Board of Governors of the Federal Reserve System, September 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21495 Filed 9-12-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 901-0010]

Atlantic Richfield Co., 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 agreement, accepted subject to final Commission approval, would require, among other things, ARCO Chemical Company, a subsidiary of Atlantic Richfield Company and a producer of urethane polyether polyols and propylene glycol, to divest: the propylene glycol assets and businesses of Union Carbide; and the urethane polyether polyol assets and businesses in the United States and Canada which ARCO acquired from Texas Chemical Company in 1987.

DATES: Comments must be received on or before November 13, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S-3302, Washington, DC 20580. (202) 326-2622.

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, 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 section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Atlantic Richfield Company, a corporation; ARCO Chemical Company, a corporation; Union Carbide Corporation, a corporation; and Union Carbide Chemicals and Plastics Company Inc., a corporation.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by ARCO Chemical Company, a partially-owned subsidiary of Altantic Richfield Company, (hereinafter collectively "ARCO"), of certain of the assets and businesses of Union Carbide Chemicals and Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation, (hereinafter collectively "Union Carbide"), which acquisition is more fully described at paragraph I.(A) below, and ARCO and Union Carbide having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge ARCO and Union Carbide with violations of the Clayton Act and Federal Trade Commission Act, and it is now appearing that ARCO and Union Carbide are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between ARCO, by its duly authorized officers, and counsel for the Commission and by and between Union Carbide, by its duly authorized officers, and counsel for the Commission that:

1. Proposed respondent Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 515 South Flower Street, Los Angeles, California 90071.

2. Proposed respondent ARCO Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newton Square, Pennsylvania 19073.

3. Proposed respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut 06187.

4. Proposed respondent Union Carbide Chemicals and Plastics Company Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut 06187.

5. ARCO and Union Carbide admit all the jurisdictional facts set forth in the attached draft of complaint.

6. ARCO and Union Carbide each 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;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

7. 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 contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify ARCO and Union Carbide, in which event the Commission will 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.

8. This agreement is for settlement purposes only and does not constitute an admission by ARCO or Union Carbide that the law has been violated as alleged in the draft of complaint here attached or otherwise.

9. 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 § 2.34 of the Commission's Rules, the Commission may, without further notice to ARCO and Union Carbide, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist 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 ARCO's and to Union Carbide's respective addresses as stated in this agreement shall constitute service. ARCO and Union Carbide each 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. This agreement additionally 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 § 2.34 of the Commission's Rules, the Commission may, thereafter, file with a United States district court the stipulation and proposed Final Judgment that are made a part hereof as Appendix II.[1]

10. ARCO and Union Carbide have each read the draft of complaint and Order contemplated hereby. ARCO and Union Carbide each understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. ARCO and Union Carbide each further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

(A) "Acquisition" means the Asset Purchase Agreement entered into on September 27, 1989, by which ARCO agreed to acquire and Union Carbide agreed to convey certain rights and interests in, and title to, certain of the assets and businesses of Union Carbide.

(B) "ARCO" means Atlantic Richfield Company and ARCO Chemical Company, their predecessors, subsidiaries, divisions, groups and affiliates (including the Properties To Be Divested as hereinafter defined) controlled (the definition of "control," as used in this Order, is the definition currently appearing at 16 CFR 801.1(b)) by Atlantic Richfield Company or ARCO Chemical Company, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(C) "ARCO Group" means individually and collectively ARCO; any joint venture in which ARCO is a participant relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each participant in any joint venture with ARCO relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each customer of the ARCO Group that manufactures, purchases, or uses PO, any PO coproduct, or any derivative of PO; and each supplier of products or services to the ARCO Group relating to the development, manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO.

(D) "Properties To Be Divested" means:

1. All of the propylene glycol Assets and Businesses of Union Carbide that ARCO agreed to acquire or acquired pursuant to the Acquistion (hereinafter "Paragraph I.(D) 1 Properties"); and

2. All of the urethane polyether polyol Assets and Businesses in the United States and Canada, including their territories and possessions, that ARCO acquired from Texaco, together with all improvements or modifications made to those Assets and Businesses by ARCO (hereinafter "Paragraph I.(D)2 Properties").

(E) "Assets and Businesses" include but are not limited to all assets, properties, business and goodwill, tangible and intangible, utilized in the transportation, production, distribution or sale of propylene glycol or urethane polyether polyols, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, trademarks, patents, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and qualify control data;

3. Raw material and finished product inventories and goods in process;

4. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

5. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (to the extent assignable) (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and gurantees, express or implied;

7. All separately maintained, as well as relevant portions of not separately maintained books, records and files; and

8. All items of prepaid expense.

(F) "Commission" means the Federal Trade Commission.

