

regulations for the service they provide. The local exchange carriers (LEC) schedules containing these charges, practices, and regulations must be filed with the Commission. Part 61 established the procedures for filing tariffs which contain the charges, practices, and regulations of common carriers. Implementation of a separate basket for LEC provided video dialtone service requires changes in the existing pricing rules to address requirement for this additional price cap basket. Video dialtone service differs sufficiently from basic telephony services in the other price cap baskets to warrant the creation of its own basket. Tariff filings to implement the separate video dialtone basket generally will be accompanied by the support required under the exiting price cap rules. This information is necessary to ensure that rates for service subject to the separate basket are just, reasonable and nondiscriminatory and comply with the Commission rules.

*OMB Approval Number:* New Collection.

*Title:* Abbreviated Cost of Service for Filing For Cable Network Upgrades.  
*Form No.:* FCC 1235.

*Type of Review:* New Collection.

*Respondents:* Businesses or other for-profit; State, Local, or Tribal Governments.

*Number of Responses:* 2,100 cable operators, and 525 local franchising authorities.

*Estimated Time Per Response:* 20 hours per cable operator response; and 10 hours per local franchising authority.

*Total Annual Burden:* 47,250 hours.

*Needs and Uses:* Section 76.922(h) enables cable operators in some circumstance to increase rates when undertaking significant network upgrades. This proposed form allows cable operators to justify rate increases related to capital expenditures used to improve services to regulated cable subscribers. Operators wishing to establish a network upgrade rate increase should file this form following the end of the month in which upgraded cable service becomes available and are providing benefits to the customers. In addition this form can be filed for pre-approval any time prior to the upgraded services becoming available to the subscribers using projected upgrade costs. If the pre-approval option is exercised the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to the customers.

*Fax Document Retrieval Number:* 601235.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-739 Filed 1-19-96; 8:45 am]

BILLING CODE 6712-01-F

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended: Sun Line Cruises, Inc., Royal Olympic Cruises Ltd. and Caroline Shipping Inc., One Rockefeller Plaza, Suite 315, New York, New York 10020

Vessel: STELLA SOLARIS

Dated: January 16, 1996.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96-629 Filed 1-19-96; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

*Sun Line Cruises, Inc., Royal Olympic Cruises Ltd. and Caroline Shipping Inc., One Rockefeller Plaza, Suite 315, New York, New York 10020*

Vessel: STELLA SOLARIS

Dated: January 16, 1996.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96-628 Filed 1-19-96; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

[File No. 961 0017]

### Praxair, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

**SUMMARY:** This Consent Agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition arising from the acquisition of CBI Industries, Inc. by Praxair, Inc. Under the terms of the proposed order contained in the Consent Agreement, Praxair, among other things, must divest all of the assets and businesses relating to four CBI plants that produce atmospheric gases—located in Vacaville, California; Irwindale, California; Bozrah, Connecticut; and Madison, Wisconsin—to an acquirer or acquirers approved by the Commission. If Praxair fails to divest these assets within 12 months after the order becomes final, a trustee may be appointed to divest the four plants. The Consent Agreement also requires Praxair to take all steps necessary to ensure that the plants to be divested continue as ongoing, viable and competitive operations, by complying with an Agreement to Hold Separate.

**DATES:** Comments must be received on or before March 22, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

#### FOR FURTHER INFORMATION CONTACT:

James H. Holden, Jr., FTC/S-2023, Washington, D.C. 20580 (202) 326-2682; or Christina Perez, FTC/S-2214, Washington, D.C. 20580 (202) 326-2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 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)).

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Praxair, Inc. ("Praxair") of CBI Industries, Inc. ("CBI"), and it now appearing that Praxair, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an agreement containing an order to divest assets, and providing for certain other relief:

It is hereby agreed by and between Proposed Respondent Praxair, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Praxair is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its principal executive offices located at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

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 to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claims under the Equal Access to Justice Act.

