

Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 22, 1983.

John L. Rankin,

*Regional Manager, Gulf of Mexico Region.*

[FR Doc. 83-32178 Filed 11-30-83; 8:45 am]

BILLING CODE 4310-MR-M

#### **Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Mobile Oil Exploration and Production Southeast Inc.**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development and Production Plan.

**SUMMARY:** Notice is hereby given that Mobil Oil Exploration and Production Southeast Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS 049 and 050, Blocks 119 and 120, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 21, 1983.

John L. Rankin,

*Regional Manager, Gulf of Mexico Region.*

[FR Doc. 83-32177 Filed 11-30-83; 8:45 am]

BILLING CODE 4310-MR-M

#### **Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Texaco U.S.A.**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development and Production Plan.

**SUMMARY:** Notice is hereby given that Texaco U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0310, Blocks 207, 212, and 217, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 25, 1983.

John L. Rankin,

*Regional Manager, Gulf of Mexico Region.*

[FR Doc. 83-32175 Filed 11-30-83; 8:45 am]

BILLING CODE 4310-MR-M

#### **INTERSTATE COMMERCE COMMISSION**

[Finance Docket No. 30319]

#### **Railroad Services Abandonment; St. Louis Southwestern Railway Co.; Exemption in McPherson County, KS**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts the St. Louis Southwestern Railway Company from the requirements of 49 U.S.C. 10903 et

seq. in connection with abandonment of 1.6 miles of rail line known as the McPherson City Track in McPherson County, KS, subject to conditions for protection of employees.

**DATES:** This exemption is effective on January 3, 1984. Petitions to stay must be filed by December 12, 1983; and petitions for reconsideration must be filed by December 21, 1983.

**ADDRESS:** Send pleadings referring to Finance Docket No. 30319 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Thormund A. Miller, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Dated: November 22, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, and Gradison.

James H. Bayne,  
*Acting Secretary.*

[FR Doc. 83-32102 Filed 11-30-83; 8:45 am]

BILLING CODE 7035-01-M

#### **DEPARTMENT OF JUSTICE**

##### **Antitrust Division**

#### **Proposed Final Judgment and Competitive Impact Statement; Alaska Board of Registration for Architects, Engineers, and Land Surveyors**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS), as set forth below, have been filed with the United States District Court for the District of Alaska in *United States v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors*, Civil No. A 82-423 CIV.

The complaint in this case alleged that, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, the defendant conspired to restrain competition for architectural, professional engineering, and land surveying services in Alaska by adopting a code of ethics provision which prohibited its licensees from engaging in competitive bidding.

The proposed Final Judgment enjoins the defendant from adopting, continuing, advocating, or furthering any agreement, plan, or course of action which has the purpose or effect of suppressing or discouraging Alaska architects, professional engineers, and land surveyors from submitting competitive bids or price quotations. The defendant is also required to delete the competitive bidding ban from its code of ethics and to notify licensed practitioners, purchasers of architectural, professional engineering, and land surveying services, and the general public in Alaska of the rule change.

Public comment is invited within the statutory 60-day period. Such comments, and responses thereto, will be published in the *Federal Register* and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530 [Telephone (202) 633-2425].

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Michael R. Spaan, U.S. Attorney, Federal Building and United States Courthouse, Room C-252, Mail Box 9, 701 C Street, Anchorage, Alaska 99513

Edward D. Eliasberg, Jr., Carolyn L. Davis, United States Department of Justice, 10th & Pennsylvania Ave., NW., Washington, D.C. 20530, Telephone: (202) 633-2582, Attorneys for Plaintiff

United States District Court for the District of Alaska

*United States of America, Plaintiff, v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors. Defendant.* Civil Action No. A82-423 CIV.

Filed: November 18, 1983.

#### Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff: William F. Baxter, Assistant Attorney General; Joseph H. Widmar; John W. Poole, Jr., Thomas L. Greaney, Attorneys, Antitrust Division, U.S. Department of Justice; Edward D. Eliasberg, Jr., Carolyn L. Davis, Attorneys, Antitrust Division U.S. Department of Justice, Washington, D.C. 20530, Telephone: (202) 633-2582, Mark R. Davis, Assistant United States Attorney District of Alaska.

For the Defendant: Norman Gorsuch, Attorney General.

By: Peter B. Proehlich, Assistant Attorney General, State of Alaska, Department of Law, Pouch K—State Capitol, Juneau, Alaska 99501, Telephone: (907) 465-3600.

Michael R. Spaan, U.S. Attorney, Federal Building and United States Courthouse, Room C-252, Mail Box 9, 701 C Street, Anchorage, Alaska 99513

Edward D. Eliasberg, Jr., Carolyn L. Davis, United States Department of Justice, 10th & Pennsylvania Ave., NW., Washington, D.C. 20530, Telephone: (202) 633-2582, Attorneys for Plaintiff

U.S. District Court for the District of Alaska

*United States of America, Plaintiff, v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors. Defendant.* Civil Action No. A82-423 CIV.

Filed: November 18, 1983.

#### Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on October 12, 1982, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby, ordered, adjudged, and decreed as follows:

#### I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

#### II

As used in the Final Judgment: "Board certificate of registration holder" means any person holding a current certificate of registration as a professional architect, engineer or land surveyor issued by defendant, or any corporation holding a current certificate of authorization to practice architecture, engineering or land surveying issued by defendant.

#### III

This Final Judgment applies to the defendant and to defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with it who shall have received actual notice

of this Final Judgment by personal service or otherwise.

#### IV

Defendant is hereby enjoined and restrained from directly or indirectly:

(A) Continuing, maintaining, adopting, entering into, carrying out, advocating or furthering any agreement, plan, program, or course of action which has the purpose or effect of suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids or price quotations.

(B) Promulgating, maintaining, adopting, disseminating, publishing, enforcing or seeking adherence to any rule, by-law, guideline, standard, code of ethics, statement of principle, policy, or collective statement which has the purpose or effect of suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids or price quotations, or which states or implies that competitive bidding or quoting prices is prohibited, unethical, unprofessional, or contrary to any policy of defendant.

(C) Refusing to issue a certificate to any applicant, or rescinding, suspending or refusing to renew a certificate of any holder, because of use or submission of competitive bids or price quotations, or solicitation of proposals for professional services on the basis of competitive bidding.

#### V

Nothing in this Final Judgment shall prohibit defendant from advocating or seeking legislation concerning competitive bidding or quoting prices, provided that such advocacy or discussion makes clear that defendant is not thereby suppressing, restraining or discouraging Board certificate of registration holders from submitting competitive bids or price quotations.

#### VI

Subsection 230(b) of the defendant's Rules of Professional Conduct [12 AAC 38.230(b)] which states that:

Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications for the proper accomplishment of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.

is hereby declared null and void because the subsection is in violation of Section 1 of the Sherman Act [15 U.S.C. § 1 (1977)]. Subsection 230(b) must be deleted from the Alaska Administrative Code within 60 days from the entry of this Final Judgment. Defendant is also ordered and directed to delete any other provision in its Rules of Professional Conduct, by-laws, resolutions, and policy statements, whether formal or informal, which prohibits, limits, or otherwise discourages the use or submission of competitive bids or price quotations, or solicitation of proposals for professional services on the basis of competitive bidding, by Board certificate of regulation holders and applicants, or which implies that the use, submission, or solicitation of competitive

bids or price quotations is prohibited, unethical, unprofessional, or contrary to any policy of the defendant.

#### VII

Within 60 days from entry of this Final Judgment:

A. The defendant is ordered to insert in the place of the text of subsection 230(b) [12 AAC 36.230(b)] and any other provision deleted pursuant to Section VI, above a statement that subsection 230(b) [12 AAC 36.230(b)] or other such provision has been deleted and the date of the deletion.