(G) "Dow" means The Dow Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Dow and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(H) "Texaco" means Texaco Inc. and Texaco Chemical Company, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Texaco and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(I) "Texaco Group" means individually and collectively Texaco; any joint venture in which Texaco is a participant relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each participant in any joint venture with Texaco relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each customer of the Texaco Group that manufactures, purchases, or uses PO, any PO coproduct, or any derivative of PO; and each supplier of products or services to the Texaco Group relating to the development, manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO.

(J) "Union Carbide" means Union Carbide Corporation and Union Carbide Chemicals and Plastics Company Inc., their predecessors, subsidiaries, divisions, groups and affiliates controlled by Union Carbide and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(K) "PO" means propylene oxide.

(L) "PO Entrant" means any person other than ARCO or Dow who has obtained the permits from federal, state, provincial, county or municipal regulatory authorities necessary to commence construction, or who has commenced construction, or a commercial PO plant in the United States or Canada, including their territories and possessions.

(M) "Polyols" means polyether polyols, except that as used in definitions (N), (O), (P), (Q), and (R) and in Paragraph III below, Polyols means polyether polyols used as feedstock for Performance Polyols or used in conjunction with Performance Polyols.

(N) "Urethane polyether polyol" means Polyols useful as a reactant with isocyanates or polyisocyanates in producing polyurethanes. Urethane polyether polyol includes Performance Polyols.

[1] Appendix II not published as a part of this document.

(O) "Polymer/Polyols" means any composition comprising a polymer dispersed in, or mixed or otherwise combined with, a Polyol, said composition being useful in producing a polyurethane by reaction with an isocyanate or a polyisocyanate.

(P) "Performance Polyols" means Polymer/Polyols and/or any two-phase compositon containing a Polyol that is an end-use performance substitute for a Polymer/Polyol as a reactant with isocyanates or polyisocyanates in producing polyurethanes.

(Q) "UCC Patent Rights" shall mean any patent or patent application in the United States or Canada, including their territories and possessions, assigned to or under which rights were granted to, ARCO pursuant to the Acquisition, claiming: (1) Performance Polyols; (2) a process for producing Performance Polyols; (3) Polyols; (4) a process for producing Polyols; (5) a process for producing polyurethanes using Polyols or Performance Polyols as starting materials; (6) or polyurethanes so produced and each patent identified in Appendix III [2] of this Order.

(R) "UCC Technology" shall means general and specific information, assigned or under which rights were granted to ARCO pursuant to the Acquisition, relating to (1) Polyols; (2) Performance Polyols; (3) feedstocks for Performance Polyols and for use in conjunctin with Performance Polyols (including the manufacture, use, and constitution of Polyols and further including process design information regarding Polyols); (4) the production of Performance Polyols; (5) the composition of Performance Polyols; (6) the use of Performance Polyols in making polyurethanes; and (7) the economic factors relating to the production of Performance Polyols and polyurethanes made therefrom; all such information being sufficiently detailed for the commercial production, sale, and use of Performance Polyols and the commercial production of polyurethane therefrom. UCC Technology shall include (but shall not be limited to) all technical information, data, specification, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and polyurethane-forming formulations. UCC Technology shall exclude information to the extent disclosure of such information by Union Carbide is prohibited by a contract between Union Carbide and any polyurethane producer, unless said polyurethane producer consents to such disclosure.

(S) "Viability and Competitiveness" of the Propeties to Be Divested means each such property is capable of operating independently at the same output as currently (at competitive prices) and is capable of functioning independently and competitively in the Urethane polyether polyol business or the propylene glycol business.

II

It is order That:

(A) Within twelve (12) months of the date this Order becomes final, ARCO shall divest, absolutely and in good faith, the Properties to Be Divested and shall also divest such additional ancillary Assets and Businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Properties to Be Divested. Provided, however, ARCO may retain free rights to practice under all patents and use all unpatented technology included within the Paragraph I. (D)2 Properties to Be Divested.

