Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit Board, publishes for comment a proposed amendment to its regulation concerning annual budgets and projections and adds a new section to its regulations concerning approval requirements for various bank transactions.

DATE: Written comments must be received on or before August 24, 1981.

ADDRESS: Submit any comments or suggestions in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, Washington, DC 20578. Copies of all communications received will be available for examination by interested persons in the Office of Director, Public Affairs Division, Office of Adminstration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, DC 20578, (202-755-2181).

SUPPLEMENTARY INFORMATION: The present regulation for annual budgets and projections provides criteria which banks should incorporate in their annual budget and that each bank board shall approve for each bank long-range financial and operating projections. Section 615.5215 is added to address the numerous items the Farm Credit Administration approves on a transactional basis.

For the reasons set out in the preamble, Part 615 of Chapter VI, Title 12 of the *Code of Federal Regulations* is amended as shown.

1. Section 615.5210 is revised to read as follows:

Subpart H—Net Worth Objective

§ 615.5210 Annual budgets and projections.

(a) Each district board shall approve for each bank an operating and financial budget for each fiscal year. Each budget shall contain sufficient background information to indicate the principal assumptions and considerations involved in its formulation, detailed pro forma sheets, income and expenses statements, bank and association programs to achieve net worth objectives, and explanation of significant changes from the previous years.

(b) Each district board shall also approve for each bank long-range financial plans on an annual basis. The long-range financial plan shall incorporate principal assumptions and long-term goals and objectives which are consistent with regulatory and System guidelines. The plan shall contain pro forma balance sheets and income statements and the planning period should be a minimum of 3 years.

2. By adding a new § 615.5215 to read as follows:

§ 615.5215 Approval requirements.

(a) Farm Credit Administration approval is required for bank interest rate charges, banks for cooperatives' cash patronage refunds in excess of 25 per centum of net savings, equity retirements, and Farm Credit banks' dividends.

(b) The approval referenced in paragraph (a) of this section can be obtained for individual transactions or, alternatively, Farm Credit Administration may approve such transactions on an annual basis on review of a bank's interest rate plan, long-range financial plan, and financial plan for the fiscal year.

(c) To receive FCA approval under this alternate procedure, a bank shall be required to:

(1) Have a district board- and FCA-approved interest rate policy in accordance with § 614.4280 if the district board desires to provide bank management flexibility in setting interest rates.

(2) Have an adequate annual financial planning and long-range financial planning process.

(3) Notify the Farm Credit Administration of each change of interest rates established within an approved interest rate plan.

(4) Upon request, provide the Farm Credit Administration annually an updated interest rate plan, a financial plan, and a long-range forecast.

(d) Farm Credit Administration may rescind this alternate approval procedure at any time and require individuals transactional approval for interest rate changes, stock retirements, dividends, and cash patronage refunds.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, 12 U.S.C. 2243, 2246 and 2252)

Donald E. Wilkinson,

Governor Farm Credit Administration.

[FR Doc. 81-18558 Filed 6-22-81; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 811-0130]

The British Petroleum Co. Ltd., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a London, England petroleum corporation and its American subsidiary to timely divest, in accordance with the terms of the order, all stock issued by Amax, Inc., the leading domestic producer of molybdenum. The order would also bar the firms' officers and employees for a period of ten years from simultaneously serving in a similar role in any other molybdenum company. Further, for specified time periods, the firms would be prohibited from acquiring any part of the stock, or more than 50 percent of the assets of any molybdenum company without prior Commission approval; and restricted from entering into any joint venture for the production and sale of molybdenum in the United States.

DATE: Comments must be received on or before August 24, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and

Pennsylvania Ave., N.W., Washington, D.C. 20580

FOR FURTHER INFORMATION CONTACT: FTC/CD, Benjamin S. Sharp, Washington, D.C. 20580. (202) 523–3475.

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 following consent agreement containing a consent order to cease and desist and an explanation thereof, 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. Public comment is invited. 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 § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America Before Federal Trade Commission

In the Matter of The British Petroleum Company Limited, a corporation, and The Standard Oil Company, a corporation. File No. 811–0130.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of a proposed acquisition by The British Petroleum Company Limited ("BP") through its 53%–owned subdsidiary, The Standard Oil Company ("Sohio"), of the Kennecott Corporation ("Kennecott"), and it now appearing that BP and Sohio are willing to enter into an Agreement containing the attached Consent Order ("Order").

