

The Bureau seeks comment on NECA's proposed compensation rates for traditional TRS, STS, CTS and IP CTS, IP Relay, and VRS for the period of July 1, 2008, through June 30, 2009, as well as the proposed carrier contribution factor and Fund size requirement.

Federal Communications Commission.

**Nicole McGinnis,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. E8-10517 Filed 5-9-08; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** 9 a.m. (Eastern Time) May 19, 2008.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

**STATUS:** Parts will be open to the public and parts closed to the public.

#### **MATTERS TO BE CONSIDERED:**

##### **Parts Open to the Public**

1. Approval of the minutes of the April 21, 2008 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
  - a. Monthly Participant Activity Report.
  - b. Monthly Investment Performance Report.
  - c. Legislative Report.
3. Mid-year budget review.

##### **Parts Closed to the Public**

4. Personnel.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: May 8, 2008.

**Thomas K. Emswiler,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 08-1253 Filed 5-8-08; 3:26 pm]

**BILLING CODE 6760-01-P**

## FEDERAL TRADE COMMISSION

[File No. 081 0073]

### **Agrium Inc. and UAP Holding Corporation; Analysis of the Complaint and Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

**DATES:** Comments must be received on or before June 4, 2008

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Agrium and UAP Holding Corp., File No. 081 0073," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at <http://secure.commentworks.com/ftc-Agrium>. To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information,

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

including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

#### **FOR FURTHER INFORMATION CONTACT:**

Donald R. Gordon, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2357.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 27, 2008), on the World Wide Web, at <http://www.ftc.gov/os/2008/05/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

#### **I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment from Agrium Inc. ("Agrium"), and UAP Holding Corporation, ("UAP") (collectively "the Parties") an Agreement Containing Consent Orders ("the proposed consent order"). The Parties have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Agrium's proposed acquisition of all of the outstanding voting stock of UAP.

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

Agrium is a Calgary, Alberta-based agricultural products company, a major producer of fertilizer in the Americas, and is the largest operator of retail farm stores in the United States. Agrium has

approximately 433 retail locations in 31 states, in all areas of the country except for a north-south band from the Northern plains to Texas. Agrium's stores operate under the "Crop Production Services" brand in the East and Midwest, and under "Western Farm Service" in the West. Agrium had nearly \$4.2 billion in sales in 2006, of which more than \$1 billion came from its U.S. farm stores, the majority from fertilizer sales. Agrium is a multinational fertilizer and farm products company that develops, manufactures, and markets chemical and agricultural products and services that it distributes to customers in the Americas and elsewhere.

UAP is a publicly-traded U.S. company based in Colorado that develops, manufactures, and markets a line of products and value-added services including chemicals, fertilizer, and seed to farmers, commercial growers, and regional dealers throughout the world. UAP is the second-largest operator of farm stores in the U.S., measured by sales, and its 370 retail stores operate in all 50 states—making it, with Helena Chemical, one of only two farm store operators with a national footprint. UAP's U.S. farm store sales in 2006 constituted more than one-third of its \$2.85 billion in total sales. UAP's retail sales are weighted more toward pesticides, though fertilizer sales account for about 30% of its revenue.

Agrium and UAP announced on December 3, 2007, that their respective boards of directors had approved the sale and purchase of all outstanding shares of UAP stock to Agrium for approximately \$2.65 billion pursuant to the stock purchase agreements by and between Agrium and UAP. As a result of the merger, Agrium will hold 100% of the voting securities of UAP. Upon completion of the merger, UAP will become a wholly owned subsidiary of Agrium.

### III. The Draft Complaint

The draft complaint alleges that the transaction may substantially lessen competition in the market for the retail sale of bulk fertilizer, and in certain cases related services, by farm stores. Retail farm stores sell mainly three classes of products: pesticides, seed, and fertilizer. Additionally, farm stores can deliver a range of services to meet the specific needs of particular growers. Retail farm stores, for example, often deliver fertilizer directly to the grower, and in many cases apply fertilizer to growers' fields, usually with the store's equipment. The stores often provide a variety of agronomic services to the

grower in order to help maximize the efficiency of the fields.

Farmers typically want one-stop shopping from their farm stores, favoring a single provider who can provide all the inputs and services they require. Although farmers sometimes visit the store, sales representatives from the stores also call upon the farmers, and bulk fertilizer is usually delivered to the farms in trucks or spreaders.

Bulk fertilizer is a critical product without which most agricultural growers cannot profitably operate. Growers must have it, must have the proper amount, and must have it exactly on time, to produce their harvest. Fertilizer is usually applied before planting, and then again at the same time as planting. Along with occasional applications during the growing season, there is usually a fall application of fertilizer. Agricultural growers have no close substitutes for bulk fertilizer purchased through farm stores.

The relevant geographic markets within which to analyze the likely effects of the proposed transaction are a series of small areas within the United States, typically extending 20-30 miles from a farm store. Transportation costs can make fertilizer prices less competitively attractive at distances over about 25-30 miles because of high fuel costs and the low price-to-weight ratio of bulk fertilizer. Furthermore, application services require application equipment that often travels slowly, and can tie up several employees and pieces of equipment if traveling more than 20-30 miles.

The proposed merger of Agrium and UAP would impact six geographic markets, including three in the central "thumb" of Michigan, two in east/central Michigan, and one on the eastern shore of Maryland. The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the areas in or near the towns of Croswell, MI; Richmond, MI; Imlay City, MI; Vestaburg, MI; Standish, MI; and Pocomoke/Girdletree, MD. In each of these identified areas, Agrium and UAP own farm stores that are well-situated among a small number of competitors in the market for the group of growers located proximate to their stores.