4. This agreement shall not become 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 the Proposed Respondent, in which event it 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.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

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 Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding, and (2) make information public with 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 Proposed Respondent shall constitute service. Proposed Respondent waives any right it 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. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final. By signing this Agreement, Proposed Respondent represents that the relief contemplated by this Agreement can be accomplished.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Praxair" means Praxair, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Praxair, Inc., and the respective directors, officers, employees, agents, and representatives, predecessors, successors, and assigns of each.

B. "CBI" means CBI Industries, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by CBI, and the respective directors, officers, employees, agents,

and representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means Praxair's acquisition of issued and outstanding common shares of CBI, pursuant to a cash tender offer dated November 3, 1995.

E. "Merchant Atmospheric Gases" means oxygen, nitrogen and argon sold in liquid form or packaged in cylinders.

F. "Atmospheric Gases Plant" means a facility that produces Merchant Atmospheric Gases.

G. "Merchant Divestiture Assets and Businesses" means, the Vacaville Plant, Irwindale Plant, Bozrah Plant, and Madison Plant, whether divested individually or in some combination, including the assets, properties, business and goodwill, tangible and intangible, used in the manufacture and sale of merchant atmospheric gases at those plants, including, without limitation, the following:

1. all real property interests, including rights, title and interest in and to owned or leased property, together with all buildings, improvements, appurtenances, licenses and permits;

2. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property, including distribution equipment and cylinders;

3. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, software licenses, inventions, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

4. rights to and in contracts, including customer, dealer, distributor, supply and utility contracts;

5. inventory, supplies and storage capacity, including storage vessels;

6. all rights under warranties and guarantees, express or implied;

7. all books, records, and files; and

8. all items of prepaid expense.

H. "Vacaville Plant" means CBI's Atmospheric Gases Plant located in Vacaville, California, together with all associated Merchant Divestiture Assets and Businesses.

I. "Irwindale Plant" means CBI's Atmospheric Gases Plant located in Irwindale, California, together with all associated Merchant Divestiture Assets and Businesses.

J. "Bozrah Plant" means CBI's Atmospheric Gases Plant located in Bozrah, Connecticut, together with all associated Merchant Divestiture Assets and Businesses.

K. "Madison Plant" means CBI's Atmospheric Gases Plant located in Madison, Wisconsin, together with all associated Merchant Divestiture Assets and Businesses.

## II

It is further ordered, That:

A. Praxair shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Merchant Divestiture Assets and Businesses, and shall also divest such additional ancillary CBI assets and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the Merchant Divestiture Assets and Businesses.

B. Praxair shall divest the Merchant Divestiture Assets and Businesses, either individually or in some combination, only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Merchant Divestiture Assets and Businesses as an ongoing, viable operation or operations, engaged in the same business in which the Merchant Divestiture Assets and Businesses are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Merchant Divestiture Assets and Businesses, Praxair shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Merchant Divestiture Assets and Businesses, and to prevent the destruction, removal, wasting, deterioration or impairment of the Merchant Divestiture Assets and Businesses except for ordinary wear and tear.

D. Praxair shall comply with all terms of the Agreement to Hold Separate attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all of the Merchant Divestiture Assets and Businesses as required by this order.

## III

It is further ordered, That:

A. If Praxair has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Merchant Divestiture Assets and Businesses within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to

divest the Merchant Divestiture Assets and Businesses. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Praxair 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 III 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 § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Praxair to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A., Praxair shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Praxair, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Praxair has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Praxair of the identity of any proposed trustee, Praxair shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Merchant Divestiture Assets and Businesses.

3. Within ten (10) days after appointment of the trustee, Praxair shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the

Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Merchant Divestiture Assets and Businesses, or to any other relevant information, as the trustee may request. Praxair shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Praxair shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Praxair shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Praxair's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order, provided, however, if the trustee receives bona fide offers for any of the plants to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest that particular plant to the acquiring entity or entities selected by Praxair from among those approved by the Commission.

