

Summy, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to use of this exemption, any employees affected by the transaction will be protected pursuant to the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Decided: December 15, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95-31085 Filed 12-21-95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32820]

Norfolk Southern Railway Company and Atlantic and East Carolina Railway Company—Lease and Operation Exemption—North Carolina Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343-45 the renewal of a lease to allow Norfolk Southern Railway Company and Atlantic and East Carolina Railway Company to continue to lease and operate approximately 317 miles of North Carolina Railroad Company's rail line, between Charlotte and Morehead City, NC, subject to standard employee protective conditions.

DATES: This exemption is effective on December 22, 1995. Petitions to reopen must be filed by January 11, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32820 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; (2) Robert J. Cooney, Norfolk Southern Railway, 3 Commercial Place, Norfolk, VA 23510; (3) Scott M. Saylor, North Carolina Railroad Company, 234 Fayetteville Street Mall, Raleigh, NC 27602; and (4) Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

¹ Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: December 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary

[FR Doc. 95-31176 Filed 12-21-95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32735]

North Carolina Ports Railway Commission—Acquisition of Control Exemption—Beaufort & Morehead Railway, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343-45 the acquisition of control by North Carolina Ports Railway Commission (NCPRC) of Beaufort & Morehead Railway, Inc. (BMRI). NCPRC, a noncarrier, currently controls the Beaufort & Morehead Railroad Company. To avoid unlawful control by NCPRC, BMRI is being held in an independent voting trust pending Commission approval or exemption of this control transaction. The exemption is subject to standard labor protective conditions.

DATES: This exemption will be effective on January 21, 1996. Petitions for stay must be filed by January 2, 1996. Petitions to reopen must be filed by January 11, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32735 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,¹ 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Fritz R. Kahn, 1100 New York Avenue, N.W.,

¹ Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

Suite 750 West, Washington, DC 20005-3934.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927-5721.]

Decided: December 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95-31175 Filed 12-21-95; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States and State of Texas v. Kimberly-Clark Corporation and Scott Paper Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Texas, Dallas Division in *United States and State of Texas v. Kimberly-Clark Corporation and Scott Paper Company*, Civil No. 3:95 CV 3055-P, as to both defendants.

On December 12, 1995, the United States and the State of Texas filed a Complaint alleging that the proposed merger of Kimberly-Clark Corporation ("Kimberly-Clark") and Scott Paper Company ("Scott") would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18. The Complaint further alleges that the merger of Kimberly-Clark and Scott would lessen competition substantially and tend to create a monopoly in the sale of consumer facial tissue and baby wipes in the United States. The proposed Final Judgment, filed the same time as the Complaint, requires Kimberly-Clark to divest the Scott baby wipes brands, Baby Fresh and Wash A Bye Baby and

the Scott facial tissue brand, Scotties, along with certain tangible and intangible assets.

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 Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: 202/307-6694).

Constance K. Robinson,
Director of Operations.

United States District Court, Northern District of Texas, Dallas Division

United States of America and State of Texas, Plaintiffs, v. Kimberly-Clark Corporation and Scott Paper Company, Defendants. Civil Action No.: 3:95 CV 3055-P. Filed: December 12, 1995.

Stipulation

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

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Texas.

2. 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(b)-(h)), and without further notice to any party or other proceedings, provided that either plaintiff has not withdrawn its consent, which either or both may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event either 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: December 12, 1995.

For Plaintiff United States:

Anne K. Bingaman

Assistant Attorney General, District of Columbia #369900.

Lawrence R. Fullerton,

Deputy Asst. Attorney General, District of Columbia #251264.

Constance K. Robinson,

Director of Operations, District of Columbia #244800.

Charles E. Biggio, Sr. Counsel,

State of New York (no bar no. assigned)

Anthony V. Nanni, Chief,

Litigation I Section State of New York (no bar number assigned).

Anthony E. Harris, Attorney,

State of Illinois #01133713, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307-6583.

For Plaintiff State of Texas:

Dan Morales,

Attorney General of Texas

Jorge Vega,

First Assistant Attorney General

Laquita A. Hamilton,

Deputy Attorney General

Thomas P. Perkins, Jr.,

Assistant Attorney General, Chief, Consumer Protection Div.

Mark Tobey,

Assistant Attorney General, Antitrust Section, State of Texas #22082960, P.O. Box 12548, Austin TX 78711-2548, (512) 463-2185.