(B) ARCO shall divest the Properties to Be Divested pursuant to paragraph I. (D)1 only with the prior consent of Union Carbide, which consent shall not unreasonably be withheld. The acquirer shall have the right to enforce all rights and privileges of ARCO set out in the Acquisition with respect to the Properties to Be Divested pursuant to paragraph I. (D)1. Union Carbide shall provide the acquirer substantially the same services as it agreed to provide ARCO pursuant to the Acquisition for the Properties to Be Divested under paragraph I.(D)1. In addition, Union Carbide shall provide to the acquirer upon the request of the acquirer, such additional services as may be necessary for the continued operation of such Properties to Be Divested at Union Carbide's South Charleston, West Virginia plant that cannot otherwise economically be obtained and that Union Carbide can economically provide. Union Carbide shall provide services to the acquirer for a period that Union Carbide has agreed to provide ARCO similar services pursuant to the Acquisition or is actually providing such services to ARCO at such facility. Union Carbide shall charge the acquirer the lesser of Union Carbide's costs consistent with Union Carbide's current practices or the charge at which ARCO contracted to purchase such services for such Properties to Be Divested.

(C) ARCO shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as ARCO has divested all the Properties to Be Divested or until such other time as the Agreement to Hold Separate provides.

(D) ARCO shall divest the Properties to Be Divested only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. ARCO shall demonstrate the Viability and Competitiveness of the Properties to Be Divested in its application for approval of a proposed divestiture. The purpose of the divestiture of the Properties to Be Divested is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of urethane polyether polyols and propylene glycol, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) ARCO shall take such action as is necessary to maintain the viability, competitiveness and marketability of the Properties to Be Divested and shall not cause or permit the destruction, removal or impairment of the Properties to Be Divested except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered That, at the time of the divestiture of the paragraph I. (D)2 properties required by this Order. ARCO shall include with the paragraph I. (D)2 Properties a paid-up, non-royalty bearing, perpetual, and non-exclusive license (a) under the UCC Patent Rights to make use and sell Polyols and Performance Polyols in the United States and Canada, including their territories and possessions and (b) to use UCC Technology to make, use and sell Polyols and Performance Polyols in the United States and Canada, including their territories and possessions; and for a period of three (3) years following the divestiture required by this Order, ARCO shall provide to the acquirer of the paragraph I. (D)2 Properties, if the acquirer so requests, such additional know-how as may be necessary to manufacture and sell Performance Polyols. ARCO's grant shall be subject to, and the licensee shall take the license subject to, any preexisting rights granted by Union Carbide to other licensees other than ARCO as of the date the Agreement Containing Consent Order was signed.

IV

It is further ordered That, for a period of three (3) years following the

[2] Appendix III not published as a part of this document.

divestiture of the paragraph I. (D)2 properties required by this Order, Union Carbide shall provide to ARCO, for transmittal by ARCO to the acquirer of the paragraph I. (D)2 Properties pursuant to Paragraph III of this Order, such know-how (not otherwise obtainable from ARCO) regarding UCC Patent Rights and UCC Technology in the possession of Union Carbide as may be necessary for the acquirer of the paragraph I. (D)2 Properties to manufacture and sell Performance Polyols.

It is further ordered That, at the time of the divestiture of the Paragraph I.(D)2 properties required by this Order, ARCO shall assign to the acquirer of the Paragraph I.(D)2 Properties, all of ARCO's rights and interests under all tolling agreements between ARCO and Texaco relating to the manufacture of Polyols at Texaco's Conroe, Texas, facility.

VI

It is further ordered That, for a period of five (5) years from the date of each divestiture required by this Order, ARCO shall, at the acquirer(s)'s request, contract with the acquirer(s) to supply to the acquirer(s) PO, in such quantities as the acquirer(s) may request for use in the Properties to Be Divested, or for use in the manufacturer of Performance Polyols under the license provided by ARCO pursuant to Paragraph III of this Order subject only to the capacity constraints of ARCO's PO production facilities in the United States and preexisting contractual obligations. The price, terms, and conditions at which ARCO shall supply PO to the acquirer(s) of the Properties to Be Divested shall be no less favorable to the acquirer(s) than the price, terms, and conditions at which ARCO supplies PO to any other person in the United States or Canada, including their territories and possessions, that competes with the acquirer(s).

VII

It is further ordered That ARCO shall rescind all existing non-compete provisions contained in any agreements between ARCO and Texaco purporting to restrict Texaco's right to engage in the manufacture of urethane polyether polyol in the United States or Canada, including their territories and possessions, or the sale in any country of urethane polyether polyol manufacturerd in the United States or Canada, including their territories and possessions; and ARCO and Union Carbide shall rescind the provisions of any existing agreements between ARCO and Union Carbide purporting to restrict Union Carbide's right to engage in the manufacture of urethane polyether polyol or propylene glycol in the United States or Canada, including their territories and possessions, or the sale in any country of urethane polyether polyol or propylene glycol manufacturerd in the United States or Canada, including their territories and possessions. ARCO shall take no action to enforce any such non-compete provision against Texaco or against Union Carbide.