7. The trustee shall serve at the cost and expense of Praxair, without bond or other security unless paid for by Praxair, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Praxair, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture 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 Praxair, 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 Merchant Divestiture Assets and Businesses.

8. Praxair shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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 III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative 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 Merchant Divestiture Assets and Businesses.

12. In the event that the trustee determines that he or she is unable to divest the Merchant Divestiture Assets and Businesses in a manner consistent with the Commission's purpose as described in Paragraph II, the trustee may divest additional ancillary CBI assets of Praxair and effect such arrangements as are necessary to satisfy the requirements of this order.

13. The trustee shall report in writing to Praxair and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### IV

It is further ordered that within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Praxair has fully complied with Paragraphs II and III of this order, Praxair 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 Paragraphs II and III of this order. Praxair shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III including a description of all substantive contacts or negotiations for the divestiture(s) required by this order, including the identity of all parties contacted. Praxair shall include in its

compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture(s).

#### V

It is further ordered that, for the purpose of determining or securing compliance with this order, Praxair shall permit any duly authorized representatives of the Commission:

A. Access, during office hours 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 Praxair, relating to any matters contained in this order; and

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

#### VI

It is further ordered that until Praxair has completed all of its obligations under this order, Praxair shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

#### VII

It is further ordered that Respondent shall not be obligated to comply with this Order if Praxair abandons the proposed acquisition of CBI. For purposes of this Order, Praxair will be deemed to have abandoned the proposed acquisition of CBI after it provides written notice to the Commission that it has abandoned its proposed acquisition and has withdrawn any related notifications filed pursuant to Section 7A of the Clayton Act, as amended, 15 U.S.C. 18a.

#### Appendix I

##### Agreement to Hold Separate

This Agreement to Hold Separate ("Hold Separate") is by and between Praxair, Inc. ("Praxair"), a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, and the Federal Trade Commission ("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 November 3, 1995, Praxair offered to purchase all of the outstanding common shares of CBI Industries, Inc. ("CBI"); and

Whereas, CBI, with its principal office and place of business located at 800 Jorie Boulevard, Oak Brook, Illinois 60521-2268, manufactures and markets, among other things, Merchant Atmospheric Gases; and

Whereas, Praxair, with its principal office and place of business located at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113, manufactures and markets, among other things, Merchant Atmospheric Gases; and

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

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), 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 Section 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 Merchant Divestiture Assets and Businesses, as defined in Paragraph I.G. of the Consent Agreement, during the period prior to the final acceptance and issuance of the Consent Agreement by the Commission (after the 60-day public comment 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 Merchant Divestiture Assets and Businesses and the Commission's right to have the Merchant Divestiture Assets and Businesses continue as viable competitors; and

Whereas, the purposes of this Hold Separate and the Consent Agreement are:

A. to preserve the Merchant Divestiture Assets and Businesses as viable, competitive, and independent businesses pending divestiture of the Merchant Divestiture Assets and Businesses, and

B. to remedy any anticompetitive effects of the Acquisition; and

Whereas, Praxair's entering into this Hold Separate shall in no way be construed as an admission by Praxair that the Acquisition is illegal; and

Whereas, Praxair understands that no act or transaction contemplated by this Hold Separate 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 Hold Separate.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Praxair agrees to execute and be bound by the Consent Agreement.

2. Praxair agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a.-2.b., it will comply with the provisions of Paragraph 3. of this Hold Separate:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the time that divestiture of the Merchant Divestiture Assets and Businesses as required by Paragraph II of the Consent Agreement is completed.