B. The defendant is further ordered to insert in the Alaska Administrative Code on the page where subsection 230(b) [12 AAC 36.230(b)] previously appeared the following Editor's Footnote:

Editor's Note: As of Register 88, Jan. 1984, 12 AAC 36.230(b) was deleted by the regulations attorney in accordance with a Final Judgment entered, with the consent of the Board and the United States Department of Justice, by the United States District Court for the District of Alaska in *United States v. Alaska Bd. of Registration for Architects, Engineers, and Land Surveyors*, Civil Action No. A82-423 CIV. This Judgment was entered because 12 AAC 36.230(b) was in violation of Section 1 of the Sherman Antitrust Act [15 U.S.C. 1 (1977)]. The Final Judgment also prohibits further enforcement of any ban or Board policy against competitive bidding.

#### VIII

Within 60 days from entry of this Final Judgment, notice of this Final Judgment consisting of a letter on the letterhead of the Division of Occupational Licensing of the Alaska Department of Commerce and Economic Development with a text identical to that of Appendix A of this Final Judgment, shall be sent: (1) To each current Board certificate of registration holder; (2) to each state, city and borough entity in Alaska which may purchase architecture, engineering, or land surveying services and to which the Board's roster is mailed under AS 08.48.081; and (3) to each trade association for contractors in the State of Alaska. In addition within 60 days from entry of this Final Judgment, such notice shall be published in the *Alaska Construction and Oil* magazine, and in the *Anchorage Times*, *Juneau Empire*, *Fairbanks News-Miner*, *Sitka Sentinel*, *Peninsula Clarion*, *Nome Nugget*, *Tundra Times*, *Ketchikan Daily News*, and *Kodiak Mirror* newspapers in their general readership sections.

Furthermore, for a period of ten (10) years following the date of entry of this Final Judgment, such notice shall be sent to each new Board certificate of registration holder and to all others who receive the Board's roster under AS 08.48.081. The letter will also be published in every printing of the Board's pamphlet of statutes and regulations for a period of ten (10) years after the date of entry of this Final Judgment.

#### IX

The defendant is ordered and directed to file with the Court and serve upon plaintiff, within one-hundred-twenty (120) days after entry of this Final Judgment, an affidavit as to

the fact and manner of its compliance with Sections VI, VII and the first paragraph of Section VIII.

#### X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Fully authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to the Division of Occupational Licensing at its principal office, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, regarding any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the Division of Occupational Licensing at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested. The Antitrust Division of the United States Department of Justice will be considered a person who has filed a request for notice of proposed regulation actions by the defendant under AS 44.62.190(a)(2) and will therefore be sent notice of those actions.

#### XI

This Final Judgment shall remain in effect until ten (10) years from the date of entry.

#### XII

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

#### XIII

Entry of this Final Judgment is in the public interest. Entered:

*United States District Court Judge.*

#### Appendix A

Re: *United States v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors*, (Civil No. A82-423 CIV. D. AK.)

Dear Alaskan or Other Interested Party:  
The Alaskan board of Registration for Architects, Engineers, and Land Surveyors

has recently entered into a stipulation with the United States Department of Justice to settle an antitrust case filed against the Board. That case, *United States v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors* (Civil No. A82-423 CIV.) concerned the Board's regulation 12 AAC 36.230(b) which does not allow an architect, engineer or land surveyor to "knowingly solicit or submit proposals for professional services on the basis of competitive bidding." Under the terms of the Final Judgment entered by the Court according to the stipulation, 12 AAC 36.230(b) has been deleted entirely. All Board Certificate of Registration holders will now be able to solicit work or submit proposals on the basis of competitive bidding and will be able to offer price quotations, hourly rates, or price estimates to all potential customers whether or not that customer requested a price quotation or competitive bid.

In addition, the Final Judgment, which was entered by Federal District Court Chief Judge von der Heydt, prevents the Board from adopting in the future any new regulation, rule, or policy statement which would prevent, discourage or label as unprofessional the use, submission or solicitation of price quotations and competitive bids. The Final Judgment, which is enforceable in federal court, prohibits the Board from discouraging or disparaging competition which is, in part, based on price, cost, or hourly charges.

A copy of the entire Final Judgment is available upon request from any office of the Division of Occupational Licensing or the Alaska Attorney General.

Sincerely yours,

Harry D. Traeger,

*Director, Division of Occupational Licensing,  
Department of Commerce and Economic  
Development, State of Alaska.*

Michael R. Spaan, U.S. Attorney, Federal  
Building and United States Courthouse,  
Room C-252, Mail Box 9, 701 C Street,  
Anchorage, Alaska 99513

Edward D. Eliasberg, Jr., Carolyn L. Davis,  
United States Department of Justice, 10th &  
Pennsylvania Ave., NW., Washington, D.C.  
20530, Telephone: (202) 633-2582, Attorneys  
for Plaintiff

U.S. District Court for the District of Alaska

*United States of America, Plaintiff, v.  
Alaska Board of Registration for Architects,  
Engineers, and Land Surveyors. Defendant.*  
Civil No. A 82-423-CIV.

Filed: November 18, 1983.

#### Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

#### I

##### Nature and Purpose of the Proceeding

On October 12, 1982, the United States filed a civil antitrust complaint alleging that, in violation of Section 1 of the Sherman Act, 15

U.S.C. 1, defendant Alaska Board of Registration for Architects, Engineers and Land Surveyors ("Board") and co-conspirators have been engaged in a combination and conspiracy to restrain competition in the sale of architectural, professional engineering, and land surveying services in Alaska.

The Complaint alleged that the substantial terms of this agreement, understanding, and concert of action have been and are that the Board promulgate, adopt, publish and distribute a provision in its Rules of Professional Conduct, 12 Alaska Administrative Code 36.230(b) ("Rule 36.230(b)" or "Rule"), prohibiting Board certificate of registration holders and other architects, professional engineers and land surveyors practicing in Alaska from knowingly soliciting or submitting proposals for professional services on the basis of competitive bidding. The Complaint further alleged that the effect of the conspiracy has been to suppress and eliminate competition in the sale of architectural, professional engineering, and land surveying services in Alaska.

The relief sought in the Complaint was that the Board be required to cancel its ban on competitive bidding and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of competitive bidding by Board certificate of registration holders. The Complaint also asked that the Board be enjoined from adopting or suggesting any rule prohibiting competitive bidding or any practice, plan, program or device having a similar purpose or effect. The Complaint further asked that the Board be required to notify all holders of Board certificates or registration, Alaska city, borough, and state officials, and the general public of the rule change.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the judgment, or to punish violations of any of its provisions.

## II

### *Description of Practices Involved in the Alleged Violation*

Defendant is a state licensing board consisting entirely of architects, engineers, and land surveyors who are also private practitioners. Under Alaska law, individuals may not practice or offer to practice the profession of architecture, professional engineering, or land surveying unless they hold a current certificate of registration from the Board to practice architecture, professional engineering, or land surveying.

In 1974, the Board adopted "Rules of Professional Conduct" intended to regulate the practice of architecture, professional engineering, and land surveying in Alaska. The board can suspend, refuse to renew, or revoke the certificate of registration of any certificate of registration holder who violates any of the Board's Rules of Professional Conduct.

Among the Rules which the Board adopted in 1974 is Rule 36.230(b), which provides that an architect, professional engineer, or land

surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. This Rule is still in effect. In December, 1980, the Board voted to retain Rule 36.230(b) despite the recommendation of the Alaska Attorney General that it be repealed. In May 1982, the Board refused to repeal the Rule on an emergency basis. In September 1982, the Board voted to retain the Rule.