VIII

It is further ordered That, one Texaco consents to take no action and assert no claim against the ARCO Group based on any conduct of ARCO or other persons working on PO technology with ARCO, and relating to such work, prior to the date the Agreement Containing Consent Order was signed, relating to any use, development, misappropriation, disclosure or license to others by the ARCO Group of any technology relating to the manufacture, sale, or use of PO or any coproducts of PO/TBA or PO/MBTE technology ARCO shall take no action and shall assert no claim against the Texaco Group based on any conduct of Texaco or other persons working on PO technology with Texaco, and relating to such work, prior to the date the Agreement Containing Consent Order was signed, relating to any use, development, misappropriation, disclosure or license to others by the Texaco Group of any technology relating to the manufacturer, sale, or use of PO or any coproducts of PO/TBA or PO/MBTE technology. Provided, however, if, in the judgment of the Commission, Texaco unreasonably fails to consent to the assignment under Paragraph V of this Order, ARCO's obligations under this Paragraph VII of this Order shall be suspended until Texaco consents to said assignment.

IX

It is further ordered That, notwithstanding any provision to the contrary, in any contract between ARCO and Texaco, between ARCO and Union Carbide, or between ARCO and the acquirer(s) of the Properties to Be Divested, for a period commencing on the date this Order becomes final and continuing for ten (10) years, ARCO shall permit upon ninety (90) days notice, Texaco, Union Carbide, and the acquirer(s), without penalty or forfeiture of any kind, to purchase or otherwise receive any or all of their PO requirements in the United States or Canada, including their territories and possessions, from any PO Entrant, including but not limited to PO supplied by such PO Entrant via manufacture outside the United States or Canada, including their territories and possessions; and, to the extent of any such purchases or receipts of PO by Texaco, Union Carbide, or the acquirer(s), ARCO shall relieve Texaco, Union Carbide, and the acquirer(s) of any contractual obligation to purchase such quantities of PO from ARCO.

X

It Is Further Ordered That:

(A) If ARCO has not divested, absolutely and in good faith and with the Commission's approval, the Properties to Be Divested within twelve (12) months of the date this Order becomes final, ARCO shall consent to the appointment by the Commission of a trustee to effectuate the obligations set out in paragraph II.(A) and II.(B) of this Order. In the event the Commission or the Attorney General brings an action pursuant to section 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. 45(*1*), or any other statute enforced by the Commission, ARCO shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ARCO to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph X.(A) of this Order, ARCO shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities.

1. The Commission shall select the trustee, subject to the consent of ARCO, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Properties to Be Divested and to divest such additional ancillary Assets and Businesses of ARCO and to effect the additional obligations set out in Paragraph II.(A) and II.(B) of this Order.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of the eighteen-month period the trustee has submitted a plan of

divesture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, Provided, however, the Commission may only extent the divestiture period two (2) times.

4. Subject to an appropriate confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to Be Divested, or any other relevant information, as the trustee may reasonably request. ARCO shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. ARCO shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by ARCO shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to ARCO's absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in Paragraph II.(D) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Properties to Be Divested. The divestiture shall be made in the manner set out in Paragraph II, provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by ARCO, to which (as to the Paragraph I.(D)1 Properties to Be Divested only) Union Carbide has no reasonable objection, from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of ARCO, on such reasonable and customary terms and conditions as the Commission or a court may set. Subject to the consent of ARCO, which consent shall not be unreasonably withheld, the trustee shall have authority to employ, at the cost and expense of ARCO, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ARCO and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to Be Divested.

7. Except in the case of reckless disregard of his or her duties or intentional wrong doing, ARCO shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, ARCO shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph X.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own intitiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to Be Divested.

12. The trustee shall report orally to ARCO every two weeks, and in writing to ARCO and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

XI

It is further ordered That, within sixty (60) days after the date this Order becomes final and every (60) days thereafter until ARCO has fully complied with the provisions of Paragraphs II and III of this Order, ARCO shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with those provisions, including the Hold Separate Agreement. ARCO shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contracts or negotiations for the divestiture of assets or businesses specified in Paragraph II of this Order, including the identity of all parties contacted. ARCO also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and reports and recommendations concerning divestiture.

