If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21450 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Occidental Chem. Corp.,* Civ. A. No. 4:CV–98–0686, was lodged on August 2, 2002, with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States sought recovery of past and future response costs under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, the imposition of a civil penalty under Section 106 of CERCLA, 42 U.S.C. 9606, due to Occidental Chemical Corporation's (''Occidental'') failure to comply with EPA's 1997 Unilateral Administrative Order (''UAO''), Docket No. III–97–79–DC, and injunctive relief requiring Occidental to comply with the UAO in the future. Under the Consent Decree, Occidental will pay the United States $561,000 for past and future response costs incurred or to be incurred in connection with the clean-up of the Centre County Kepone Superfund Site (''the Site''), located in State College, Centre County, Pennsylvania.

Furthermore, in order to fulfill its obligations under the UAO, which directed Occidental to ''participate and cooperate'' in performing the response actions at Operable Unit #1 (''OU–1'') of the Site with Ruetgers Organics Corporation (''ROC''), Occidental will make a good faith offer to ROC of at least $220,000 as its appropriate share of the response actions to be performed under the UAO. If ROC rejects Occidental's good faith offer, Occidental will instead pay $220,000 to the EPA Hazardous Substance Superfund in reimbursement for response costs incurred in connection with OU–1 at the Site.

Finally, to resolve its failure to comply with the UAO, Occidental will pay a civil penalty of $21,000 and perform a Supplemental Environmental Project (''SEPP''), involving the acquisition of an environmental easement, the Hartle Farm, at a cost of at least $84,000.

The Department of Justice will receive, for a period of not less than thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Occidental Chem. Corp.* (4:CV–98–0686), DOJ Ref. #90–11–3–1436A.

The Consent Decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Room 220, Harrisburg, PA 17108, and at the Region III Office of the Environmental Protection agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood at (202) 514–0097 [Phone confirmation number (202) 514–1547]. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction cost), payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–21369 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Association of Police Equipment Distributors, Inc.; Proposed Final Judgment and Competitive Impact Statement

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 have been filed with the United States District Court for the Southern District of Florida in *United States of America* v. *National Association of Police Equipment Distributors, Inc.* (''NAPED''), Civil Action No. 02–80703. On July 29, 2002, the United States filed a Complaint to obtain equitable and other relief to prevent and restrain violations of Section I of the Sherman Act as amended, 15 U.S.C. 1. The United States brought this action to enjoin NAPED from engaging in an unlawful group boycott of manufacturers that participated or considered participating in the United States General Services Administration program under Section 1122 of the National Defense Authorization Act of 1994 to make available police equipment products to state and local law enforcement agencies at GSA-negotiated prices. The proposed Final Judgment, filed at the same time as the Complaint, requires NAPED to eliminate the anticompetitive conduct identified in the Complaint.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Florida.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Marvin N. Price, Jr., Chief, Chicago Field Office, Antitrust Division, U.S. Department of Justice, 209 S. LaSalle Street, Suite 600, Chicago, IL 60604, (telephone: (312) 353–7530).

Dorothy B. Fountain,

Deputy Director of Operations.

Stipulation

The undersigned parties, by their respective attorneys, stipulate as follows:

1. A Final Judgment in the form attached hereto 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 entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. Defendant shall abide by and comply with the provisions of the

proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court rule declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

3. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

4. For purposes of this Stipulation and the accompanying Final Judgment only, defendant stipulates that: (i) The Complaint states a claim uopn which relief may be granted under Section 1 of the Sherman Act; (ii) the Court has jurisdiction over the subject matter of this action and over each of the parties hereto; and (iii) venue of this action is proper in this Court.

5. In the event plaintiff withdraws its consent, as provided in paragraph (1) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendant represents that the undertakings ordered in the proposed Final Judgment can and will be satisfied, and that defendant will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the undertakings contained therein.

Dated: July 25, 2002.

For Plaintiff United States of America:

Charles A. James,
Assistant Attorney General.

Deborah P. Majoras,
Deputy Assistant Attorney General.

Dorothy B. Fountain,
Deputy Director of Operations.

Marvin N. Price. Jr.,
Chief, Chicago Field Office.

Frank J. Vondrak
Assistant Chief, Chicago Field Office.

For Defendant Naped, INC.

Paula Cozzi Goedert, Esq.,
IL Bar #00978515, Jenner & Block, One IBM Plaza, Chicago, IL 60611, (312) 222–9350, (312) 527–0484 (Fax), E–Mail: pgoedert@jenner.com.

Rosemary Simota Thompson,
IL Bar #6204990, E-Mail:
rosemary.thompson@usdoj.gov.