For Defendant Kimberly-Clark Corp.:

William O. Fifield, Esquire,

State of Illinois #0080332, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603, (312) 853-7474

For Defendant Scott Paper Company:

Michael L. Weiner, Esquire,

State of New York (no bar number assigned) Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022-3897, (212) 735-2632

Executed on: December 11, 1995.

United States District Court, Northern District of Texas, Dallas Division

United States of American and State of Texas. Plaintiffs, v. Kimberly-Clark Corporation and Scott Paper Company, Defendants. Civil No.: 3:95 CF 3055-P. Filed: December 12, 1995.

Final Judgment

Whereas, plaintiffs, the United States of American and the State of Texas, having filed their Complaint herein on December 12, 1995, and plaintiffs and defendants, 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 issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain rights and assets to assure that competition is not substantially lessened are the essence of this agreement;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing viable competitors in the sale of baby wipes and facial tissue;

And whereas, defendants have represented to plaintiffs that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

New, 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. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Kimberly-Clark" means defendant Kimberly-Clark Corporation, a Delaware corporation with its headquarters in Dallas, Texas, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. "Scott" means defendant Scott Paper Company, a Pennsylvania corporation with its headquarters in Boca Raton, Florida, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

C. "Relevant Wet Wipes Assets" means:

(1) The Dover, Delaware plant of Scott, including all tangible assets used by Scott in connection with its business of researching, developing, making, having made, packaging, distributing, or selling products of the Dover plant, including but not limited to: the manufacturing plant and associated web making, converting, packaging and distributing equipment and facilities, inventory, real property, and any other interests, or tangible assets or

improvements, associated with the Dover plant;

(2) A twenty-five year, exclusive, royalty-free and assignable license, perpetually renewable at the licensee's option, to make, have made, use or sell in the United States any label of any baby wipes product currently produced at the Dover, Delaware plant, including but not limited to the Baby Fresh, Wash-a-Bye Baby, Baby Fresh Gentle Touch, and Kid Fresh labels, and any improvement to or line extension of those labels; and

(3) All intangible assets, wherever located, that relate in any way to the tangible assets and labels described above (including but not limited to: manufacturing, converting, packaging and distribution know-how); exclusive, assignable rights to all patents, proprietary technology, supply contracts, and business information solely dedicated to the tangible assets or the labels described above; rights in real and personal property; and nonexclusive, assignable rights to all related patents, proprietary technology and business information used in connection with, but not solely dedicated to the tangible assets or the labels described above.

D. "Relevant Facial Tissue Assets" means:

(1) A twenty-five year, exclusive, royalty-free and assignable license, perpetually renewable at the licensee's option, to make, have made, use or sell in the United States any facial tissue under the Scotties label, and a covenant that defendants shall not make, have made, use or sell in the United States any facial tissue under the Scott or Scotties label;

(2) Any two of the following four tissue mills: the Scott tissue mill in Marinette, Wisconsin; the Scott tissue mill in Ft. Edward, New York; the Kimberly-Clark Lakeview tissue mill in Neenah, Wisconsin; and the Kimberly-Clark Badger-Globe tissue mill in Neenah, Wisconsin; provided, however, that in the event a purchaser elects to purchase the Marinette, WI tissue mill of Scott, defendants shall not be required to divest the DRC tissue machine and associated converting assets, located in an adjacent facility on the Marinette tissue mill site and not currently used for making facial tissue, in which case defendants shall, at the option of the purchaser, enter into an arrangement with respect to the measures necessary to separate the DRC tissue machine from the rest of the Marinette tissue mill, including but not limited to a long-term agreement to provide, on a nondiscriminatory basis, shared utilities, such as water, electric,

steam, and treatment of waste or effluent;

(3) At the purchaser's option. (a) a commitment by defendants to enter into up to a three-year agreement to sell to purchaser, at such rates as to which purchaser and defendants may agree, as much as 25,000 metric tons/year of tissue parent rolls; and (b) a commitment by defendants to enter into up to a three-year agreement to buy from the purchaser, at such rates as to which purchaser and defendants may agree, as much as 25,000 metric tons/year of tissue parent rolls;