The draft complaint further alleges that new entry would not prevent or counteract the anticompetitive effects of this acquisition in the relevant geographic markets. New farm store entry has become highly infrequent, due to the risks involved in expending significant sunk costs to obtain enough customers to make a new store viable in

a mature industry. Furthermore, because reliable supply and service is so important, loyalty to existing suppliers is typically high among growers, making it particularly difficult for a new entrant to develop a sufficient customer base.

The draft complaint also alleges that Agrium's acquisition of all of the outstanding voting securities of UAP, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating direct competition between farm retail stores owned or controlled by Agrium and farm retail stores owned and controlled by UAP; by increasing the likelihood that Agrium will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining farm retail store firms. Each of these effects increases the likelihood that the prices of bulk fertilizer or related services will increase, in the geographic markets alleged in the complaint. Other competitors are not effective competitive constraints to Agrium or UAP throughout each relevant trade area, due to factors such as location, and size and scale of their operations.

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

The Agreement Containing Consent Orders ("proposed consent order") will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Agrium must divest five UAP farm stores and two Agrium farm stores. UAP's farm stores that will be divested are located in Croswell, MI; Richmond, MI; Imlay City, MI; Vestaburg, MI; and Standish, MI. Agrium's farm stores that will be divested are located in Snow Hill, MD and Keller, VA. An Order to Hold Separate and Maintain Assets requires that the stores to be divested be operated independently, and appoints an Interim Monitor to ensure that the Commission's interests are protected.

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

The proposed Orders will allow for effective divestiture of the key assets that today allow UAP to provide an independent competitive presence to Agrium in the relevant markets, and therefore will preserve the market structure. Paragraph II of the Decision and Order provides that Agrium divest itself of five UAP stores in Michigan,

and two Agrium stores in Maryland and Virginia within 180 days of its acquisition of UAP, and that Agrium further comply with all provisions of a divestiture agreement to be approved by the Commission. The agreement also provides that the two Agrium stores located in Snow Hill, Maryland and Keller, Virginia, be sold to a single buyer. Because Agrium's Keller location provides the Snow Hill location with dry bulk blended fertilizer, the Keller store must be sold to maintain the existing market dynamic. If the Snow Hill store were sold alone, it would be unable to sell bulk dry blended fertilizer to local farmers.

The Decision and Order defines the scope of the assets to include the attributes of an ongoing business, such as necessary real property, tangible personal property, inventories, contracts, records of the business, accounts receivable permits, and intellectual property (other than the UAP and Agrium trade names). Pursuant to Paragraph II.E. of the proposed Decision and Order, Agrium also is required, for a period of up to a year, provide necessary transition services to the buyer at cost. The purpose of this provision is to allow for a relatively smooth transition of the store operation to the acquirer. Paragraph II.F. of the Decision and Order provides mechanisms for retention of each UAP store's employees by the acquiring party.

Paragraph III of the proposed Decision and Order requires that the Parties keep private, except where necessary under the agreement, confidential business information related to the divested UAP stores. Paragraph IV of the proposed Decision and Order requires that the Parties provide the Commission with "advance written notification" of intent to acquire any assets engaged in the sale of agricultural products in any area affected by the proposed divestitures. Paragraph V of the proposed Decision and Order provides for appointment of a divestiture trustee. Paragraphs VI-VIII define reporting obligations.

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

The Order to Hold Separate and Maintain Assets requires the Parties to maintain the assets to be divested as independent businesses pending divestiture, and to maintain the viability of these businesses. The proposed Order also provides for the appointment of an interim monitor to oversee the UAP assets in the relevant markets. The proposed Order incorporates the traditional provisions that allow the Interim Monitor broad oversight of the

assets, and requiring the Monitor to report to the Commission on a regular basis. Furthermore, the proposed Order has provisions requiring the Parties to appoint a Manager who would run the assets on an independent basis, and requiring the Parties to give that Manager financial incentives in the success of the assets. The Parties will also be required to provide the held separate businesses with necessary support, but provides that employees of the Parties will not have access to confidential information, except to the extent necessary to accomplish the divestitures, comply with laws or regulations, or comply with the Orders. The Order requires that the Parties establish a system to prevent unauthorized disclosure of such confidential information, and, more generally, written procedures covering the management, maintenance and independence of the held separate assets. The Order also requires that the Parties provide the held separate assets with the financial resources and support that the Monitor believes are necessary to run the assets on an independent basis, including maintenance and replacement of existing assets, and business expansion.

#### **V. Opportunity for Public Comment**

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. E8-10461 Filed 5-9-08; 8:45 am]

**BILLING CODE 6750-01-S**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Agency for Toxic Substances and Disease Registry**

[ATSDR-242]

#### **Development of Set 22 Toxicological Profiles**

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of Development of Set 22 Toxicological Profiles.

**SUMMARY:** This notice announces the development of Set 22 Toxicological Profiles. Set 22 Toxicological Profiles consists of one new draft and five updated drafts. These profiles will be available to the public for comment on or about October 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Commander Jessilynn B. Taylor, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F-32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488-3313. Electronic access to these documents will also be available at the ATSDR Web site: <http://www.atsdr.cdc.gov/toxpro2.html>.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances, <http://www.atsdr.cdc.gov/cercla/07list.html>. The list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067);