Donna Alberts Peel,
Attorney.

Diane Lotko-Baker,
Attorney.

Attorneys, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530, (312) 353–4136 (Fax).

III. Applicability

A. This Final Judgment applies to the defendant and to each of its officers, directors, agents and employees.

B. Defendant shall require, as a condition of any merger, reorganization, or acquisition by any other organization, that the organization to which defendant is to be merged or reorganized, or by which it is to be acquired, agree to be bound by the provisions of this Final Judgment.

C. Nothing in this Final Judgment creates any rights for, or gives standing to, any person not a party to this action.

IV. Prohibited Conduct

Defendant is hereby enjoined from:

A. Directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to hinder through any means any manufacturer's participation in the GSA Program;

B. Directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program;

C. Urging, encouraging, advocating or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program;

D. Urging, encouraging, advocating or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program;

E. Urging, encouraging, advocating or suggesting that any distributor, dealer or manufacturer (1) refuse to do business with particular persons or types of persons, (2) reduce the amount of business they do with particular persons or types of persons, or (3) do business with particular persons or types of persons only on specified terms.

II. Definitions

As used in this Final Judgment:

A. ''Agreement'' means a contract, arrangement, or understanding, formal or informal, oral or written, between to or more persons.

B. ''Dealer'' or ''Distributor'' means any person that distributes police equipment products manufactured by another person or who purchases or acquires such product for resale to any other person.

C. ''GSA'' means General Services Administration of the United States Government.

D. ''GSA Program'' means the General Services Administration's (''GSA'') program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase equipment products for drug interdiction under GSA schedules, and any other programs under which state and local governments are able to purchase police equipment products through a GSA schedule.

E. ''Manufacturer'' means any person who makes a assembles police equipment including each of its divisions, parents, subsidiaries, and affiliates.

F. ''NAPED'' or ''defendant'' means National Association of Police Equipment Distributors, Inc., including each of its committees, divisions, parents, subsidiaries, and affiliates, and any person action on behalf of any of them, as well as its successors and assigns.

G. ''Organizations'' means any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business, legal or government entity.

H. ''Person'' means any natural person, corporation, company, partnership, joint venture firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

I. ''Police Equipment'' means any product used primarily in law enforcement.

J. ''Section 1122'' means Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules.

Final Judgment

Plaintiff, United States of America, filed its Complaint on July 29, 2002. Plaintiff and defendant, National Association of Police Equipment Distributors, Inc. (''NAPED''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against or an

admission by any party with respect to any issue of fact or law herein.

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, it is hereby ordered, adjudged, and decreed, as follows:

I. Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over the defendant. 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. Venue is a proper in the District Court for the Southern District of Florida.

V. Limiting Conditions

A. Nothing in this Final Judgment shall prohibit defendant from:

1. Continuing to disseminate public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments;

2. Engaging in collective actions to procure government action when such actions are protected under the Noerr-Pennington doctrine, as established by *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965);

3. Presenting the views, opinions or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV above;

B. Nothing in this Final Judgment shall prohibit any individual distributor or dealer, acting alone and not on behalf of or in common with defendant or any of defendant's officers, directors, agents, employees, successors, or assigns, from negotiating any terms of its business relationship with any manufacturer, including terms related to a manufacturer's policies.

VI. Notification Provisions

Defendant is ordered and directed:

A. To publish the Final Judgment and a written notice, in the form attached as Appendix A to this Final Judgment, in *Law & Order* magazine within 60 days of the entry of this Final Judgment;

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who is a current member of NAPED within 30 days of the entry of this Final Judgment; and

C. To send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who becomes a member of NAPED within 10 years of entry of this Final Judgment. Such notice shall be sent within 30 days after the distributor or dealer becomes a member of NAPED.

VII. Compliance Program

A. Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment and the antitrust laws. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

1. Furnishing a copy of this Final Judgment within 30 days of entry of the Final Judgment to each of defendant's officers, directors, and employees, except for employees whose functions are purely clerical or manual and do not address issues related to the sale or purchase of police equipment;

2. Furnishing within 30 days a copy of this Final Judgment to any person who succeeds to a position described in Section VII A.1;

3. Arranging for an annual briefing to each person designated in Section VII A.1 or 2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtaining from each person designated in Section VII A.1 or 2 certification that he or she: (1) Has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against NAPED and/or any person who violates this Final Judgment;

5. Maintaining: (1) A record of certifications received pursuant to this Section; (2) a file of all documents related to any alleged violation of this Final Judgment and the antitrust laws; and (3) a record of all communications related to any such violation, which shall identify the date and place of the communications, the persons involved, the subject matter of the communication, and the results of any related investigation;

6. Reviewing the final draft of each speech and policy statement made by any officer, director, or employee in order to ensure its adherence with this Final Judgment;

7. Reviewing the purpose for the formation or creation of each committee and task force in order to ensure its adherence with this Final Judgment;

8. Reviewing the content of each letter, memorandum, and report written by or on behalf of any director in his or her capacity as a NAPED director or on NAPED stationery in order to ensure its adherence with this Final Judgment.

B. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII. Certification

A. Within 60 days after the entry of this Final Judgment, defendant shall certify to the plaintiff that it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VII above.

B. For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall file with plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VI and VII.

IX. Plaintiff's Access

A. For the purpose of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

1. Access during regular business hours to inspect and copy all records and documents in the possession, custody, or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment;

2. To interview defendant's officers, directors, employees or agents, who may have their individual counsel present, regarding any such matters; and

3. To obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

B. Defendant shall have the right to be represented by counsel in any process under this Section.

C. No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. 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 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 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Duration of the Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until 10 years from the date of entry.

XI. Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and 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.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Appendix A

On July 29, 2002, the Antitrust Division of the United States Department of Justice filed a civil suit alleging that the National Association of Police Equipment Distributors (''NAPED'') had engaged in certain practices that violated Section 1 of the Sherman Antitrust Act. Without being subject to any monetary penalties, NAPED has agreed to the entry of a civil consent order to settle this matter. The consent order does not constitute evidence or admission by any party with respect to any issue of fact or law. The consent order applies to NAPED and all of its officers, directors, employees, and agents, but not to any distributor or dealer acting on its own.

Under the consent order, NAPED may not enter into, adhere to, or enforce any agreement with any distributor or dealer to hinder through any means any manufacturers' participation in the GSA Program. The GSA Program includes the General Services Administration's (''GSA'') program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules, and any other program under which state and local governments are able to purchase police equipment products through a GSA schedule.

The consent order further provides that NAPED may not enter into, adhere to, or enforce any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program. NAPED is also prohibited from recommending that any distributor or dealer: (1) Suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program; or (2) refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program. Furthermore, NAPED is prohibited from recommending that any distributor, dealer or manufacturer refuse to do business or reduce the amount of business it does with particular people or organizations, or types of people or organizations. Finally, NAPED is prohibited from recommending that any distributor, dealer, or manufacturer do business with particular people or organizations, or types of people or organizations, only on specified terms. Failure to comply with the consent order may result in conviction for contempt of court.

The consent order does not prohibit NAPED from continuing certain activities, including disseminating public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments; seeking to procure government action; and presenting members' views to distributors or dealers, manufacturers, consumers, or other interested parties in ways that do not otherwise violate the consent order.

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files 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 July 29, 2002, the United States filed a civil antitrust Complaint alleging that the defendant had violated Section 1 of the Sherman Act, 15 U.S.C. 1. The defendant, the National Association of Police Equipment Distributors, Inc. (''NAPED''), is a trade association. Its members are competing distributors and dealers of police equipment products such as body armor, batons, uniforms, and handcuffs. The Complaint alleges that, from 1998 to 1999, the defendant engaged in an unlawful group boycott of manufacturers who participated or considered participating in the United States General Services Administration program under Section 1122 of the National Defense Authorization Act of 1994 (''GSA Program'') to make police equipment products available to state and local law enforcement agencies at reduced prices.

On July 29, 2002, the United States and the defendant filed a Stipulation in which they consented to the entry of a proposed Final Judgment that requires the defendant to eliminate the anticompetitive conduct identified in the Complaint. Specifically, the proposed Final Judgment provides that the defendant may not enter into, adhere to, or enforce any agreement with any distributor or dealer to hinder any manufacturer's participation in the GSA Program. The proposed Final Judgment also provides that the defendant may not enter into, adhere to, or enforce any agreement with any distributor or dealer to retaliate against any manufacturer for participating or considering participating in or seeking information about the GSA Program. Defendant is also prohibited from recommending that any distributor or dealer: (1) Suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program; or (2) refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program. The defendant is prohibited from recommending that any distributor, dealer or manufacturer do business only with particular people or organizations, or types of people or organizations, or do business only on specified terms.

The United States and the defendant have agreed that the proposed Final Judgment may be entered after compliance with the APPA, provided that the United States has not withdrawn its consent. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the Final Judgment's provisions and to punish violations thereof.

II. Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background on the GSA Program and the Defendant

GSA negotiates contracts with manufacturers of police equipment products that allow federal agencies to purchase such products at a discount. The GSA Program is authorized by Section 1122 of the National Defense Authorization Act of 1994, which permits state and local law enforcement entities to purchase products directly from manufacturers at prices negotiated by the GSA, as long as the equipment is used for drug interdiction.

Although the GSA Program was enacted into law in 1994, it was initially a pilot program. At first, any manufacturer that sold to federal entities under the GSA schedule was required to honor Section 1122 orders. In 1998, only a few states were fully operational participants and order volume was low. On January 1, 1999, the program was changed and manufacturers' participation in Section 1122 became voluntary. By 1999, over half of the states had committed to work on the GSA Program rollout, and order volume increased accordingly. Currently, most states are participants in the GSA Program.

Prior to the GSA Program, state and local governments purchased most law enforcement equipment from distributors or dealers at prices reflecting their mark-ups. After the GSA Program, manufacturers selling police equipment at GSA-negotiated prices competed with distributors for sales of police equipment to state and local law enforcement agencies. Thus, state and local law enforcement agencies could choose to buy police equipment directly from the manufacturers under the GSA Program at negotiated prices, or from distributors who often provided them with certain services not provided by manufacturers.

Defendant's members specialize in selling and servicing police equipment products to state and local law enforcement agencies and carry a small inventory. Generally, they do not have GSA contracts for federal sales. The typical NAPED member is a distributor or dealer who operates his or her own business, although a few large catalog houses are also members. The large catalog houses carry a significant inventory and sell by mail order. When state and local governments purchase directly from manufacturers under a discounted GSA schedule, distributors and dealers lose those sales.

B. Illegal Agreement To Boycott Manufacturers

In the spring of 1998, the defendant, through its officers, directors, and members, engaged in conduct to prevent manufacturers' participation in the GSA Program and thereby limit competition in the sale of police equipment to state and local law enforcement agencies. This conduct spanned approximately eighteen months.

During the summer of 1998, the defendant, through its members, contacted manufacturers under the guise of taking a survey of manufacturers' attitudes towards the GSA Program and pressured them to avoid their legal obligations to accept orders from state and local law enforcement and not to participate in the GSA program. The defendant monitored activities of manufacturers and encouraged its members to express their displeasure with 1122 sales and to discourage manufacturers' participation in the GSA program.

In the spring of 1999, defendant's officers told at least three manufacturers that distributors would not do business with them if they participated in the GSA Program. These manufacturers believed that these officers were speaking directly or indirectly on behalf of NAPED and its members. Defendant's efforts caused at lease some manufacturers to eliminate their participation in the GSA Program.

For example, one manufacturer, fearing that it would be ''blackballed'' by defendant's members for participating in a GSA Program event to attract purchasers and vendors, withdrew its registration for the event from the GSA Web site. Another manufacturer, which attended the GSA Program event, was excluded from the mail order catalog of one of NAPED's members as a result of its participation. Also, during a meeting with executives of a large manufacturer, defendant's then-president stated that the trade association would not ''support'' manufacturers that engaged in 1122 sales under the GSA Program. The executives understood this to mean that the members of NAPED would no longer do business with their company if it participated in the GSA Program.

C. Effects of the Agreement

The purpose and effect of the boycott agreement between defendant and its members was to prevent participation by manufacturers in the GSA Program and thereby preventing them from competing with distributors or dealers for the sale of police equipment to state and local law enforcement agencies. As a result of the agreement, participation by manufacturers in the GSA Program was significantly less than it otherwise would have been. Thus, state and local law enforcement agencies were deprived of some of the benefits of free and open competition in the purchase of police equipment products.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

The proposed Final Judgment prohibits the defendant from engaging in five (5) categories of prohibited conduct. These prohibitions are intended to deter the defendant from using the threat of a group boycott by its members to pressure manufacturers to decline participation in the GSA Program, or any other program under which state and local governments are able to purchase products through a GSA schedule. These provisions will also bar the defendant from urging its members to reduce or eliminate the amount of business they do with manufacturers engaged in the GSA Program.

Section IV.A of the proposed Final Judgment contains a general prohibition against any agreement by the defendant with any distributor or dealer to hinder any manufacturer's participation in the GSA Program. Section IV.B contains a similar prohibition against any agreement by the defendant with any distributor or dealer to retaliate against any manufacturer for participating or considering participating in the GSA Program. Section IV.C prohibits the defendant from urging, encouraging, advocating, or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program. Section IV.D prohibits the defendant from urging, encouraging, advocating, or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in or considering participating in the GSA Program. Finally, Section IV.E prohibits the defendant from urging distributors, dealers, or manufacturers to refuse to do business or reduce their business with particular types of persons, or do business with particular persons only on specified terms.