Had this case gone to trial, the United States would have offered evidence to show that the Rule has had an adverse impact on consumers of architectural, engineering and land surveying services in Alaska by restricting practitioners' ability to compete and thereby raising prices. As a result of the Board's ban on competitive bidding, certificate of registration holders have refused to submit competitive bids although purchasers have requested such bids, and architectural, professional engineering and land surveying associations have made reference to the ban in an attempt to discourage purchasers in Alaska from requesting or insisting upon competitive bids. Had this case gone to trial, the Government would also have adduced evidence that the Board informed potential purchasers that competitive bidding was in violation of its Rules and took other steps to ensure compliance with its Rules.

## III

### *Explanation of the Proposed Final Judgment*

The United States and the Board have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section XIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the Board completely eliminates all formal or informal rules, policy statements, or ethical codes proscribing or discouraging competitive bidding. It is also intended to ensure that Board certificate of registration holders and purchasers of architectural, professional engineering and land surveying services in Alaska are made aware that competitive bidding is now permissible.

**A. Prohibited Conduct.** Section IV of the proposed Final Judgment prohibits three categories of conduct. First, it enjoins the Board from directly or indirectly entering into, continuing, adopting, advocating, or furthering any plan, agreement, program, or course of action which has the purpose or effect of suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids. Second, Section IV enjoins the Board from promulgating, adopting, maintaining, or seeking adherence to any rule, guideline, statement of principal, policy, or collective

statement which has the purpose or effect of suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids or price quotations, or which states or implies that competitive bidding or quoting prices is prohibited, unethical, unprofessional, or contrary to any policy of the Board. Finally, the Board is also enjoined from refusing to issue a certificate to any applicant, or rescinding, suspending or refusing to renew a certificate of any holder, because of use or submission of competitive bids or price quotations, or solicitation of proposals for professional services on the basis of competitive bidding.

Section V provides that nothing in the proposed Final Judgment shall prohibit the Board from advocating or seeking legislation concerning competitive bidding, provided that such advocacy or discussion makes clear that the Board is not thereby suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids or price quotations.

**B. Affirmative Obligations.** The affirmative obligations of the proposed Final Judgment are found in Sections VI-VIII.

Section VI declares Rule 36.230(b) null and void and requires its deletion from the Alaska Administrative Code within 60 days from entry of the proposed Final Judgment. Section VI also requires the Board to delete any other provision in its Rules of Professional Conduct, by-laws, resolutions, and policy statements, whether formal or informal, that prohibits, limits, or otherwise discourage the use or submission of competitive bidding or price quotations or which implies that the use, submission, or solicitation of competitive bids or price quotations is prohibited, unethical, unprofessional, or contrary to any policy of the Board.

Section VII of the proposed Final Judgment requires the Board within 60 days from entry of the proposed Final Judgment to insert in the place of the text of Rule 36.230(b) and any other provision deleted pursuant to Section VI a statement that Rule 36.230(b) or other such provision has been deleted and the date of the deletion. The Board is also required within 60 days from entry of the proposed Final Judgment to insert in the Alaska Administrative Code on the page where Rule 36.230(b) previously appeared a statement that the Rule was deleted in accordance with the proposed Final Judgment and that the proposed Final Judgment also prohibits further enforcement of any ban or Board policy against competitive bidding.

Section VIII contains various requirements for dissemination of the proposed Final Judgment. First, Section VIII provides that within 60 days from entry of the proposed Final Judgment notice of the proposed Final Judgment consisting of a letter on the letterhead of the Division of Occupational Licensing of the Alaska Department of Commerce and Economic Development with a text identical to that of Appendix A of the proposed Final Judgment shall be sent to: (1) Each current Board certificate of registration holder, (2) each state, city, and borough entity in Alaska which may purchase architectural,

engineering, or land surveying services and to which the Board's roster is mailed under Alaska Statute 08.48.081, and (3) each trade association for contractors in the State of Alaska. Second, Section VIII further provides that within 60 days from entry of the proposed Final Judgment this notice will also be published in the general readership sections of various publications and newspapers in Alaska. Third, this Section also requires that this notice be sent to each new Board certificate of registration holder and to all other persons who normally receive the Board's roster each year for the next ten years. Finally, the Section also provides that the letter will also be published in every printing of the Board's pamphlet of statutes and regulations for the next 10 years.

c. *Scope of Final Judgment.* Section XI provides that the proposed Final Judgment will remain in effect for 10 years. Section III provides that the proposed Final Judgment applies to the Board and to the Board's officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with the Board who shall have received actual notice of the proposed Final Judgment by personal service or otherwise.

#### IV

##### *Competitive Effect of the Proposed Final Judgment*

The relief in the proposed Final Judgment is designed to permit competitive bidding with regard to architectural, professional engineering, and land surveying services in Alaska.

Three methods for determining compliance with the terms of the Final Judgment are provided. First, Section IX requires that the Board file within 120 days after entry of the Final Judgment an affidavit as to the fact and manner of its compliance with Sections VI, VII and the first paragraph of Section VIII of the Final Judgment. Second, Section X provides that, upon reasonable notice, the Department of Justice shall be given access to any of the Board's records relating to matters contained in the Final Judgment and permitted to interview any officers, directors, employees, or agents of the Board. Third, Section X also provides that, upon written request, the Department of Justice may require the Board to submit written reports about any matters relating to the Final Judgment. Finally, Section X provides that, pursuant to Alaska Statute 44.62.19(a)(2), the Department of Justice will be sent notice of proposed regulation actions by the Board.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to eradicate the effects of the alleged conspiracy.

#### V

##### *Remedies Available To Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages

suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 18(a), the judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the Board.

#### VI

##### *Procedures Available for Modification of the Proposed Final Judgment*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, N.W. Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the *Federal Register*. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consents to the proposed judgment at any time prior to entry. Section XII of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

#### VII

##### *Alternative to the Proposed Final Judgment*

The alternative to the proposed Final Judgment considered by the Department of Justice was a full trial of the issues on the merits and on relief. The Department considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violation alleged in the Complaint and is the identical relief that would have been sought at trial.

#### VIII

##### *Determinative Materials and Documents*

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 18(b), were considered in formulating the proposed Final Judgment.

Dated: November 18, 1983.

Respectfully submitted,

Edward D. Eliasberg, Jr.,

Carolyn L. Davis,

Attorneys, United States Department of Justice, 10th & Constitution Ave., NW., Washington, D.C. 20530, Telephone-(202) 633-2582.

[FK Doc. 83-32109 Filed 11-30-83; 8:45 am]

BILLING CODE 4410-01-M

#### **Proposed Consent Judgment and Competitive Impact Statement Thereon; First Multiple Listing Service, Inc.**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act,

15 U.S.C. Sections 16 (b) through (h), that a proposed final judgment and a competitive impact statement ("CIS") as set out below have been filed with the United States District Court for the Northern District of Georgia in Civil Action No. C80-1861A, *United States v. First Multiple Listing Service, Inc.*

The complaint in this case alleges that the defendant, First Multiple Listing Service, Inc. ("FMLS"), a residential real estate multiple listing service, and various co-conspirators, engaged in a combination and conspiracy to restrict licensed real estate brokers from access to the competitive benefits derived from membership in FMLS. The complaint alleged that FMLS and the other co-conspirators otherwise combined and conspired to restrict competition among licensed brokers and salespersons engaged in the sale of real estate in the Atlanta, Georgia area.

The proposed final judgment would enjoin the defendant from engaging in these restrictive practices and would require it to admit to membership persons who meet certain specified requirements. The CIS explains the background of the case and the intended effects of the proposed judgment.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the *Federal Register* and filed with the Court. Comments should be directed to Donald A. Kinkaid, Chief, Atlanta Field Office, Antitrust Division, United States Department of Justice, Suite 420, 1776 Peachtree Street, NW., Atlanta, GA 30309—telephone (404) 881-3828.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court, Northern District of Georgia, Atlanta Division

*United States of America, Plaintiff, v. First Multiple Listing Service, Inc., Defendant.* Civil No. C80-1861A.