XII

It is further ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, ARCO shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets located in the United States or Canada, including their territories and possessions, used for or previously used for (and still suitable for use for) the production of PO, urethane polyether polyol, or propylene glycol. ARCO shall also not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, more than one percent of the total outstanding stock or share capital of, or any other interest in, any entity (other than an entity included within ARCO under Paragraph I.(B) of this Order as of the date the Agreement Containing Consent Order was signed) that owns or operates assets located in the United States or Canada, including their territories and possessions, engaged in the production of urethane polyether polyol or propylene glycol. Provided, however, these prohibitions shall not relate to the construction of new facilities. Provided, further, that such prior approval shall not be required if ARCO satisfies the conditions set forth in Paragraph XIII of this Order.

XIII

It is Further Ordered That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States or Canada, including their territories and possessions, engaged in the production of urethane polyether polyol, propylene glycol, or PO (hereinafter "Acquired entity"), ARCO announces its intention to acquire or commences an acquisition of, any interest in the Acquired entity and, before ARCO obtains sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires more than one percent of the total outstanding stock or share capital of, or any other interest in assets that produce urethane polyether polyol or propylene glycol in

the United States or Canada, including their territories and possessions, (hereinafter "Third entity"), or said Acquired entity acquires any assets used in the production of urethane polyether polyol, propylene glycol or PO in the United States or Canada, including their territories and possessions, ARCO may, in lieu of obtaining prior approval of such acquisition under Paragraph XII of this Order, comply with each of the requirements of this Paragraph XIII of this Order. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to Paragraph XII, Arco shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of ARCO learning of the acquisiton by the Acquired entity of any interest in a Third entity, as described in Paragraph XIII of this Order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR parts 801, 802, 803.

(B) In the case where the Acquired entity assets used in the production of urethane polyether polyol, propylene glycol or PO, ARCO shall comply with all terms of the Agreement to Hold Separate, made a part hereof as Appendix IV.[3] Said Agreement shall take effect as soon as ARCO has sufficient control over the Acquired entity to satisfy the terms of the Agreement to Hold Separate and shall continue in effect until such time as ARCO has divested all the stock or share capital of the Third entity or all the Assets and Businesses acquired by the Acquired entity or until such other time as the Agreement to Hold Separate provides. In the case where the Acquired entity acquired stock or share capital of the Third entity, as soon as ARCO has sufficient control over the Acquired entity to do so, ARCO shall place all stock and share capital of the Third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when ARCO has sufficient control over the Acquired entity to divest assets, stock or share capital of the Acquired entity, ARCO shall:

1. In the case where the Acquired entity acquired stock or share capital of the Third entity, divest, absolutely and in good faith, the stock or share capital of the Third entity,

or

2. In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol, propylene glycol or PO, divest, absolutely and in good faith, all the Assets and Businesses of the Acquired entity and also divest such additional ancillary assets and businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Assets and Businesses of the Acquired entity.

(D) ARCO shall divest the stock or share capital of the Third entity or the Assets and Businesses of the Acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol or propylene glycol, ARCO shall demonstrate the Viability and Competitiveness of the Assets and Businesses of the Acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of urethane polyether polyols and propylene glycol, and to remedy and lessening of competition resulting from the acquisition.

(E) In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol or propylene glycol, ARCO shall take such action as is necessary to maintain the viability, competitiveness and marektability of the Assets and Businesses of the Acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of businesses and except for ordinary wear and tear.

(F) If ARCO has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the Third entity or the Assets and Businesses of the Acquired entity within three (3) months of the date when ARCO has sufficient control over the Acquired entity to divest assets, stock or share capital of the Acquired entity, ARCO shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the Third entity

or

2. The Assets and Businesses of the Acquired entity and to divest such additional ancillary assets and businesses of the Acquired entity and effect such arrangements that may be necessary to assure the Viability and Competitiveness of the Assets and Businesses of the Acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, ARCO shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ARCO to comply with this Order.

(H) If a trustee is appointed by the Commission or a court pursuant to paragraph XIII.(F) of this Order, ARCO shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph X.(B) of this Order. Provided, however, that each reference to "Properties to be Divested" in paragraph X.(B) of this Order shall, for the purposes of this paragraph XIII, mean either the "stock or share capital of the Third entity"or the "Assets and Businesses of the Acquired entity."

XIV

It is further ordered That, one year from the date this Order becomes final and annually for nine years thereafter, ARCO shall file with the Commission a verified written report of its compliance with this Order.

XV

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to ARCO or to Union Carbide, as applicable, made to its principal office, ARCO and Union Carbide shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda

[3] Appendix IV not published as a part of this document.

and other records and documents in the possession or under the control of ARCO or of Union Carbide, as applicable, relating to any matters contained in this Order; and

(B) Upon five days notice to ARCO or to Union Carbide, as applicable, and without restraint or interference from ARCO or Union Carbide, to interview officers or employees of ARCO and Union Carbide, who may have counsel present, regarding such matters.

XVI

It is further ordered That, ARCO and Union Carbide shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries that may affect compliance obligations arising out of the Order or any other change that may affect compliance obligations arising out of the Order.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Atlantic Richfield Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 515 South Flower Street, Los Angeles, California 90071; ARCO Chemical Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania 19073 (collectively referred to as "ARCO"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on September 27, 1989, ARCO entered into an Asset Purchase Agreement providing for the acquisition of certain of the assets and businesses (hereinafter "the Acquired Assets") of Union Carbide Chemicals and Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation (collectively referred to as "Union Carbide"); (hereinafter the "Acquisition"); and

Whereas, Union Carbide manufactures and sells Polyols and propylene glycol; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Acquired Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I of the Consent Order and the Commission's right to seek to restore Union Carbides's Polyols and propylene glycol assets and businesses as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) preserve the Acquired Assets as a viable independent business pending the divestiture of the Properties to Be Diverted as viable and ongoing enterprises,

(ii) remedy any anticompetitive effects of the Acquisition, and

(iii) preserve the Acquired Assets as ongoing, viable entities engaged in the manufacture and sale of Polyols and propylene glycol in the event that divestiture is not achieved; and

Whereas, ARCO entering this Agreement shall in no way be construed as an admission by ARCO that the Acquisition is illegal; and

Whereas, ARCO understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has determined that it has reason to believe the acquisition may substantially lessen competition, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from ARCO or Union Carbide with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, and other relief, as follows:

1. ARCO agrees to execute and be bound by the attached Consent Order.

2. ARCO agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules;

b. 120 days after publication in the **Federal Register** of the Consent Order, unless by that date the Commission has finally accepted such Order; or

c. The day after the divestitures required by the Consent Order have been completed.

3. ARCO will hold the Acquired Assets as they are presently constituted separate and apart on the following terms and conditions:

a. The Acquired Assets shall be held separate and apart and shall be operated independently of ARCO (meaning here and hereinafter, ARCO excluding the Acquired Assets and excluding all personnel connected with the Acquired Assets on behalf of Union Carbide as of the date this Agreement was signed) except to the extent that ARCO must exercise direction and control over the Acquired Assets to assure compliance with this Agreement or the Consent Order.

b. ARCO shall not exercise direction or control over, or influence directly or indirectly, the Acquired Assets; provided, however, that ARCO may exercise only such direction and control over the Acquired Assets as is necessary to assure compliance with this Agreement or the Consent Order.

c. ARCO shall maintain the viability and marketability of the Acquired Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Except for the single ARCO director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined

in subparagraph 3.i), ARCO shall not permit any director, officer, employee, or agent of ARCO to also be a director, officer or employee of the Acquired Assets.

e. Except as required by law or as reported by the auditor (provided for in subparagraph 3.f) and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of assets, ARCO shall not receive or have access to, or the use of, any of the Acquired Assets' "material confidential information" not in the public domain, except as such information would be available to ARCO in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to ARCO from sources other than Union Carbide or the Acquired Assets, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. ARCO may retain an independent auditor to monitor the operation of the acquired assets. Said auditor may report to ARCO on all aspects of the operation of the acquired assets other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

g. ARCO shall not change the composition of the management of the Acquired Assets except that the non-ARCO (as ARCO is defined in subparagraph 3.a hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.i hereof) shall have the power to remove employees for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a—3.g hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 3.i hereof).

i. ARCO shall either separately incorporate the Acquired Assets and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or shall establish a separate business venture with articles of agreement covering the conduct of the Acquired Assets in accordance with this Agreement. ARCO shall also elect a new three-person board of directors of the Acquired Assets ("New Board") or Management Committee of the Acquired Assets ("Management Committee") once it obtains title to the Acquired Assets. ARCO may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall consist of at least two non-ARCO directors, officers, or employees and no more than one ARCO director, officer, employee, or agent. Except as permitted by this Agreement, the director of the Acquired Assets or member of the Acquired Assets Management Committee who is also an ARCO director, officer, employee or agent shall not receive, in his or her capacity as a director or Management Committee member of the Acquired Assets, material confidential information and shall not disclose any such information received under this Agreement to ARCO or use it to obtain any advantage for ARCO. Such director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding $1,000,000 and carrying out ARCO's and the Acquired Assets' responsibilities under this Agreement or the Consent Order. Except as permitted by this Agreement, such Director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if ARCO and the Acquired Assets were separate and independent entitles. Meetings of the New Board or Management Committee during the term of this Agreement shall be strenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

j. Any ARCO employee who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

k. All earnings and profits of the Acquired Assets shall be retained separately in the Acquired Assets. If necessary, ARCO shall provide the Acquired Assets with sufficient working capital to operate at the current rate of operation.

1. Should the Federal Trade Commission seek in any proceeding to compel ARCO (meaning here and hereinafter ARCO including the Acquired Assets) to divest itself of the Acquired Assets or to compel ARCO to divest any assets or businesses of the Acquired Assets that it may hold, or to seek any other injunctive or equitable relief, ARCO shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. ARCO also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to ARCO made to its principal office, ARCO shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of ARCO and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of ARCO relating to compliance with this Agreement;

b. Upon five (5) days notice to ARCO, and without restraint or interference from it, to interview officers or employees of ARCO, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Appendices II—Stipulation and Final Judgment, III—Patent Rights, and IV—Agreement to Hold Separate (not published as part of this document). Copies are available from the Commission's Public Reference Branch, Room H–130, 6th and Pa. Ave., NW., Washington, DC 20580. Phone (202) 326–2222.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted, for public comment, from Atlantic Richfield, ARCO Chemical Company, Union Carbide Corporation, and Union Carbide Chemicals & Plastics Company Inc. an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record.

After sixty 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 order.

The Commission's investigation of this matter concerns the proposed acquisition by ARCO Chemical Company, a majority owned subsidiary of Atlantic Richfield Company (collectively "ARCO"), of certain urethane polyether polyol and propylene glycol assets from Union Carbide Chemicals & Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation ("Union Carbide"). ARCO and Union Carbide are producers of urethane polyether polyols and propylene glycol. Both of these products are chemical products used in a large variety of end-products. Urethane polyether polyols are used in urethane products, such as flexible and rigid foam. Propylene glycol is used in products such as unsaturated polyester resins, antifreeze, tobacco, pet food and pharmaceuticals.

ARCO and Union Carbide manufacture and sell urethane polyether polyols and propylene glycol in the United States, and in various countries outside the United States. ARCO is also a producer of propylene oxide, a major raw material for both urethane polyether polyols and propylene glycol.

The agreement containing consent order would, if finally accepted by the Commission, settle the complaint that alleges an anticompetitive effect in the urethane polyether polyols, propylene glycol and propylene oxide markets in the United States.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the United States markets for urethane polyether polyols, propylene glycol and propylene oxide and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of: (1) The propylene glycol assets and businesses of Union Carbide; and (2) the urethane polyether polyol assets and businesses in the United States and Canada which ARCO acquired from Texaco Chemical Company in 1987. The purpose of these divestitures is to prevent undue increase in market concentration among either propylene glycol producers or urethane polyether polyol producers. Another purpose of these divestitures is to reduce the loss of merchant demand for propylene oxide that might deter new entry into the propylene oxide market.

For both of these divestitures, assets and businesses include plant equipment, customer lists, patents and trademarks, trade secrets, and other technology and know-how. For divestiture of the urethane polyether polyols assets, the order also would require that ARCO assign to the acquirer its rights under all existing tolling agreements between ARCO and Texaco Chemical Company ("Texaco") relating to the manufacture of polyols at Texaco's Conroe, Texas facility. In addition, the order would require ARCO to provide a license to the acquirer of the polyether polyol assets and businesses, a license to use the performance polyol (including polymer polyol) patent rights and technology that ARCO proposes to acquire from Union Carbide. The purpose of the licensing agreement is to provide the acquirer with significant technology to expand in urethane polyether polyols beyond the assets and businesses it would obtain in the divestitures.

The order would also require ARCO, for a period of five years, to supply the acquirer of both the urethane polyether polyol assets and the propylene glycol assets with propylene oxide at a price no higher than the lowest price any similarly situated purchaser in the United States pays. For divestiture of the propylene gylcol assets, the order would require Union Carbide to provide certain services as requested by the acquirer which are necessary to facilitate operation of the propylene glycol assets within the Union Carbide plant complex.

The order would also remove any prohibitions restricting the rights of either Union Carbide or Texaco to compete with ARCO in the United States or Canada in the manufacture or sale of either urethane polyether polyols or propylene glycol. Both companies, by their agreements with ARCO, had been prohibited from competing with ARCO in the businesses they sold to ARCO.

The agreement contains additional provisions intended to increase the likelihood that a new producer will enter into the propylene oxide market. There are currently only two producers of propylene oxide in the United States: ARCO and Dow.

The order would require ARCO to take no action and assert no claim against Texaco or other persons working with Texaco on development and commercialization of propylene oxide technology. The purpose of this provision is to remove certain potential obstacles to entry by Texaco into propylene oxide production.

The order also provides a new entrant into propylene oxide production with an opportunity to make sales to Union Carbide, Texaco or the acquirer of the divested assets, if it so chooses. All of these purchasers would be free, under the order, to purchase propylene oxide from a new producer, notwithstanding existing purchase obligations to ARCO. The purpose of this provision is to offset, to some degree, the effect of the acquisition in removing the Union Carbide businesses as an outlet for a new propylene oxide entrant.

Under the terms of the order, ARCO must complete the required divestitures within 12 months of the date the order becomes final. If ARCO fails to complete the required divestitures within the twelve-month period, ARCO shall consent to the appointment of a trustee, who would have eighteen additional months to divest the assets and businesses. Any proposed divestiture pursuant to the order must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. The hold separate agreement executed as part of the consent requires ARCO to hold separate and preserve all of the assets and businesses acquired by ARCO from Union Carbide until all of the required divestitures have been effected either by ARCO or by the trustee.

For a period of ten years from its effective date, the order would also prohibit ARCO from acquiring, without prior Commission approval, assets or substantial interest in any company engaged in the manufacture, distribution or sale of urethane polyether polyols, propylene glycol or propylene oxide. The order contains a mechanism that prevents the order from being abused by a takeover target. If such target attempts to thwart an acquisition by making certain acquisitions, the order permits ARCO to proceed with the acquisition subject to later divestiture and hold separate requirements.

Both ARCO and Union Carbide have stipulated to the entry of a final judgment in the United States District Court, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), which would require ARCO and Union Carbide each to pay civil penalties in the amount of one million dollars. These penalties are in settlement of the Commission's complaint that ARCO and Union Carbide transferred beneficial ownership of Union Carbide's urethane polyether polyol and propylene glycol assets and business prior to making necessary filings under the Hart-Scott-

Rodino Antitrust Improvements Act and without waiting for expiration of the applicable waiting periods.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 90-21582 Filed 9-12-90; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0121, Contractor's Report of Orders Received. This information is used by GSA to estimate requirements for the subsequent year, evaluate the effectiveness of the schedule, negotiate better prices on contracts based on volume, and for special reports.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 5,982; *annual responses:* 20.0; *average hours per response:* 0.2640; *burden hours:* 31,585.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: September 4, 1990.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 90-21578 Filed 9-12-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OIS-010-N]

Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, regulations and other **Federal Register** notices, and statements of policy that were published during April, May and June 1990 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our Medicare issuances in the **Federal Register** at least every three months.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin (301) 966-5265; (For Instruction Information Only).

Karen Mayer (301) 966-4675; (For All Other Information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 34 million Medicare beneficiaries. Administration of the program involves (1) providing information to beneficiaries, health care providers, and the public; and (2) effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). As in prior notices, although both substantive and interpretative regulations published in the **Federal Register** in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements, we are including regulations (proposed and final) published.

II. Coverage Issues

Beginning with our listing of publications issued during the period July through September 1989 (55 FR 10290), we included the text of changes to the Coverage Issues Manual. In this manner, we implement the policy announced in the **Federal Register** on August 21, 1989 (54 FR 34555) that we will issue quarterly or more often the revisions to that manual. Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, or in response to inquiries we receive seeking clarification, or in resolution of a coverage issue under Medicare. Sometimes no Coverage Issues Manual revisions were published during a particular quarter, as during the quarter covered by this listing. Our listing notes that fact. For a complete listing of coverage determinations issued in Coverage Issues Manual, interested parties should review our publications dated August 21, 1989 (54 FR 34555) and March 20, 1990 (55 FR 10290).

III. How To Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review table I of our first three notices; those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 (54 FR 34555) publication; and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736). We have divided this current listing into three tables.

Table I describes where interested individuals can get a description of all previously published HCFA manuals and memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a