3. To assure the complete independence and viability of the Merchant Divestiture Assets and Businesses, and to assure that no material confidential information is exchanged between Praxair and the Merchant Divestiture Assets and Businesses, Praxair shall hold the Merchant Divestiture Assets and Businesses separate and apart on the following terms and conditions:

a. Within 30 days from the date this Hold Separate becomes final Praxair shall cause all of its rights, title and interest in the Merchant Divestiture Assets and Businesses, as defined in Paragraph I.G. of the Consent Agreement, as well as all such necessary personnel, including but not limited to, payroll and marketing personnel, to be transferred to a separate corporation ("Nucorp"), and effect any other arrangements as are necessary to ensure that Nucorp has complete viability and independence from Praxair (meaning here and hereinafter, Praxair excluding the Merchant Divestiture Assets and Businesses, personnel connected with the Merchant Divestiture Assets and

Businesses, and Nucorp as of the date this Agreement is signed, but including all other portions of CBI).

b. Nucorp shall be held separate and apart and shall be managed and operated independently of Praxair, except to the extent that Praxair must exercise direction and control over Nucorp to assure compliance with this Hold Separate or the Consent Agreement.

c. Praxair shall maintain the marketability, viability, and competitiveness of Nucorp, including the Merchant Divestiture Assets and Businesses, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of Nucorp including the Merchant Divestiture Assets and Businesses.

d. Praxair shall appoint a knowledgeable person among the top management of CBI's Merchant Atmospheric Gases Business to manage and maintain Nucorp on a day to day basis during the term of the Hold Separate. The manager shall have exclusive management and control of Nucorp, and shall manage Nucorp independently of Praxair's other businesses.

e. The Manager shall report exclusively to the Nucorp Management Committee ("Management Committee"). The Management Committee shall consist of the Manager; two other knowledgeable persons from among the top management of CBI's Merchant Atmospheric Gases Business; and two Praxair financial officers or comparable, knowledgeable persons from Praxair's financial office who have no direct involvement with Praxair's Merchant Atmospheric Gases Business ("Praxair Management Committee Members"). The Chairman of the Management Committee shall be the Manager. Except for the Praxair Management Committee Members serving on the Management Committee, Praxair shall not permit any officer, employee, or agent of Praxair also to be an officer, employee or agent of Nucorp. Each Management Committee member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Management Committee shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the

Management Committee during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

f. All material transactions, out of the ordinary course of business and not precluded by Paragraph 3 hereof, shall be subject to a majority vote of the Management Committee.

g. Praxair shall not exercise direction or control over, or influence directly or indirectly, Nucorp, including the Merchant Divestiture Assets and Businesses, the Management Committee, or the Manager of Nucorp, any of their operations, assets, or businesses; provided, however, that Praxair may exercise only such direction and control over Nucorp as is necessary to assure compliance with this Hold Separate, the Consent Order and with all applicable laws and except as otherwise provided in this Hold Separate.

h. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the Consent Order or negotiating agreements to divest assets, Praxair shall not receive or have access to, or the use of, any material confidential information of Nucorp or the activities of the Manager or Management Committee not in the public domain, nor shall Nucorp, the Manager, or the Management Committee receive or have access to, or the use of, any material confidential information about Praxair. Praxair may receive on a regular basis from Nucorp aggregate financial information necessary and essential to allow Praxair to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information, including, but not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets, not independently known to:

1. Praxair, with regard to Nucorp, including the Merchant Divestiture Assets and Businesses, from sources other than Nucorp or its employees or the Management Committee; or

2. The Management Committee or Nucorp or its employees, with regard to Praxair, from sources other than Praxair.)

i. Except as is permitted by this Hold Separate, the Praxair Management Committee Members shall not receive any Nucorp material confidential information and shall not disclose any such information obtained through their involvement with Nucorp to Praxair or use it to obtain any advantage for Praxair. The Praxair Management Committee Members shall participate in matters that come before the Management Committee only for the limited purpose of considering any capital investment of over \$250,000, approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in subparagraph 3.f, and carrying out Praxair's responsibilities under the Hold Separate and the Consent Agreement. Except as permitted by the Hold Separate, the Praxair Management Committee Members shall not participate in any matter, or attempt to influence the votes of the other directors on the Management Committee with respect to matters that would involve a conflict of interest between Praxair and Nucorp, including the Merchant Divestiture Assets and Businesses.