Filed: November 18, 1983.

##### *Stipulation*

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to either party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court.

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to Plaintiff or Defendant in this or any other proceeding.

Dated:

For the Plaintiff: William F. Baxter,  
Assistant Attorney General; Mark P.  
Leddy; Donald A. Kinkaid, Attorneys,  
Antitrust Division, U.S. Department of  
Justice; John R. Fitzpatrick, Katherine A.  
Schlech, Attorneys, Antitrust Division,  
U.S. Department of Justice, 1776  
Peachtree St., NW., Suite 420, Atlanta,  
Georgia 30309; Telephone: FTS 257-3628,  
(404) 881-3828.

For the Defendant: Harold L. Russell,  
Esquire, Gambrell & Russell, 4000 First  
Atlanta Tower, Atlanta, Georgia 30383,  
Telephone: (404) 658-1620.

U.S. District Court, Northern District of  
Georgia, Atlanta Division

United States of America, Plaintiff, v. First  
Multiple Listing Service, Inc. Defendant. Civil  
Action No. C80-1861A.

Filed: November 16, 1983.

#### Final Judgment

Plaintiff, United States of America, having  
filed its Complaint herein on October 28,  
1980, and Plaintiff and Defendant, by their  
respective attorneys, having consented to the  
entry of this Final Judgment without trial or  
adjudication of any issue of fact or law  
herein and without this Final Judgment  
constituting any evidence against or an  
admission by any party with respect to any  
such issue:

Now, therefore, before the taking of any  
testimony and without trial or adjudication of  
any issue of fact or law herein and upon  
consent of the parties hereto, it is hereby,  
ordered, adjudged and decreed as follows:

This Court has jurisdiction of the subject  
matter of this action and each of the parties  
consenting hereto. The Complaint states a  
claim upon which relief may be granted  
against the Defendant under Section 1 of the  
Sherman Act (15 U.S.C. § 1).

#### II

As used in this Final Judgment:

(A) "Member" shall mean any person who  
is entitled to access to the services offered by  
Defendant's multiple listing service, whether  
or not said person is a stockholder in  
Defendant; and

(B) "Person" shall mean any individual,  
partnership, firm, association, corporation or  
other business or legal entity.

#### III

This Final Judgment applies to Defendant  
and to its officers, directors, members,  
retained agents, employees, subsidiaries  
successors and assigns, and to all other  
persons in active concert or participation  
with any of them who shall have received  
actual notice of this Final Judgment by  
personal service or otherwise.

#### IV

Defendant, whether acting unilaterally or  
in concert or agreement with any other  
person, is enjoined and restrained from:

(A) Refusing to make available or to  
furnish any and all services that Defendant  
now or hereafter makes available or  
furnishes to any of its members to any person  
who:

(1) Holds a real estate broker's license  
issued by the appropriate State of Georgia  
governmental licensing authority and is  
deemed by said authority to be acting as a  
principal broker, and whose license is  
deemed to be in active status by said  
authority;

(2) Is not the subject of any pending  
proceedings before the appropriate State of  
Georgia governmental licensing or  
disciplinary authority which may result in the  
suspension or revocation of the applicant's  
broker's license;

(3) Agrees to abide by Defendant's charter,  
by-laws, rules and regulations insofar as they  
are not inconsistent with the terms of this  
Final Judgment; and

(4) Agrees to pay to Defendant:

(a) A charge equal to the reasonable set-up  
costs of preparing to make Defendant's  
services available to the person;

(b) A reasonable security deposit, to secure  
against any unpaid claims or charges that  
may be asserted by Defendant against the  
person, which deposit shall be placed in an  
account bearing interest at a market rate and  
shall be returned with the accumulated  
interest to the depositor upon such person's  
withdrawal from membership in Defendant to  
the extent not applied against such unpaid  
claims or charges; and

(c) Reasonable and non-discriminatory fees  
for use of Defendant's services, which shall  
be equal on a per use basis for all members,  
whether or not stockholders of Defendant,  
and which shall not differentiate between  
persons who became members before or after  
the date of this Final Judgment. Such fees  
shall reflect the reasonable expenses of  
Defendant's operations, and may provide for  
a reasonable minimum annual fee for access  
to Defendant's services reflecting a  
reasonable approximation of the cost of  
Defendant's standing ready to provide  
services. The reasonable expenses of  
Defendant's operations, for purposes of this  
decree, shall include, in addition to  
Defendant's other expenditures in providing  
its services to members: (i) The accumulation  
and maintenance of reasonable reserves to  
be used exclusively for developing,  
maintaining, or improving the services and  
facilities used or to be used by Defendant to  
serve its members, and (ii) an annual return  
to stockholders, which may be distributed to  
stockholders as dividends or retained by  
Defendant for the benefit of stockholders,  
calculated on the basis of the book value of  
Defendant's outstanding stock as of the close  
of the nearest preceding accounting period.  
The aggregate annual rate of return to all  
stockholders as a group shall not exceed the  
sum of the following items: (i) 130 percent of  
the average (for the calendar year next  
preceding the date of such determination) of  
the auction average interest rates for three-  
month U.S. Treasury bills calculated on the

sum of (aa) \$25,000, plus (bb) an amount  
arrived at by multiplying the book value of  
Defendant's aggregate outstanding stock by a  
simple fraction of which the numerator shall  
be the value of Defendant's net (depreciated)  
property and equipment and the denominator  
shall be the value of Defendant's total assets,  
all as determined as of the close of  
Defendant's most recent accounting period  
next preceding the date of such  
determination; plus (ii) 100 percent of the  
average (for the calendar year next preceding  
the date of such determination) of the auction  
average interest rates for three-month U.S.  
Treasury bills calculated on the balance of  
book value remaining after deducting from  
total book value \$25,000 plus the portion  
thereof derived in accordance with the  
formula specified in subpart (bb) above.  
Nothing in this Final Judgment shall prohibit  
Defendant from: (i) Imposing delivery or  
service charges, which shall be applied  
equally to all members, reflecting reasonable  
approximations of actual costs, including  
reasonable deposits for keys or books, or (ii)  
limiting book delivery or photographic  
services to an area reasonably accessible to  
such delivery or photographic services;  
provided, however, that Defendant must  
make reasonable arrangements for  
alternative service to inaccessible areas,  
including shipment of books by common  
carrier and allowing members to take and  
submit for publication their own photographs.

(B) Refusing to sell a share of stock in  
Defendant to any person who elects to  
purchase a share of stock and who:

(1) Satisfies the standards set forth in  
Paragraph A of this Section; and

(2) Agrees to pay Defendant as the  
purchase price for the share of stock the  
lesser of either (a) \$25,000, or (b) a sum equal  
to (i) the book value of one share of  
Defendant's stock, plus (ii) an amount arrived  
at by multiplying the book value of one share  
of Defendant's stock by a simple fraction of  
which the numerator shall be the value, not  
to exceed \$20,000 of Defendant's net  
(depreciated) property and equipment and  
the denominator shall be the value of  
Defendant's total assets, all as determined as  
of the close of Defendant's most recent  
accounting period next preceding the date of  
such purchase. The purchaser may elect to  
make payment for the share in five annual  
installments, each consisting of one-fifth of  
the purchase price, together with accrued  
interest on the unpaid portion at a rate equal  
to 130 percent of the average (for the  
calendar year next preceding the respective  
dates when the four final installments  
become due) of the auction average interest  
rates for three-month U.S. Treasury bills. The  
first installment shall be due at the time of  
purchase. Each succeeding installment shall  
become due and payable one year after the  
preceding installment, together with accrued  
interest to the date of payment of that  
installment.