It is hereby agreed by and between BP and Sohio, by their duly authorized officers and attorneys, and counsel for the Commission, in accordance with the Commission's Rule governing consent order procedures, that:

1. BP is a corporation organized, existing and doing business under and by virtue of the laws of England, with its office and principal place of business at Britannic House, Moor Lane, London, England. Sohio is a corporation organized, existing and doing business under and by virtue of the laws of Ohio, with its office and principal place of business at Midland Building, Cleveland, Ohio.

2. Solely for purposes of this proceeding, BP and Sohio do not contest the allegations of jurisdiction as set forth in Paragraph 14 of the draft complaint here attached.

3. BP and Sohio waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement.

4. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint attached, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify BP and Sohio, in which event it may take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only, and does not constitute any admission by BP or Sohio that the law has been violated as alleged in the draft of complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to BP or Sohio, (i) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order in disposition of the proceeding, and (ii) make information public in respect thereto. When so entered the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Messrs. Sullivan & Cromwell, counsel for BP, and Messrs. Squire, Sanders & Dempsey, counsel for Sohio, shall constitute service on BP and Sohio, respectively. BP and Sohio waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. BP and Sohio have read the proposed complaint and Order contemplated hereby. BP and Sohio understand that once the Order has been issued, they will be required to file one or more compliance reports setting forth the manner and form in which they intend to comply, are complying or have complied with the Order. BP and Sohio further understand that they may be liable for civil penalties in the amounts provided by law for each violation of the Order after it becomes final.

Order

For purposes of this Order, the following definitions shall apply:

(a) "Respondent" means The British Petroleum Company Limited, a corporation, and its subsidiaries (any company or other entity in which it holds more than 50% of the stock or voting securities or voting rights), successors and assigns.

(b) "Amax" means AMAX Inc., a corporation, and its subsidiaries (any company or other entity in which it holds more than 50% of the stock or voting securities or voting rights), successors and assigns.

(c) "Outstanding stock" means stock or securities which have been issued and have not been recalled or purchased by the issuer, and excludes treasury stock.

(d) "Person" means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association or orgainization, or government or agency or political subdivision thereof, or other business or legal entity, other than respondent.

(e) "Molybdenum" means the metallic element Mo.

(f) "Molybdenum company" means any person which in the most recent calendar year for which information is available produced more than 3% of the contained molybdenum produced in the United States in that year.

(g) "Joint venture" means a joint business undertaking by two or more persons, for the purpose of carrying out a particular objective or objectives, pursuant to an agreement which provides for joint contributions to capital, which may include tangible and intangible assets, and some sharing of profits or production in kind.

(h) "Effective date" means the day on which this Order becomes final.

I

It is order that within thirty (30) months from the effective date of this Order respondent divest, absolutely and in good faith, all right, title or interest in or to any stock issued by Amax which respondent directly or indirectly owns or controls as of the effective date of this Order.

II

It is further ordered that until the divestiture required by Paragraph I of this Order is completed, respondent shall, at any meeting of the holders of common stock of Amax, cause any of the stock issued by Amax which respondent directly or indirectly owns or controls to be voted in respect of any matter in the same respective proportions as the votes cast by the other holders of common stock of Amax.

III

It is further ordered that for ten (10) years commencing September 1, 1981 no person who is an officer, director or employee of any other molybdenum company shall be an officer, director or employee of respondent.

IV

It is further ordered that for ten (10) years following the effective date of this Order respondent shall not, without the prior approval of the Commission, directly or indirectly, (a) acquire (except for investment purposes for the benefit of an employee pension fund) any part of the stock of a molybdenum company, or (b) acquire more than 50% of the assests of a molybdenum company. For purposes of the foregoing clause (b), assets shall be valued in accordance with generally accepted accounting principles.

V

It is further ordered that for two years following the effective date of this Order respondent shall not, without the prior

approval of the Commission, enter into any joint venture or similar arrangement with any other molybdenum company for the production or sale of molybdenum in the United States; and that for an additional three-year period following this two-year period, respondent shall notify the Commission ninety (90) days in advance of entering into any joint venture or similar arrangement with any other molybdenum company for the production or sale of molybdenum in the United States.

VI

It is further ordered that no acquisition, joint venture or other act or transaction to which respondent is a party shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this Order.

VII

It is further ordered that within ninety (90) days from the effective date of this Order and on the anniversary of the effective date of this Order in every year thereafter, respondent shall submit to the Commission in writing a verified report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied therewith.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any change in its corporate structure (such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation) which may affect compliance obligations arising out of this Order.

The British Petroleum Company Limited

File No. 811-01130—Analysis of Proposed Consent Order To Aid Public Comment.

The Federal Trade Commission ("Commission") has accepted an agreement to a proposed consent order from The British Petroleum Company Limited ("BP") and The Standard Oil Company ("Sohio").