(4) All tangible assets used solely in connection with the business of making, having made, using, converting, packaging, distributing, or selling any product from any of the tissue mills identified in Section II(D)(2), including but not limited to: the tissue mill and associated papermaking, converting, packaging and distribution equipment and facilities; real property; or tangible assets or improvements, associated with the tissue mill; and

(5) All intangible assets, not otherwise addressed above, wherever located, that relate in any way solely to the tangible assets described above or the Scotties label (including but not limited to: papermaking, converting, packaging and distributing know-how); exclusive, assignable rights to all patents, proprietary technology, supply contracts, and business information and rights in real and personal property solely dedicated to the tangible assets or the Scotties label; and nonexclusive, assignable rights to all related patents, proprietary technology and business information used in connection with, but not solely dedicated to the tangible assets or the Scotties label.

E. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress (and any improvements, extensions or modifications); the brand's trade secrets; know-how or other proprietary information for making, having made, using and selling the brand, including, but not limited to, packaging, sales, marketing and distribution know-how and documentation, such as customer lists.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and 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.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, within 150 days after filing of the Final Judgment, to divest to a purchaser the Relevant Wet Wipes Assets, in accordance with the procedures specified in this Final Judgment.

Defendants are ordered and directed, within 180 days after filing of the Final Judgment, to divest to one or more purchasers the Relevant Facial Tissue Assets, in accordance with the procedures specified in this Final Judgment.

B. Defendants agree to take all reasonable steps to accomplish the divestitures as expeditiously and timely as possible. Plaintiffs may, in their sole discretion, extend the time period for any divestiture for an additional period of time not to exceed two months.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets. Defendants shall provide any person making an inquiry regarding a possible purchase with a copy of the Final Judgment. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all reasonably necessary information regarding the Relevant Wet Wipes Assets and the Relevant Facial Tissue Assets, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestitures required by this Final Judgment.

D. Unless plaintiffs otherwise consent in writing, divestitures under Section IV(A), or by the trustee appointed pursuant to Section V, shall include the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets and be

accomplished in such a way as to satisfy plaintiffs, in their sole discretion, that the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of baby wipes and facial tissue at wholesale to retail stores. Each divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiffs' satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in making and selling branded baby wipes and/or facial tissue at wholesale to retail stores and other customers; and (2) the purchaser or purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in making and selling branded baby wipes and/or facial tissue at wholesale to retail stores; and (3) none of the terms of any agreement between the purchaser or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively. Although Sections II(D)(2) and IV(A) require a sale of any two of four tissue mills, plaintiffs can, in their sole discretion, approve a divestiture involving a sale of less than two tissue mills listed in Section II(D), if convinced that such divestiture is sufficient to satisfy their competitive concerns.

E. Defendants shall exercise any residual right in any label licensed pursuant to this Final Judgment solely for the purpose of protecting their lawful intellectual property rights. Defendants shall not, in any circumstance, exercise any such right to impair or inhibit in any way a licensee's ability to compete, and they shall not exercise such right, directly or indirectly, to obtain competitively-sensitive information pertaining to any licensee.

V. Appointment of Trustee

A. If defendants have not accomplished any divestiture required by Section IV within the time specified therein, defendants shall notify plaintiffs of that fact in writing. Within ten (10) calendar days of their receipt of such written notice, plaintiffs shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiffs within five (5) calendar days thereafter whether either or both of such

nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiffs shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiffs, within ten (10) calendar days after plaintiffs provide the names of their nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiffs, plaintiffs shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiffs, plaintiffs shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished either of the divestitures required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect the divestiture(s) specified in Section IV(A).

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets. The trustee shall have the power and authority to accomplish the divestiture(s) to a purchaser acceptable to plaintiffs at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement which provides an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall

serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses (other than related to the selection process), prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Relevant Wet Wipes Assets or the Relevant Facial Tissue Assets, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however,

that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and term of the trustee's appointment.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the assets that are the subject of the finding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiffs shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiffs provided written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under the provisions in Section V(C). Absent written notice that the plaintiffs do not object to the proposed purchaser, a divestiture proposed under

Section IV shall not be consummated. Upon objection by either plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by either plaintiff, or by defendants under the proviso in Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

Within ten (10) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Section IV and V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII. Financing

With prior written consent of the plaintiffs, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that the Relevant Wet Wipes Assets will be maintained as an independent, ongoing, economically viable and active competitor in the sale of baby wipes in the United States, with proprietary technology, management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of Kimberly-Clark's Huggies baby wipes business.