(C) Issuing stock in Defendant of a different  
class, or having different rights, from the  
stock in Defendant outstanding on the date of  
entry of this Final Judgment, or in any other  
manner discriminating between stockholders

with regard to the rights, benefits, or privileges of stock ownership.

(D) Issuing stock in Defendant to any person except in accordance with the provisions of Paragraph (B) of this Section.

(E) Issuing an additional share of stock in Defendant to any stockholder in Defendant or exchanging any share of stock in Defendant for more than one share of stock in Defendant.

(F) Establishing, maintaining or enforcing any charter provision, by-law, rule or regulation, or otherwise taking action, which is designed to or has the effect of restricting or limiting the availability of either stockholder or nonstockholder membership in Defendant whether by imposing moratoria on the acceptance of new members or otherwise.

(G) Prohibiting or restricting any member of Defendant from belonging to or otherwise using the services of any other multiple listing service, or adopting or enforcing any such prohibition, except that Defendant may: (i) Prohibit any of its directors or officers from simultaneously serving as directors or officers of any other multiple listing service, and (ii) require its members to devote a reasonable number of uncompensated hours to the administration of Defendant's service, provided that such an obligation is not used to discriminate against such of Defendant's members as may elect to become members of, or to utilize the services of, another multiple listing service or to discriminate against any member of Defendant who is not a stockholder.

(H) Establishing, maintaining or enforcing any fees, charges, or practices which discriminate among members with respect to the availability of Defendant's services, except that collection of the charges provided for in Paragraphs (A)(4)(a) and (A)(4)(b) of this Section may be limited to persons who become members after the date of this Final Judgment.

## V

(A) Defendant is ordered and directed to admit to membership any person who meets the criteria set forth in Section IV(A) and to issue a share of stock to any person who meets the criteria set forth in Section IV(B) within thirty (30) days from the receipt of an application. Within ten (10) days from receipt of an application, Defendant shall acknowledge its receipt and furnish the applicant with a copy of the Final Judgment. In the event a question is raised as to whether an applicant meets the criteria set forth in Paragraphs (A) or (B) of Section IV, Defendant shall promptly inform the applicant in writing of the nature of the question, and the applicant shall be permitted an opportunity to supply information to Defendant pertinent to the resolution of such question as has been raised as to his qualifications.

(B) Nothing in this Final Judgment shall affect Defendant's right to purchase or redeem its own stock on such terms, including price, as it deems appropriate: provided, however, that the purchase or redemption of stock shall not be considered an expense of Defendant's operation within the meaning of Section IV(A)(4)(c). Nothing in this Final Judgment shall affect Defendant's

right to use funds received as a return to stockholders pursuant to Section IV(A)(4)(c) or as the purchase price for a share of stock pursuant to Section IV(B)(2) for the purpose of redeeming or purchasing its own stock or for the purpose of paying dividends to its stockholders.

(C) In the event that Defendant collects set-up charges or service fees in excess of its actual requirements, including the payment of a return to stockholders and the accumulation and maintenance of reasonable reserves as provided in Section IV(A)(4)(c), said excess monies shall be returned to the members or credited to their accounts in proportion to the contributions of said members to the amount of the surplus: provided that any amounts then due and payable to Defendant in payment for stock pursuant to Section IV(B)(2) may first be deducted from any member's share of such surplus. Any surplus shall be returned or credited to members within ninety (90) days of the end of each of Defendant's fiscal years.

(D) Nothing in this Final Judgment shall prevent defendant from suspending or terminating the membership of any member who at the time of such suspension or termination fails to meet the standards of or fulfill obligations assumed pursuant to Section IV(A) or, in the case of stockholders, to meet the standards of or fulfill obligations assumed under Section IV(B).

## VI

Defendant shall:

(A) Furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers, directors, member firms, employees and retained agents.

(B) Furnish a copy of this Final Judgment to each person who, subsequent to Defendant's compliance with Paragraph (A) of this Section, becomes an officer, director, member firm, employee or retained agent of Defendant, said copy to be furnished within thirty (30) days of said person's achieving such status.

(C) File with this Court and with Plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact of its compliance with Paragraph (A) of this Section.

(D) Obtain from each person served with this Final Judgment pursuant to Paragraph (A) or (B) of this Section a written statement evidencing such person's receipt of a copy of this Final Judgment and retain such statements in its files.

## VII

Defendant shall require, as a condition of the sale or disposition of all, or substantially all, of Defendant's total assets or stock, to any person or persons seeking to perform essentially the same services as Defendant, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon Plaintiff, its consent to be bound by this Final Judgment.

## VIII

(A) Once each fiscal year, for a total of five (5) successive fiscal years, Defendant shall conduct an examination of its operations to

determine compliance with the provisions of this Final Judgment. The persons conducting the examinations must be given complete cooperation by Defendant's officers, directors, member firms, employees and retained agents, and shall be given access to all relevant books and records of Defendant.

(B) Descriptions by Defendant as to how the examination will be conducted are to be submitted to Plaintiff for approval within six (6) months after the date of entry of this Final Judgment.

(C) Within one hundred twenty (120) days after the close of each of its fiscal years ending after the anniversary date of the entry of this Final Judgment, a report of the findings of each such examination shall be filed with the Court, and a copy thereof submitted to Plaintiff and to the officers and directors of Defendant.

## IX

Within sixty (60) days after the entry of this Final Judgment, Defendant shall mail or deliver to the real estate boards in the nineteen counties listed in Paragraph 5 of the Complaint in this action either a copy of this Final Judgment or a notice of its entry, which notice shall also set forth, verbatim, the text of Sections IV and V hereof and the advice that this Final Judgment is available for inspection in the office of the Clerk of the United States District Court in Atlanta, Georgia.

## X

(A) For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(1) Fully authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice directed to Defendant's principal office, shall be permitted:

(a) Access during the office hours of Defendant to inspect and copy all books, ledgers, accounts, minutes, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, which may have counsel present, relating to any of the matters contained in the Final Judgment; and

(b) Subject to the reasonable convenience of Defendant and without restraint or interference from it to interview officers, directors, members, employees and agents of Defendant, any of whom, as well as Defendant, may have counsel present, regarding any such matters; and

(2) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal office, Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(B) No information or documents obtained by the means provided in this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of Plaintiff except in the

course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this final judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to be that to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than proceedings initiated by Plaintiff to enforce compliance with this Final Judgment or to punish any violation hereof or a grand jury proceeding).

#### XI

This Final Judgment shall expire on, and have no effect after, the end of Defendant's fiscal year ending after the tenth (10th) anniversary to the date of entry of this Final Judgment by this Court; provided, however, that such expiration shall not relieve members or Defendant from any monetary obligation incurred as a result of this Final Judgment during its term.

#### XII

Defendant's two counterclaims against Plaintiff are dismissed, with prejudice, upon entry of this Final Judgment.

#### XIII

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of any of the provisions of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith or for the punishment of any violation hereof.

Entry of this Final Judgment is in the public interest.

Done and ordered this \_\_\_\_\_ Day of \_\_\_\_\_, 1984.

Marvin H. Shoob,  
Judge, United States District Court, Northern District of Georgia.

U.S. District Court, Northern District of Georgia, Atlanta Division

United States of America, Plaintiff, v. First Multiple Listing Service, Inc., Defendant.  
Civil Action No. C80-1861A.

Filed: November 18, 1983.

#### Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §§ 18(b)-(h)), the United States of America submits this Competitive Impact Statement relating to the proposed consent judgment in this civil antitrust proceeding.

#### I

##### Nature of the Proceeding

On October 28, 1980, the Department of Justice filed a civil antitrust complaint under

Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that First Multiple Listing Service, Inc. had violated Section 1 of the Sherman Act (15 U.S.C. § 1). First Multiple Listing Service, Inc. ("FMLS" or "Defendant") is in the business of operating a real estate multiple listing service for the benefit of its members, who are licensed real estate brokers doing business in the Atlanta, Georgia area, which is made up of 19 contiguous counties ("Atlanta area").