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) 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.

The Allegations of the Complaint

The draft complaint ("Complaint") which the Bureau of Competition staff presented to the Commission for its consideration charged respondents BP and Sohio with violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act on the grounds that BP's acquisition, through its 53%-owned subsidiary Sohio, of The Kennecott Corporation ("Kennecott") would eliminate competition in the following respects:

(1) Actual competition would be eliminated between Amax, Inc. ("Amax") and Kennecott in the production and sale of molybdenum disulphide ("molybdenum"), a strategic metal used primarly as an alloy to impart strength, resistance to corrosion, and other desirable properties to steel; and

(2) Potential competition would be eliminated between BP and producers of molybdenum, including Amax and Kennecott, in the production and sale of molybdenum.

Both competitive concerns addressed by the complaint arise from the relationship between BP and Amax, the dominant firm in the molybdenum industry with a 65 percent market share. BP, through its wholly-owned subsidiary, Selection Turst Limited, holds 6.8 percent of the stock of Amax. The Chief Executive of Selection Trust has served on the Amax Board of Directors since 1966 and is a member of its Executive and Finance Committees; a second Amax director retired from Selection Trust only last October. BP also has plans to undertake a joint venture with Amax to develop the latter's major molybdenum deposits at Mt. Tolman in Washington and Mt. Emmons in Colorado. Indeed, at least as regards Mt. Tolman, these plans appear to be advanced to the point of nearly final agreement and would involve the immediate purchase by BP from Amax of substantial quantities of molybdenum for resale.

Commission staff believed BP's acquisition of Kennecott, the third largest firm in the molybdenum industry, simultaneously with its holding of Amax stock, would lessen competition by creating a mechanism for the dissemination of price or other competitively sensitive information between the number one and number three firms in the already highly concentrated molybdenum industry. Staff further feared that following the acquisition BP would refuse to allow Kennecott to compete vigorously, rather than risk jeopardizing its investment in Amax's substantial molybdenum profits.

Staff believed the acquisition might also have an anticompetitive impact, irrespective of the 6.8 percent holding of Amax stock, by eliminating a potential new entrant to the molybdenum industry. Evidence indicates that but for the Kennecott acquisition, BP would enter the highly concentrated molybdenum market through a joint venture with Amax. BP's entry through the joint venture might be viewed as procompetitive since it would introduce a new entrant into the market and reduce the amount of molybdenum production controlled by the number one firm.

The Proposed Order

The proposed settlement primarily addresses the horizontal concerns raised by BP's 6.8 percent interest in Amax.

Under the draft settlement, the Commission would permit the Sohio/Kennecott transaction to occur without a challenge by federal court injunction. In return, BP would sell its 6.8 percent holding of Amax' common stock over a 30-month period and, in the interim, would vote the shares in proportion to the votes cast by the other Amax common shareholders (proposed order, Paragraphs I and II). Second, BP would agree to an order that for 10 years would bar officers, directors, or employees from simultaneously serving BP and any other "molybdenum company" (defined as any company which produces more than 3 percent of the contained molybdenum produced in the United States) (Paragraph III). In furtherance of this proscription, the interlocked Selection Trust/Amax Director, John Du Cane, would give up all positions in BP by September 1, 1981. Third, for ten years BP would not acquire any part of a molybdenum company's stock, or more that 50 percent of a molybdenum company's assets, without prior Commission approval (Paragraph IV). Finally, for two years BP would not, without prior Commission approval, enter into any joint venture with any other molybdenum company with respect to molybdenum production or sale in the United States; and for three years after that initial two-year period, BP would provide the Commission with 90 days' advance notice before entering into such an arrangement (paragraph V).

The Competitive Impact of the Order

The ban on interlocking directors, officers or employees removes a major source for information exchange. BP's agreement to vote its stock proportionately with votes cast by all other common stockholders further reduces BP's ability to influence Amax. Most importantly, eventual divestiture of Amax stock eliminates BP's disincentive to vigorously compete with Amax. The provisions restricting further acquistions of or joint ventures with other molybdenum companies provide assurances that new, unaddressed structural problems will not be created

immediately following the acquisition of Kennecott.

Thus, the consent proposal appears to correct the immediate and actual anticompetitive problems raised by the acquisition. BP must divest approximately $250 million of stock in Amax and essentially must sever all other ties with that firm. The decree, however, does not address the concerns relating to the effect on potential competition. Nevertheless, the Commission believes that the gains resulting from seeking to block the acquistion and encouraging an Amax/BP joint venture are at best speculative, and may also be achieved should Amax find a new joint venture partner. Further, were the Commission to pursue litigation seeking to block the Kennecott acquisition, there would be an additional risk of losing the substantial concessions currently offered by BP and Sohio. After weighing the risks attendant upon litigation against the substantial benefits offered in the proposed consent, the commission has concluded that the better course is to accept the settlement proposal and forego a challenge to the Kennecott acquisition, and the substantial commitment of Commission resources which such a challenge would involve.

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

Carol M. Thomas,

Secretary.

Separate Statement of Commissioner Pertschuk

I have voted to accept this proposed consent agreement for purposes of receiving public comment. However, I wish to indicate serious reservations with this resolution of the acquisition of Kennecott by BP/Sohio. In my opinion, there is reason to believe that BP is a likely entrant into the manufacturing and sale of molybdenum by means other than the acquisition of Kennecott and that such alternative would be significantly procompetitive. The result of this large acquisition, therefore, may be to preclude this procompetitive development. The appropriate remedy, if these propositions are true, is to prohibit the acquisition.

The proposed consent, on the other hand, addresses competitive problems which arise if the acquisition takes place, primarily the creation of close ties between BP/Sohio/Kennecott and the dominant firm in molybdenum, Amax. While I agree that there is reason to believe these problems are significant and should be remedied if the acquisition is allowed, it is clear that the proposed consent order does not adddress the loss of potential competition. I hope that interested parties who express their views on this proposed disposition of the case address this issue.

[FR Doc. 81-18547 Filed 6-22-81; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 180 and 182

[Docket No. 80N-0418]

Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study; Availability of Information

AGENCY: Food and Drug Administration.

ACTION: Notice of availability of information on proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final report of the Caffeine Study Review Panel, which was submitted to the agency on May 15, 1981. The report contains information pertinent to the agency's review of the safety of added caffeine and is being made available in accord with a previous **Federal Register** notice.

DATE: Comments must be received on or before July 29, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Office of Regulatory Affairs (HFC-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1980 (45 FR 69817), FDA proposed to delete caffeine used as an added food ingredient from the list of substances that are generally recognized as safe (GRAS); to declare that no prior sanction exists for the use of caffeine as an added food ingredient; to restrict the use of caffeine as added food ingredient to current uses and levels; and to require that the presence of caffeine as an added ingredient be reflected on the product label in the ingredient delcaration. In the **Federal Register** of March 27, 1981 (46 FR 18996), FDA extended the period during which comments on the proposal will be accepted to July 29, 1981. this availability notice announces that a final report entitled, "An Analysis of FDA's Caffeine Teratogenicity Study (Protocol No. 1150)" is now on file in the Dockets Management Branch under Docket Number 80N-0418.

As part of its Good Laboratory Practice (GLP) inspection program, FDA conducted a GLP inspection of the Bureau of Foods laboratories at Federal Office Building 8, 200 C St. SW., Washington, D.C. As part of the inspection, there was a data audit of a completed study, "Teratogenic Potential of Caffeine in Osborne-Mendel Rats (Administered Via Oral Intubation)" Protocol No. 1150, conducted by Dr. T. F. X. Collins, et al. ("the Collins Study"). This study was, in part, the basis for FDA's regulatory proposal published in the **Federal Register** of October 21, 1980. The data audit raised questions about the validity of the Collins study and the appropriateness of FDA's continued reliance on this study in its ongoing rulemaking concerning the GRAS status of added caffeine. In order to resolve both questions in a fair nonbiased, and expeditious manner, FDA chartered a panel of non-FDA, government scientists to review the matter. Their charter has already been made a part of the administrative record in this proceeding.

The charter explicitly set forth the panel's purpose: "The Panel is to determine whether the agency's data audit inspection findings have compromised the validity of study Protocol No. 1150 'Teratogenic Potential of Caffeine in Osborne-Mendel Rats (Administered Via Oral Intubation)'." On May, 1981, the panel presented its report to the Acting Deputy Commissioner. The panel made six findings and recommendations which will be briefly discussed in this document.

The panel's first finding and recommendation is:

1. There were numerous GLP deviations that reflected generally poor procedures and management in the Bureau of Foods laboratories. However, the Panel concludes that the final study results are real and unaffected by the GLP deviations.

The agency has carefully analyzed the report and accepts the panel's finding on this matter.

The panel's next finding and recommendation is:

2. The study did not determine if caffeine is a direct teratogen or merely produced the observed teratogenicity as a result of maternal toxicity and/or the failure of the pregnant animals to develop normally. Future studies should attept to control the effects of maternal toxicity by using groups whose feed is restricted to duplicate the observed weight gains and failure of the dams to thrive.

This finding deals with the interpretation of the Collins data and