B. Limiting Conditions

Section V of the proposed Final Judgment contains certain limiting provisions that clarify the scope of the prohibitions in Section IV. Section V

identifies specific activities that are unlikely to restrict competition and are not prohibited by the decree. Specifically, Section V.A provides that the defendant may: (1) Continue to disseminate public statements regarding contemplated changes in the laws affecting the GSA 1122 Program, GSA policies, or procurement of police equipment by state and local branches of government; (2) engage in collective action to procure government action, such as lobbying activities, when those actions are immune from antitrust challenge under the Noerr-Pennington doctrine; and (3) present the views, opinions, or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV. Section V.B clarifies that nothing in the proposed Final Judgment limits individual distributor or dealers' rights to act independently.

C. Additional Relief

Section VI of the proposed Final Judgment requires the defendant to publish a notice describing the Final Judgment in *Law and Order,* an industry trade publication, within sixty (60) days after the proposed Final Judgment is entered. Section VI also requires that written notice be sent to all distributors or dealers who are current members of NAPED within thirty (30) days after the proposed Final Judgment is entered. A copy of the written notice also must be sent to each dealer or distributor who becomes a member of NAPED during the ten-year term of this Final Judgment.

Section VII requires the defendant to set up an antitrust compliance program to ensure that its members are aware of and comply with the limitations in the proposed Final Judgment and the antitrust laws. Section VII requires the defendant to designate an Antitrust Compliance Officer and to furnish a copy of the Final Judgment, together with a written explanation of its terms, to each of its officers, directors, and non-clerical employees who address issues related to the purchase and sale of police equipment products. The Antitrust Compliance officer is also required to review: (1) The final draft of each speech and policy statement by each officer, director, or employee; (2) the purpose for the creation of each committee and task force; and (3) the content of each letter, memorandum, and report written by or on behalf of each director in his or her capacity as a NAPED director, in order to ensure adherence to the Final Judgment.

Section VIII requires the defendant to certify the designation of an Antitrust Compliance Officer and the distribution of the Final Judgment as required by Section VII. It also requires the defendant to submit to the United States an annual statement regarding defendant's compliance with the Final Judgment.

Section IX of the proposed Final Judgment provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview defendant's officers, directors, employees, and agents.

D. Effect of the Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute any evidence against or an admission by either party with respect to any issue of fact or law. Section III of the proposed Final Judgment provides that it shall apply to the defendant and each of its officers, directors, agents, employees, successors, and assigns and to any organization to which it is to be merged or reorganized, or by which it is to be acquired.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violations of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV. 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 attorneys' 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. 16(a), the Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. The Department believes that entry of this Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Marvin N. Price, Jr., Chief, Chicago Field Office, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle St., Suite 600, Chicago, Illinois 60604.

Under Section XI of the proposed Final Judgment, the Court will retain jurisdiction over this action, and the parties may apply to the Court for orders necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) year from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the Department considered litigation on the merits. The Department rejected that alternative for two reasons. First, a trial would involve substantial cost to both the United States and to the defendant and is not warranted because the proposed Final Judgment provides all the relief the Government would likely obtain following a successful trial. Second, the Department is satisfied that the various compliance procedures to which the defendant has agreed will ensure that the anticompetitive practices alleged in the Complaint are unlikely to recur and, if they do recur, will be punishable by civil or criminal contempt, as appropriate.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the Court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); see also Microsoft; 56 F.3d at 1458. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing the case in the first place,'' it follows that court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Materials And Documents

There are no determinative documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 25, 2002.

Respectfully submitted,
Rosemary Simota Thompson,
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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Manitowoc Co. Inc., Grove Investors Inc., and National Crane Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *The Manitowoc Co. Inc., Grove Investors Inc., and National Crane Corp.,* Civil No. 02 CV 01509 (RCL).

On July 31, 2002, the United States filed a Complaint alleging that the proposed acquisition by Manitowoc of Grove would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in development, production, and sale of medium- and heavy-lift boom trucks in North America. The proposed Final Judgment, filed the same time as the Complaint, requires that the defendants divest either Manitowoc's or Grove's boom truck business to a person acceptable to the United States within 150 days after July 31st. Copies of the Complaint, the proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impacts

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[1] 119 Cong. Rec. 24,598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D.Mo. 1977); see also *United States* v. *Loew's Inc.,* 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.,* 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Boardcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. See also *United States* v. *Amerian Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), (quoting *United States* v. *Gillette,* 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.,* 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).