The complaint filed in this action alleges that FMLS and certain other persons combined and conspired, since at least as early as January 1, 1973, to restrict membership in Defendant and to adopt and enforce rules and regulations otherwise restricting competition between and among licensed real estate brokers and other persons engaged in the business of selling real estate in the Atlanta area, in violation of Section 1 of the Sherman Act. The complaint asked the Court to restrain Defendant from establishing, maintaining, or enforcing by-laws, rules and regulations which: (a) Unreasonably restrict membership in Defendant; (b) arbitrarily exclude from membership in Defendant any real estate broker licensed by the State of Georgia; or (c) contribute to the violation alleged in the complaint.

Entry of the proposed consent judgment will terminate the action, including dismissal of Defendant's two counterclaims against the United States, except that the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment.

#### II

##### Detailed Description of the Practices Involved in the Alleged Violation

Defendant is a Georgia corporation engaged in facilitating the sale of residential real estate in the Atlanta area by compiling the real estate listings of its members into a listing book and periodically disseminating copies of such listing books, as well as copies of new listings, to its members. In this manner, each FMLS affiliated real estate broker and agent is conveniently apprised of a large number of properties for sale in the Atlanta area by member firms. FMLS offers its members other advantages, such as the use of a "lock box" system which provides convenient access to homes offered for sale through FMLS and a computerized data bank and computer terminals which provide its members with easy access to all available information on all FMLS listings. In addition to benefiting its members, FMLS multiple listing service benefits the public by ensuring that prospective purchasers have convenient access to the maximum number of properties in the Atlanta area. Home sellers obtain the assurance that a large number of brokers and agents have been made aware of the fact that their property is being offered for sale.

Historically, FMLS has focused its attention on "North Atlanta," an area generally to the north of the city, while Metropolitan Multi-List, Inc. ("MML"), a multiple listing service owned by the DeKalb County Board of Realtors, has operated

primarily in a section of Atlanta generally to the east and south of FMLS' area of dominance. Many brokers who wish to compete in North Atlanta have found membership in MML to be of limited utility, and membership in FMLS to be a competitive necessity.

In its complaint, the United States alleged that access to FMLS' services is essential for a broker to compete in the North Atlanta market. The United States also alleged that by adopting restrictive prerequisites for FMLS membership, FMLS and its members restricted competition in the business of selling residential real estate in the Atlanta area, thereby depriving buyers and sellers of the benefits of free and open competition. Specifically, the United States challenged FMLS' requirements that an applicant for membership has to:

(a) Have operated as a broker in the State of Georgia for two years immediately prior to the date of application for membership;

(b) Have submitted proof that the applicant had sold and closed sale on 240 residences in the two years immediately prior to application for membership, within the defined boundaries of FMLS;

(c) Have received the affirmative vote of at least 75 percent of the active shareholders (85 percent if the applicant was applying for membership as a stockholder);

(d) Have been recommended by two members of FMLS and have received the approval of FMLS' board of directors, if applying for membership as a stockholder; and

(e) Have ceased being a member of, or using the services of, any other multiple listing service, wherever located.

The United States also challenged moratoria by FMLS on the admission of new members, FMLS' rules governing access to its listing books and keys, and FMLS' membership and user fees as they impacted on the ability of both members and non-members to compete on equal terms.

Had further proceedings been necessary, the United States would have submitted evidence to prove its contentions. However, after both parties have engaged in extensive discovery, FMLS demonstrated a willingness to reach a settlement without resorting to what would have been additional costly proceedings. FMLS has agreed to eliminate the practices which the United States alleged to be anticompetitive and violative of Section 1 of the Sherman Act. The proposed consent decree will serve to ensure that FMLS does not reintroduce such objectionable practices and provides the United States with substantially all of the relief which would have been sought if the case had proceeded to a litigated judgment.

##### Explanation of the Proposed Consent Judgment and Its Anticipated Effects on Competition

The United States and Defendant have stipulated that the proposed consent judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect

to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), entry of the proposed consent judgment is conditioned upon a determination by the Court that the proposed consent judgment is in the public interest.

An explanation of each of the material provisions of the proposed consent judgment is set forth below, together with a statement of its anticipated effects on competition.

A. Reasonable and Non-Discriminatory Requirements for Membership in FMLS. The proposed consent judgment prohibits FMLS from refusing membership in FMLS,<sup>1</sup> i.e., from refusing to make available any and all of its services, to any person who meets the following reasonable and non-discriminatory requirements:

(1) Holds a real estate broker's license issued by the appropriate State of Georgia governmental licensing authority and is deemed by said authority to be acting as a principal broker, and whose license is deemed to be in active status by said authority;

(2) Is not the subject of any pending proceedings before the appropriate State of Georgia governmental licensing or disciplinary authority which may result in the suspension or revocation of the applicant's broker's license;

(3) Agrees to abide by Defendant's charter, by-laws, rules and regulations insofar as they are not inconsistent with the terms of the Final Judgment; and

(4) Agrees to pay to Defendant:

(a) A charge equal to the reasonable set-up costs of preparing to make Defendant's services available to the person;

(b) A reasonable security deposit, to secure against any unpaid claims or charges that may be asserted by Defendant against the person; and

(c) Reasonable and non-discriminatory fees for use of Defendant's services, which shall be equal on a per use basis for all members, whether or not stockholders of Defendant, and which shall not differentiate between persons who became members before or after the date of the Final Judgment. Such fees shall reflect the reasonable expenses of Defendant's operations, and may provide for a reasonable minimum annual fee for access to Defendant's services reflecting a reasonable approximation of the cost of Defendant's standing ready to provide services.

Thus, under the provisions of the proposed judgment, all members of Defendant's multiple listing service, whether stockholders or not, have to pay reasonable and non-discriminatory fees for the use of Defendant's services, reflecting the reasonable expenses of Defendant's operations and equal on a per use basis. Under a related provision of the proposed judgment, in the event that Defendant collects set-up charges or service fees in excess of its actual requirements,

<sup>1</sup> The judgment defines the term "member", as . . . any person who is entitled to access to the services offered by Defendant's multiple listing service, whether or not said person is a stockholder in Defendant . . . The term "member" will be used in the same fashion in this Competitive Impact Statement.

including the payment of a return to stockholders and the accumulation and maintenance of reasonable reserves, such excess monies shall be returned to the members or credited to their accounts in proportion to their respective contributions to the amount of the surplus.

The reasonable expenses of Defendant's operations, for purposes of the proposed decree, shall include, in addition to Defendant's other expenditures in providing its services to members:

(i) The accumulation and maintenance of reasonable reserves to be used exclusively for developing, maintaining, or improving the services and facilities used or to be used by Defendant to serve its members, and

(ii) An annual return to stockholders, which may be distributed to stockholders as dividends or retained by Defendant for the benefit of stockholders, calculated on the basis of the book value of Defendant's outstanding stock as of the close of the nearest preceding accounting period.

The proposed judgment makes it clear that the aggregate annual rate of return to all stockholders as a group, referred to above, shall not exceed the sum of the following items:

(i) 130 percent of the average (for the calendar year next preceding the date of such determination) of the auction average interest rates for the three-month U.S. Treasury bills calculated on the sum of (aa) \$25,000, plus (bb) an amount arrived at by multiplying the book value of Defendant's aggregate outstanding stock by a simple fraction of

$$130\% \times 10\% \times (\$25,000 + \frac{\$18,000}{\$1,000,000} \times \$500,000) +$$

$$100\% \times 10\% \times (\$500,000 - [\$25,000 + (\frac{\$18,000}{\$1,000,000} \times \$500,000)]).$$

<sup>2</sup> This example, as well as the other example used herein, is intended as a guide to the reader as to how the calculations are to be made, not to illustrate dollar amounts which necessarily have any relationship to actual amounts of money likely to be involved.