j. Praxair shall not change the composition of the Management Committee unless a majority of the Management Committee consents. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to require Praxair to appoint replacement members to the Management Committee in the same manner as provided in Paragraph 3.e. of this Hold Separate. Praxair shall not change the composition of the management of the Merchant Divestiture Assets and Businesses, except that the Management Committee shall have the power to remove management employees for unsatisfactory performance or for cause.

k. If the Chairman of the Management Committee ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraphs 3.d. and 3.e.

l. CBI personnel connected with Nucorp or the Merchant Divestiture Assets and Businesses or providing support services to Nucorp or the Merchant Divestiture Assets and Businesses as of the date this Hold Separate is signed shall continue, as employees of Praxair, to provide such services as of the date of this Hold Separate. Such Praxair personnel must retain and maintain all material confidential information relating to Nucorp, including the Merchant

Divestiture Assets and Businesses on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Praxair business.

Such Praxair personnel shall also execute a confidentiality agreement prohibiting the disclosure of any material confidential information concerning Nucorp, including the Merchant Divestiture Assets and Businesses, or Praxair information.

m. Nucorp shall be staffed with sufficient employees to maintain the viability and competitiveness of the Merchant Divestiture Assets and Businesses, which employees shall be Nucorp employees and may also be hired from sources other than Praxair. Each management employee of Nucorp shall execute a confidentiality agreement prohibiting the disclosure of any material confidential information concerning Nucorp.

n. Praxair shall circulate to the management employees of Nucorp and appropriately display a notice of this Hold Separate and Consent Order in the form attached hereto as Attachment A.

o. Praxair shall cause Nucorp to expend funds for research and development, quality control, manufacturing and marketing of the products produced at Nucorp at a level not lower than that budgeted for the 1994 fiscal year, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. Within thirty (30) days of the date of this Hold Separate, the Chairman of the Management Committee shall develop a budget and operating plan for the 1996 fiscal year that complies with the provisions of this Paragraph and present it to the Management Committee for approval. If necessary, Praxair shall provide Nucorp with any funds to accomplish the foregoing. Praxair shall provide to Nucorp such support services as provided by CBI prior to the Acquisition.

p. Praxair shall provide Nucorp with sufficient working capital to operate at a level not less than the rate of operation in effect during the twelve (12) months preceding the date of this Hold Separate.

q. The Management Committee shall serve at the cost and expense of Praxair. Praxair shall indemnify the Management Committee against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that

such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Management Committee members.

r. The Management Committee shall have access to and be informed about all companies who inquire about, seek or propose to buy the Merchant Divestiture Assets and Businesses.

s. Notwithstanding the provisions of Paragraph 3.i., companies who undertake a due diligence process in the course of negotiations to purchase Nucorp, or any part thereof, may be accompanied and assisted by either or both of the Praxair Management Committee Members, in addition to appropriate Nucorp employees selected by the Management Committee. The Praxair Management Committee Members may delegate tasks relating to such due diligence to attorneys, accountants and/or other financial employees of Praxair who are not directly engaged in the Praxair Merchant Atmospheric Gases Business; provided, however, that such Praxair employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Nucorp material confidential information.

4. Should the Federal Trade Commission seek in any proceeding to compel Praxair to divest itself of Nucorp, or any additional assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief, Praxair shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Praxair shall also waive all rights to contest the validity of this Hold Separate.

5. To the extent that this Hold Separate requires Praxair to take, or prohibits Praxair from taking, certain actions that otherwise may be required or prohibited by contract, Praxair shall abide by the terms of this Hold Separate or the Consent Agreement, and shall not assert as a defense such contract requirements in any action brought by the Commission to enforce the terms of this Hold Separate or the Consent Agreement.

6. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Praxair made to its General Counsel, Praxair shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Praxair 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 Praxair or relating to compliance with this Hold Separate;

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

7. This Hold Separate shall not be binding until approved by the Commission.

#### Attachment A—Notice of Divestiture and Requirement for Confidentiality

Praxair, Inc. ("Praxair") and CBI Industries, Inc. have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Merchant Divestiture Assets and Businesses. Until after the Commission's Order becomes final and the Merchant Divestiture Assets and Businesses are divested, the Merchant Divestiture Assets and Businesses must be managed and maintained as a separate company, independent of all other Praxair businesses. All competitive information relating to The Merchant Divestiture Assets and Businesses must be retained and maintained by the persons involved in the Merchant Divestiture Assets and Businesses on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Praxair business. Similarly, all such persons involved in any other Praxair business shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Merchant Divestiture Assets and Businesses.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Praxair to civil penalties and other relief as provided by law.

#### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted subject to final approval an agreement containing a proposed Consent Order from Praxair, Inc. ("Praxair"), under which Praxair

will be required to divest all of the assets and businesses relating to four CBI Industries, Inc. ("CBI") plants that produce atmospheric gases. In addition, the Commission has accepted an Agreement to Hold Separate ("Hold Separate"), under which Praxair will be required to preserve the assets to be divested as viable, competitive and independent businesses pending divestiture.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception 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.

Pursuant to a cash tender offer dated November 3, 1995, Praxair proposed to acquire all of the common shares of CBI in a transaction valued at approximately \$2.0 billion. On December 22, 1995, the parties entered into a definitive agreement whereby Praxair will purchase all of CBI's common shares. The proposed complaint alleges that the acquisition, if consummated, would violate 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, in the markets for merchant oxygen and merchant nitrogen in Northern and Southern California, Eastern Connecticut, and Western Wisconsin/Southeastern Minnesota, and in the market for merchant argon in Eastern Connecticut, and Western Wisconsin/Southeastern Minnesota.

Common air consists of three principal gases which exist in the atmosphere in fixed proportions: nitrogen (78%); oxygen (21%); and argon (0.9%). These gases are commonly referred to collectively as "atmospheric gases." Nitrogen is used primarily to create inert environments in applications such as heat treating and chemical blanketing, and also for freezing purposes in industries such as food products. Oxygen is used mainly for combustion and oxidization purposes in applications such as foundries, and steel and glass production, and also for medical purposes. Argon is mostly used for welding purposes. Because of their unique properties, there are no adequate substitutes for nitrogen, oxygen or argon. "Merchant" atmospheric gases are products (nitrogen, oxygen and argon) supplied to customers in either in bulk liquid form or gaseous form in cylinders.

Geographically, due to significant transportation costs, merchant nitrogen and merchant oxygen can be economically shipped a maximum of approximately 150 to 300 miles from the production facility, depending on such factors as the degree of traffic congestion in a given area. Merchant argon can be shipped much longer distances (up to approximately 1,000 miles), because it is more expensive than nitrogen and oxygen.

Praxair's acquisition of CBI would reduce the number of merchant nitrogen and merchant oxygen competitors in both Northern and Southern California from five to four. In the Northern California market, the post-acquisition Herfindahl-Hirschman Index ("HHI") would increase by 431 points to 3366, and Praxair would increase its share of that market to 32%. In the Southern California market, the post-acquisition HHI would increase by 440 points to 2727, and Praxair would become the market leader with 34.8% of the market. In two additional areas, Eastern Connecticut and Western Wisconsin/Southeastern Minnesota, Praxair and CBI are each other's closest geographic competitor in merchant nitrogen, oxygen and argon.

New entry into any of these four areas would also be time-consuming and unlikely. Construction of a new manufacturing facility capable of serving the merchant atmospheric gases markets takes approximately two years, and is unlikely as a large percentage of a new plant's output must be sold out prior to or shortly after opening in order to account for the facility's opening costs and the need to operate the plant at a sufficient level of capacity utilization.

Praxair's acquisition of CBI poses serious antitrust concerns. In the Northern and Southern California markets for merchant nitrogen and oxygen, the acquisition would eliminate direct actual competition between Praxair and CBI, enhance the likelihood of coordinated interaction, and thereby increase the likelihood that consumers would be forced to pay higher prices. Coordinated interaction would be enhanced in Northern and Southern California because merchant nitrogen and oxygen are homogeneous products and the remaining firms in both markets would be a fairly homogeneous group that have similar incentives. In Eastern Connecticut and Western Wisconsin/Southeastern Minnesota, where Praxair and CBI are each other's closest geographic competitor in merchant nitrogen, oxygen and argon, the acquisition would eliminate direct actual competition between the parties

and increase the likelihood that Praxair would unilaterally raise prices to consumers.

Under the proposed Consent Order, Praxair is required to divest four of CBI's atmospheric gases production facilities, either individually or in some combination. These facilities are located in: (1) Vacaville, California; (2) Irwindale, California; (3) Bozrah, Connecticut; and (4) Madison, Wisconsin. The proposed Consent states that this divestiture shall take place within twelve (12) months of the date the proposed Order becomes final, and shall be to an acquirer or acquirers approved by the Commission. If Praxair fails to divest the assets within 12 months, a trustee may be appointed to divest the four plants.

The proposed Order also requires Praxair to take all steps necessary to ensure that the plants to be divested continue as ongoing, viable and competitive operations. To this end, an Agreement to Hold Separate is incorporated into the proposed Order to preserve the four plants to be divested and to remedy any anticompetitive effects of the acquisition. Under the Hold Separate, Praxair commits to assure the complete independence and viability of the four plants to be divested. Furthermore, to assure that no confidential information is exchanged between Praxair and the businesses that will be divested, Praxair will hold those businesses separate and apart from all of its other operations.

The Order also requires Praxair to provide the Commission a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date the Order becomes final, and every sixty (60) days thereafter until Praxair has completed the required divestiture.

Finally, with the exception of the Eastern Connecticut and Western Wisconsin/Southeastern Minnesota areas, where Praxair and CBI are each other's closest geographic competitor, the Complaint accompanying the Consent Order does not allege a violation with respect to merchant argon. Because merchant argon can be economically shipped significantly greater distances than nitrogen and oxygen, the geographic market for merchant argon most likely consists of the contiguous United States. CBI's share of the argon market is extremely small, seven other competitors would remain in the market after the acquisition, and anticompetitive effects on a national scale appear unlikely. However, localized unilateral anticompetitive effects are likely in the Eastern Connecticut and Western Wisconsin/Southeastern Minnesota areas, where Praxair and CBI are each other's closest competitors. The divestitures that the proposed Consent Order requires in Eastern Connecticut and Western Wisconsin/Southeastern Minnesota eliminate the likelihood of unilateral anticompetitive effects in merchant argon in those areas.

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

Donald S. Clark,

Secretary.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Comment Request

##### *Proposed Project(s):*

Title: Refugee Unaccompanied Minor Placement Report, Refugee Unaccompanied Minor Progress Report.

OMB No.: 0970-0034.

*Description:* The two reports collect information necessary to administer the refugee unaccompanied minor program. The ORR-3 (Placement Report) is submitted to ORR by the service provider agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR-4 is submitted annually and records the child's progress toward the goals listed in the child's case plan.

*Respondents:* State governments.

#### ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ORR-3 .....	20	50	.417	417
ORR-4 .....	20	55	.250	275

Estimated Total Annual Burden Hours: 692.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described below. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be

identified by title. Electronic comments must be submitted as an ASCII file without special characters or encryption.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 16, 1996.

Roberta Katson,

Director, Division of Information, Resource Management Services.

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