B. Defendants shall operate the Relevant Facial Tissue Assets to ensure a distinct and economically viable product line, which actively competes in the sale of facial tissue in the United States, with competitively-sensitive sales, marketing and pricing information and decision-making kept separate and

apart from, and not influenced by, that of Kimberly-Clark's Kleenex facial tissue business.

C. Defendants shall use all reasonable efforts to maintain and increase sales of baby wipes under any label required to be divested pursuant to Sections II(C) and IV(A) and facial tissue under the Scotties label, and they shall maintain at 1995 or previously approved levels, whichever is higher, promotional, advertising, marketing and merchandising support for baby wipes under labels in the Relevant Wet Wipes Assets and facial tissue under the Scotties label.

D. Defendants shall take all steps necessary to ensure that the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets are fully maintained in operable condition at their current capacity configurations, and shall maintain and adhere to normal repair and maintenance schedules for such assets.

E. Defendants shall not, except as part of a divestiture approved by plaintiffs, sell any Relevant Wet Wipes Assets or Relevant Facial Tissue Assets, other than in the ordinary course of business.

F. Defendants shall take no action that would jeopardize the sale or license of the Relevant Wet Wipes Assets or the Relevant Facial Tissue Assets. Within 21 days after filing of the Final Judgment, defendants shall discontinue making and selling facial tissue under the Scott label and make and sell facial tissue under the Scotties label; provided, however, that defendants may sell inventory of facial tissue produced under the Scott Label until such inventory is depleted.

X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege from time to time.

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or of the Attorney General of the State of Texas, and on reasonable notice to defendants made to their principal offices, shall be permitted:

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

(2) Subject to the reasonable convenience of defendants and without

restraint or interference from them, to interview officers, employees, and agents of defendants, 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, or of the Attorney General of the State of Texas, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of either plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Texas, 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 defendants to plaintiffs, defendants represent and identify 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 defendants mark 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) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

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 such 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 the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge

United States District Court, Northern District of Texas, Dallas Division

United States of America and State of Texas, Plaintiffs, v. Kimberly-Clark Corporation and Scott Paper Company, Defendants. Civil No. 3:95 CV 3055-P. Filed December 12, 1995.

Competitive Impact Statement

The United States, 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

The United States and the State of Texas filed a civil antitrust Complaint on December 12, 1995, which alleges that Kimberly-Clark Corporation's proposed acquisition of Scott Paper Company ("Scott") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Kimberly-Clark and Scott are the nation's first and third leading sellers of facial tissue, and its leading sellers of baby wipes.

The Complaint alleges that the combination of these rivals would substantially lessen competition in production and distribution, and raise prices to consumers in retail sale, of facial tissue and baby wipes in the United States. The prayer for relief seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Kimberly-Clark from acquiring control of Scott's facial tissue and baby wipes businesses or otherwise combining them with its own business in the United States.

At the time the suit was filed, the United States and State of Texas also filed a proposed settlement that would permit Kimberly-Clark to complete its acquisition of Scott's other assets, but require divestitures of baby wipes and facial tissue assets in a way that will preserve competition in the markets. This settlement consists of a Stipulation and a proposed Final Judgment.

The proposed Final Judgment orders defendants to divest to one or more purchasers Scott's Scotties® facial tissue label, any two or four United States tissue mills currently operated by Kimberly-Clark or Scott, all of Scott's baby wipes labels, and Scott's wet wipes plant used to produce baby wipes and other products. Certain tangible and intangible assets that relate to these assets and labels must also be divested.

Defendants must complete the divestiture of the Scott facial tissue business within 180 days, and the divestiture of the wet wipes business within 150 days, after December 12, 1995, in accordance with the procedures specified in the proposed Final Judgment.

The Stipulation and Final Judgment require Kimberly-Clark to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, Scott's facial tissue and baby wipes businesses and associated assets will be held separate from, and operated independently of, other, competing Kimberly-Clark facial tissue and baby wipes businesses. Kimberly-Clark must preserve and maintain these assets as saleable and economically viable, ongoing concerns, with competitively-sensitive business information and decision-making divorced from that of competing Kimberly-Clark businesses.

The United States, the State of Texas, Kimberly-Clark, and Scott have also stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Kimberly-Clark, based in Dallas, Texas, is a leading producer of consumer paper products, including disposable diapers, feminine care products, facial tissue and baby wipes. In 1994, Kimberly-Clark reported total sales of \$7.3 billion. Kimberly-Clark makes Kleenex® facial tissue and Huggies® brand baby wipes.

Scott, based in Boca Raton, Florida, is also a leading producer of consumer paper products, including bath tissue, facial tissue and baby wipes. In 1994, Scott reported total sales of \$3.5 billion. Among its other brands, Scott makes and sells Scotties® facial tissue (recently renamed Scott®) and Baby Fresh® and Wash A Bye Baby® baby wipes.

On July 16, 1995, Kimberly-Clark agreed to acquire Scott for cash and stock in a transaction that would create a firm with global sales of about \$12 billion. This transaction, which would combine leading competitors in two major markets, precipitated the governments' suit.

B. The Transaction's Effects in the Facial Tissue Industry

Facial tissue is a soft, thin, pliable and absorbent sheet of paper, typically folded and packed in a box. It is primarily used to catch a sneeze, blow a nose, or remove make-up. There are no good substitutes for facial tissue.

For all practical purposes, the retail facial tissue market is dominated by three major firms—Kimberly-Clark, Scott and Procter & Gamble—which together account for nearly 90 percent of sales of facial tissue, a \$1.34 billion dollar market. Kimberly-Clark's popular Kleenex® is by far the leading brand of facial tissue sold, commanding 48.5 percent of all sales.

Scott's Scotties® facial tissue, a value brand offering consumers more product for the money, has a 7 percent share of sales, but significantly greater presence and consumer acceptance in the Northeast, where the brand was first introduced. Procter & Gamble, the only other significant firm, makes Puffs®, which has about a 30 percent market share.¹

Scott's market share, however, understates its competitive significance. As a value brand, Scotties® has, in the past, imposed a significant constraint on Kimberly-Clark's prices for facial tissue. Kimberly-Clark's Kleenex® likewise has been a significant constraint on prices of Scotties® facial tissue.

The Complaint alleges that Kimberly-Clark's acquisition of Scott would remove these constraints, and provide Kimberly-Clark both the power and the incentive to increase unilaterally and profitably the price of either, or both, brands of facial tissue. Kimberly-Clark's acquisition of Scott would also increase the likelihood of cooperative increases in the price of consumer facial tissue, since the merger would leave Kimberly-Clark with a single significant rival, Procter & Gamble's Puffs®, in the facial tissue market.

Because entry into the facial tissue market is difficult, requiring a significant investment in plant equipment and brand building, successful new entry or repositioning after the merger is unlikely to restore the competition lost through Kimberly-Clark's removal of Scott from the marketplace.

C. The Transaction's Effect in the Baby Wipes Industry

Baby wipes are soft, moist and absorbent sheets of paper substrate,

about the size of a wash cloth, that are packaged in a plastic tub or canister. Consumer use baby wipes to clean babies, especially during a diaper change. Stronger, softer and more convenient or sanitary than any alternative product, baby wipes are a popular staple of families with babies, and are bought by 95 percent of such households. There are no good substitutes for baby wipes.

Kimberly-Clark and Scott are the nation's two largest and most significant manufacturers of baby wipes. Scott's Baby Fresh® and Wash A Bye Baby® baby wipes account for about 31 percent of all baby wipes sold, while Kimberly-Clark's Huggies® baby wipes command nearly 25 percent of all sales. They are each other's primary competitor and most significant constraint on prices for baby wipes. Kimberly-Clark and Scott aggressively compete in pricing, promotion, and product innovation.

Following its acquisition of Scott, Kimberly-Clark would control nearly 60 percent of all baby wipes sold,² and leave it seven times larger than its next largest competitor in a market with \$500 million in annual sales. By eliminating Scott, the Complaint alleges, Kimberly-Clark would acquire market power that would enable it unilaterally to increase prices to consumers of either, or both, Huggies®, Baby Fresh® and Wash A Bye Baby® wipes. New market entry is difficult, time-consuming and unlikely, and hence cannot be expected to constrain the unlawful effects of Kimberly-Clark's acquisition of Scott.

D. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the facial tissue and baby wipes markets will be substantially lessened; actual and potential competition between Kimberly-Clark and Scott in the market for facial tissue and baby wipes will be eliminated in the United States; prices for facial tissue and baby wipes in the United States are likely to increase; and product innovation in facial tissue and baby wipes in the United States will suffer.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in production and retail sale of branded baby wipes and facial tissue in the United States. Within

150 days after filing the proposed Final Judgment, defendants must divest Scott's wet wipes plant in Dover, Delaware; grant a 25-five year, royalty-free, exclusive and assignable, perpetually renewable license for the baby wipes labels produced at that plant; and divest other associated assets—sell, in essence, the entire Scott baby wipes business and brands. Within 180 days after filing the proposed Final Judgment, defendants must similarly divest Scott's Scotties® brand facial tissue business, grant a 25-year, royalty-free, exclusive and assignable, perpetually renewable license for the Scotties® facial tissue label, and divest any two of four tissue mills specified in the Final Judgment and associated assets. These businesses must be sold to a purchaser or purchasers who demonstrate to the sole satisfaction of the United States and the State of Texas that they will be an economically viable and effective competitor, capable of maintaining or surpassing Scott's market performance in the sale of branded baby wipes and consumer facial tissue in the United States.

Until the ordered divestitures take place, defendants must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective purchaser. If defendants do not accomplish the ordered divestitures within the specified 150 and 180 day time periods, the Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestitures. Defendants must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Kimberly-Clark will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee shall promptly file with the Court a report setting forth the trustee's efforts to accomplish the divestiture, explaining why the divestiture has not been accomplished, and making recommendations. The trustee's report will be furnished to the parties and shall

¹ The approximate post-merger Herfindahl-Hirschman Index ("HHI") for the facial tissue market, based on 1994 dollar sales, would be 4031, with an increase in the HHI as a result of the merger of 705 points.

² The approximate post-merger HHI for the relevant market based on 1994 dollar sales would be over 3137, with a change in the HHI concentration index resulting from the merger of 1501 points.

be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties will each have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

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 the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants. The proposed Final Judgment provides that nothing therein contained shall be construed to provide any rights to any third party.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants 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 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 the date 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 proposed 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: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division,

United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

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.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants Kimberly-Clark and Scott. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the production and sale of facial tissue and baby wipes that would otherwise be adversely affected by the acquisition. Thus, the proposed Final Judgment would achieve the relief the governments would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the governments' Complaint.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-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) (emphasis added). As the DC Circuit recently held, this statute 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,*

1995-1 Trade Cas. (CCH) ¶71,027, at ___ (Slip op. 26) (DC Cir. June 16, 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."³ 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.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

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*, 1995-1 Trade Cas. at ___ (Slip. op. 22). 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.⁴

³ 119 Cong. Rec. 24598 (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. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

⁴ *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *Microsoft*, 1995-1 Trade Cas. at ___ (Slip op. 23) (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'") (citations omitted).

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.' (citations omitted)." ⁵

VIII. Determinative Documents

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

Dated: December 12, 1995.

Respectfully submitted,

Anthony E. Harris,

Attorney, State of Illinois # 01133713,
Antitrust Division, U.S. Department of Justice,
1401 H. Street NW., suite 4000, Washington,
DC 20530, (202) 307-6583.

[FR Doc. 95-31054 Filed 12-21-95; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division;

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931,

as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. MD950050 and MD950053 dated February 10, 1994.

Agencies with construction projects pending, to which this Wage Decision would have been applicable, should utilize Wage Decision MD950047. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume II

Virginia
VA950040 (Dec. 22, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New York
NY950009 (Feb. 10, 1995)
NY950010 (Feb. 10, 1995)
NY950041 (Feb. 10, 1995)

Volume II

Maryland
MD950047 (Feb. 10, 1995)
Pennsylvania
PA950004 (Feb. 10, 1995)
PA950023 (Feb. 10, 1995)
PA950065 (Feb. 10, 1995)

Virginia
VA950004 (Feb. 10, 1995)
VA950014 (Feb. 10, 1995)
VA950015 (Feb. 10, 1995)
VA950049 (Feb. 10, 1995)
VA950064 (Feb. 10, 1995)

⁵ *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).