The excess set-up charges or service fees are required under the judgment to be returned to members (stockholders or otherwise) or credited to their accounts. The excess monies to be returned or credited would then be \$98,980 (\$750,000 (\$600,000 + \$150,000)).

Another provision of the judgment makes it clear that should FMLS determine to redeem one or more shares of its outstanding stock from its shareholders, the redemption of such shares shall not be considered an expense for which Defendant can levy fees. However, nothing in the proposed judgment would prohibit Defendant from using monies obtained as the purchase price of new shares of stock or from the allowable return to stockholders on invested capital, based on U.S. Treasury Bill rates, for the purchase or redemption of its own stock.

Although nonstockholder members would have the right to use all of Defendant's

which the numerator shall be the value of Defendant's net (depreciated) property and equipment and the denominator shall be the value of Defendant's total assets, all as determined as of the close of Defendant's most recent accounting period next preceding the date of such determination; plus

(ii) 100 percent of the average (for the calendar year next preceding the date of such determination) of the auction average interest rates for three-month United States Treasury bills calculated on the balance of book value remaining after deducting from total book value \$25,000 plus the portion thereof derived in accordance with the formula specified in subpart (bb) above.

The following is intended to illustrate the application of the above rules governing the interaction of the judgment's provision relating to reasonable expenses and returns of excess fees. Let us assume that: (1) The total amount of set-up charges or service fees of Defendant was \$750,000 for a particular fiscal year; (2) its expenses were \$60,000 (including the accumulation of reasonable reserves but excluding a return to shareholders); (3) the aggregate book value of its outstanding stock was \$500,000; (4) the value of its total assets was \$1,000,000, including \$18,000 worth of net (depreciated) property and equipment; and (5) the average of the auction average interest rates for three-month U.S. Treasury Bills was 10%. The total amount available for the payment of dividends to stockholders would be \$51,020, derived as follows:

services on the same basis as stockholders, the proposed consent judgment also requires Defendant to sell a share of stock in Defendant to any person who elects to purchase a share of stock, provided he or she meets the requirements specified above and agrees to pay Defendant the specified price. Defendant would be prohibited from discriminating among stockholders with regard to the rights, benefits, or privileges of stock ownership. The purchase price for a share of stock would be the lesser of either (a) \$25,000, or (b) a sum equal to (i) the book value of one share of Defendant's stock, plus (ii) an amount arrived at by multiplying the book value of one share of Defendant's stock by a simple fraction of which the numerator shall be the value, not to exceed \$20,000, of Defendant's net (depreciated) property and equipment and the denominator shall be the value of Defendant's total assets, all as

determined as of the close of Defendant's most recent accounting period next preceding the date of such purchase.<sup>3</sup> To illustrate the application of this formula in arriving at a stock purchase price, let us assume FMLS were to have a total book value of \$500,000, and that its assets totaled \$1,000,000, including \$18,000 worth of net (depreciated) property and equipment. Assume further that there were 50 shareholders. The maximum allowable charge to an additional, new member for a share of FMLS stock would be \$10,180 derived as follows:

$$\frac{\$10,000 + (\$18,000 \times \frac{\$18,000}{\$1,000,000})}{\$1,000,000}$$

Finally, the proposed judgment requires that if a question is raised as to whether an applicant meets the judgment's criteria for obtaining access to Defendant's services or for purchasing a share of stock in Defendant, the applicant must be informed in writing of the nature of the question and given the opportunity to present information pertinent to the resolution of the question raised.<sup>4</sup>

The United States believes that, taken together, the above provisions of the proposed consent judgment will assure access to Defendant's services on a reasonable and non-discriminatory basis, thereby permitting all interested brokers to compete on an equal footing. The judgment reflects the conclusion that competition is best promoted by providing for membership in Defendant by interested brokers on both a non-stockholder and stockholder basis. All users, whether stockholders or not, are to be charged the same reasonable and non-discriminatory fees for the use of Defendant's services, charges which shall be equal on a per use basis to all members. However, the judgment also recognizes that stockholder members of FMLS entitled to a fair return on their capital which is invested in FMLS. Consequently, the judgment provides that an annual return to stockholders on invested capital, based upon U.S. Treasury Bill rates, is to be considered as part of the expenses of operating FMLS which are to be paid by all members, whether or not stockholders. Before any annual surplus of monies collected on expenses are returned to all

members, as is required by the judgment, the judgment permits a U.S. Treasury Bill rate-based dividend to be paid to stockholders by Defendant, or to be retained by Defendant for their benefit. Thus, stockholders in Defendant are placed in the same position as, for example, consumers of electricity who are also stockholders in the public utility providing power. While as stockholders in the utility providing power they would receive a return on capital invested, their charge for using electricity would be the same as that for other, non-stockholder consumers of electric power.

The provisions of the judgment which requires FMLS to sell stock to interested brokers at a price tied to the lesser of book value of a share (plus a small increment) or \$25,000, ensure that those willing to make a modest investment will be entitled to the same rights as other shareholders to a return on capital and to other rights incident to holding stock, such as the right to vote. By providing for stockholdership for a modest maximum investment, and by providing that this charge may be paid on an installment basis, the United States believes it has minimized the risk of existing stockholders seeking to manipulate the value of Defendant's asset base upward in an unreasonable fashion, either to discourage additional applications for stockholder membership or to discourage non-stockholder membership by increasing the interest-based component of fees. This is true because those dissatisfied for any reason with non-stockholder membership have the right to purchase a share of stock on demand, provided they otherwise qualify for membership.

#### B. Other Prohibited Practices.

(1) *Prohibition on Moratoria on New Memberships.* The proposed consent judgment prohibits FMLS from restricting or limiting the admission of new members through enactment of moratoria on new memberships, thereby making it clear that the provisions of the judgment discussed above are not to be frustrated by such device.

(2) *Elimination of Prohibition on Membership in Other Multiple Listing Services.* The proposed consent judgment will prevent FMLS from prohibiting its members from belonging to, or otherwise using the services or, other multiple listing services. Defendant may prohibit its officers or directors from simultaneously serving as officers or directors of another listing service. It may also require its members to devote a reasonable number of uncompensated hours to the administration of Defendant's service, provided that obligation does not discriminate against any members of Defendant who is not a stockholder or against any members who uses, or participate as a member in the services of, another multiple listing service. The proposed judgment thereby recognizes FMLS' legitimate interest in avoiding potential conflicts of interest on the part of its officers and directors and in assuring active participation by all members in its own administration.

The elimination of this restraint will free the Atlanta area from an arbitrary impediment to the development of alternative listing services. FMLS' members will be free

to subscribe or belong to other multiple listing services without fear of losing the benefits of FMLS membership.

#### IV

##### *Scope of the Proposed Judgment and Provisions for Compliance Therewith*

By its terms the judgment applies to Defendant and to each of its officers, directors, members, employees, retained agents, subsidiaries, successors and assigns, and to all other persons who act in concert with defendant, provided that such persons have actual notice of the judgment by personal service or otherwise.

Defendant is required to provide notice of the Final Judgment to the real estate boards in each of the 19 counties listed in the Complaint. The proposed consent judgment also requires that Defendant provide a copy of the Final Judgment to each of its officers, directors, member firms, employees and retained agents, and to furnish to the Court and to Plaintiff an affidavit that it has done so. Defendant is similarly required to provide a copy of the Final Judgment to each successor to any officer, director, employee and retained agent of FMLS, and to each new member firm.

The proposed consent judgment also provides that Defendant shall require, as a condition of the sale or disposition of all or substantially all of the total assets or stock of FMLS to a person seeking to perform the same services as Defendant, that the acquiring party agree to be bound by the provisions of the Final Judgment, and that each such acquiring party is to file with the Court, and serve upon Plaintiff, its consent to be so bound.

Finally, the proposed consent judgment requires that for five years Defendant is to conduct an annual examination of its operations to determine compliance with the provisions of the judgment. The findings of the examination shall be filed with the Court and Plaintiff, and submitted to the officers and directors of Defendant. Within six months after the entry of the Final Judgment, Defendant is to submit to Plaintiff for its approval a description of how the examination is to be conducted.

#### V

##### *Appropriateness of the Proposed Judgment*

The relief encompassed in the proposed consent judgment is designed to prevent any recurrence of the activities alleged in the complaint. The prohibitions contained in the judgment should ensure that in the future Defendant will not adopt unreasonably restrictive or anticompetitive membership or operating prices.

The judgment provides two methods for determining Defendant's compliance with the terms of the judgment. First, the United States is given access, upon reasonable notice, to the records of Defendant to examine these records for possible violations of the judgment, and to interview officers, directors, members, employees or agents of Defendant. Second, Defendant may be required to submit written reports with respect to any matter contained in the proposed consent judgment.

<sup>3</sup> At the option of the purchaser, the stock may be paid for in five annual installments on terms specified in the proposed judgment. The installment provision is designed to ensure that the cost of a share of stock can be spread over time so as not to present an unreasonable barrier to stock purchase.

<sup>4</sup> The Court will retain general jurisdiction over the decree, including the power to modify those provisions relating to the purchase of stock and return to stockholders in light of unforeseen circumstances. For example, the decree provides that the maximum purchase price for a share of stock is \$25,000. This ceiling on the purchase price is intended to assure that the present stockholders of FMLS do not conduct the operations of FMLS in such a manner as to increase book value to a level that may make it financially burdensome for a new member to become a stockholder. The figure of \$25,000 was selected as a reasonable ceiling to accomplish this objective. If future price inflation should cause the present \$25,000 ceiling price to become unrealistically low, the court would have the power to adjust the ceiling price accordingly.

In the Department's view, disposition of the lawsuit without further litigation is appropriate in that the proposed consent judgment provides all of the relief which the Government sought by filing its complaint.

#### VI

##### *Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. The proposed final judgment would in no way affect the rights of any present or potential private plaintiff to sue for monetary damages. Section 5(a) of the Clayton Act, as amended, (15 U.S.C. § 16(a)) allows a judgment to be invoked as *prima facie* evidence in private litigation only where the judgment operates as an estoppel between the parties. Since this proposed final judgment does not operate as an estoppel in any way as between the parties in this case, it would not have such *prima facie* effect.

#### VII

##### *Procedures Available for Modification of the Proposed Judgment*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed consent judgment should be modified may submit written comments to Donald A. Kinkaid, Chief, Atlanta Field Office, Antitrust Division, United States Department of Justice, 1776 Peachtree Street, N.W. Suite 420, Atlanta, Georgia 30309—telephone (404) 881-3828, within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the *Federal Register*. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed consent judgment provides that the Court will retain jurisdiction over this action, and the parties may apply to the Court for such orders as may be necessary or appropriate for its modification, interpretation or enforcement.

#### VIII

##### *Alternatives to the Proposed Consent Judgment*

The Department considers the injunctive provisions of the proposed consent judgment to be of sufficient scope and effectiveness to make continued litigation unnecessary, as the judgment provides all of the relief which reasonably could have been expected after trial. The Department therefore did not consider a trial to be a reasonable alternative.

The proposed judgment results from extensive negotiations between the United States and Defendant. From the Department of Justice's standpoint, at issue were two basic considerations. The first was how to ensure that the tangible competitive advantage of access to FMLS' services was

made available to appropriate persons. The second was how to ensure that access to FMLS' services would be made available to those persons at a reasonable cost. To that end, a number of alternative proposals were considered and either abandoned or rejected, as outlined below.

At one time, the Department had under consideration a proposed method of settlement which would have left FMLS' membership requirements in place, but which would have required FMLS to make its listing and comparable sales books, week-old listing books, lock box keys and computer data, available to MML on a reciprocal basis. However, MML was unwilling to become a party to any such proposal and the United States resumed settlement discussions with Defendant alone.

Other alternative means of placing a non-member of FMLS on substantially the same footing as a member were explored. Initially, discussions centered around devising a method to provide a non-member access to FMLS' computer terminals, lock box keys and listing and comparable sales books, while at the same time permitting FMLS' members to belong to or use the services of another listing service. However, an adequate solution to the problem along these lines proved unobtainable. Thereafter, the parties gradually worked toward the proposal now before the Court.

Discussions between the parties also included the possibility of providing for a class of non-stockholder membership in FMLS, with new entrants alone subsidizing a reserve fund designed to redeem the shares of existing stockholders at an amount in excess of book value. This approach to the problem was at one point modified to include consideration of a stock redemption reserve funded by both stockholders and non-stockholders. The concept of having non-shareholders, whether alone or in conjunction with shareholders, buy out shareholders was rejected as placing an unfair burden on non-stockholders, who would receive no equity interest in return.

The Department also had under consideration at various other times proposals to: (a) Tie the number of votes to which a stockholder was entitled to the stockholder's volume of business using the Defendant's services; (b) reduce the term of the judgment to less than ten years; (c) create a class of non-stockholder membership which would pay the same fees to use the service as stockholders, without providing for the option to purchase stock; and (d) include in the judgment a provision which would prevent or limit costs for antitrust suits filed against FMLS being assessed against new members.

It was concluded that in order to prevent discrimination against any class of FMLS members, the opportunity to obtain voting rights by purchasing stock was essential. Consequently, relief that did not provide a means of obtaining voting privileges was not considered appropriate. Proportional voting, according to the member's usage of the service, appeared facially attractive. However, it was felt that the concept required further discussion and analysis outside the confines of ongoing litigation. Relief lasting less than 10 years was not

considered of sufficient duration to cure long-existing problems. Preventing or limiting the assessment of the costs of defending antitrust suits against new members was seriously considered. However, it was felt that, on balance, prompt implementation of the relief obtained outweighed the value of pursuing a difficult and minor issue under the facts of this case.

The present concept of affording a qualified person access to Defendant's services on either a stockholder or non-stockholder basis and allowing stockholder members a return on invested capital arose from the full and considered exploration of numerous proposals. After due consideration, it was concluded that Defendant's existing members were entitled to be placed in a position analogous to that of persons who were both stockholders in a public utility and users of that utility's services. They are entitled to a return on invested capital, but will have to pay the same fees as non-stockholders for the Defendant's services.

#### IX

##### *Other Materials*

There are no materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)) that were considered determinative in formulating the proposed judgment.

Dated: November 16, 1983.

John R. Fitzpatrick

Katherine A. Schlech

Attorneys, Antitrust Division, U.S. Department of Justice, Suite 420, 1776 Peachtree Street, N.W., Atlanta, Georgia 30309; Tel: (404) 881-3828; FTS 257-3828.

[FR Doc. 83-32106 Filed 11-30-83; 8:45 am]

BILLING CODE 4410-01-M

#### **Pollution Controls; Proposed Consent Decree Western Dairymen Cooperative, Inc.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States of America v. Western Dairymen Cooperative, Inc.*, Civil Action No. C-82-1227A, was lodged with the United States District Court for the District of Utah on October 31, 1983.

The proposed consent decree requires the Western Dairymen Cooperative to abate its unpermitted discharges, monitor surface and groundwater quality, construct and properly maintain a solid waste land application treatment system for its process waste water, and monitor the performance of its treatment system at the facility. The decree also requires the cooperative to pay a \$13,000 civil penalty and daily stipulated penalties for failure to comply with the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments