vacant space, offerors' design and construction fees). A request for public comments was published in the **Federal Register** at 74 FR 52811, on October 14, 2009. No comments were received.

*Public comments are particularly invited on:* Whether this collection of

information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: February 12, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Cromer, Procurement Analyst, Acquisition Policy Division, at telephone (202) 501-1448 or via e-mail to [Beverly.cromer@gsa.gov](mailto:Beverly.cromer@gsa.gov).

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (MVPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0086, GSA Form 1364/1364A, Proposal to Lease Space (Not Required by Regulation), in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

**B. Annual Reporting Burden**

*Respondents:* 5733.

*Responses Per Respondent:* 1.

*Hours Per Response:* 5.0205.

*Total Burden Hours:* 28,783.

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 3090-0086, GSA Form 1364, Proposal to Lease Space, in all correspondence.

Dated: January 7, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010-417 Filed 1-12-10; 8:45 am]

**BILLING CODE 6820-61-P**

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0246]

### General Services Administration Regulation; Submission for OMB Review; Packing List Clause

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Notice of request for reinstatement of and information collection requirement for an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding the packing list clause. A request for public comments was published in the **Federal Register** at 74 FR 52811, October 14, 2009. No comments were received.

Public comments are particularly invited on: whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: February 12, 2010.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0246, Packing List Clause, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Michael O. Jackson, Procurement Analyst, Contract Policy Branch, by telephone (202) 208-4949 or via e-mail at [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

GSAR clause 552.211-77, Packing List, requires a contractor to include a packing list that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder