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Walker Smith,

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96-23375 Filed 9-11-96; 8:45 am]

BILLING CODE 4410-01-M

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

Notice is hereby given that a proposed Consent Decree in *United States v. Sherwood Medical Company*, Civ. No. 8:96CV486, was lodged on August 30, 1996 with the United States District Court for the District of Nebraska. The proposed Consent Decree requires Sherwood Medical Company ("Sherwood") to implement a remedial action consistent with the Record of Decision and the Explanation of Significant Differences issued by the Environmental Protection Agency for the Sherwood Medical Company site ("site") located in Norfolk, Nebraska. The Consent Decree also requires Sherwood to reimburse the United States for all outstanding response costs incurred and to be incurred at the site. Contemporaneously with lodging the Consent Decree, the United States filed a complaint alleging that Sherwood is an owner or operator of the site within the meaning of Sections 107(a)(1) and 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a)(1) and 9607(a)(2), and that Sherwood arranged for the disposal of hazardous substances at the site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3); and thus, is liable for cleanup and response costs incurred in remediating the site.

The Department of Justice will receive, for a period of 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 for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Sherwood Medical Company*, DOJ Reference Number 90-11-2-993.

The proposed Consent Decree may be examined at the Region VII Office of the Environmental Protection Agency, 726

Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$31.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. Bruce S. Gelber,

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96-23377 Filed 9-11-96; 8:45 am]

BILLING CODE 4410-01-M

**Antitrust Division**

**United States v. Brush Fibers, 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 Eastern District of Pennsylvania in the above-captioned case.

On August 29, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Brush Fibers, Inc., from conspiring to lessen and eliminate competition for tampico fiber sold in the United States in violation of Section 1 of the Sherman Act (15 U.S.C. 1). Tampico fiber is a vegetable fiber grown in Mexico and used as a filler in industrial and consumer brushes. The complaint alleges that the defendant agreed with its co-conspirator supplier to resell tampico fiber at prices fixed by the supplier and other co-conspirators.

The proposed Final Judgment would prohibit the defendant from directly or indirectly agreeing with a supplier to fix the price at which tampico fiber may be resold by the defendant or any other distributor. The proposed Final Judgment also would prohibit the defendant from entering into any agreement or understanding with any other distributor or with any supplier of tampico fiber for (1) raising, fixing, or maintaining the price or other terms or conditions for the sale or supply of tampico fiber; (2) allocating sales, territories, or customers for tampico fiber; (3) eliminating or discouraging new entry into the tampico fiber market; and (4) eliminating or otherwise restricting the supply of tampico fiber to

any customer. Finally, the proposed Final Judgment would also prohibit the exchange of current and future price information, information regarding sales volume, or the location or identity of customers with any other distributor of tampico fiber or with any supplier other than its own.

Public comment is invited within the statutory sixty (60) day period. Such comments will be published in the Federal Register and filed with the Court. Comments should be addressed to Robert E. Connolly, Chief, Middle Atlantic Office, U.S. Department of Justice, Antitrust Division, The Curtis Center, 6th and Walnut Streets, Suite 650 West, Philadelphia, PA 19106, (telephone number 215-597-7405).

Rebecca P. Dick,

*Deputy Director of Operations.*

**Stipulation**

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

(1) The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provide by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(3) In the event the plaintiff withdraws its consent hereto, this stipulation shall be of no effect whatever in this or any other proceeding and the making of this stipulation shall not, in any manner, prejudice any consenting party to any subsequent proceedings.

Dated:

Respectfully submitted,

For the Plaintiff:

Joel I. Klein,  
Acting Assistant Attorney General.  
Rebecca P. Dick,  
Deputy Director of Operations.  
Robert E. Connolly,  
Chief, Middle Atlantic Office.  
Edward S. Panek  
Michelle A. Pionkowski  
Roger L. Currier  
Joseph Muoio,  
Attorneys, Antitrust Division, U.S.  
Department of Justice, Middle Atlantic Office,  
The Curtis Center, Suite 650W, 7th & Walnut  
Streets, Philadelphia, PA 19106, Tel.: (215)  
597-7401.

For the Defendant:

Ian Moss,  
President, Brush Fibers, Inc.

### Final Judgment

Plaintiff, the United States of America, filed its complaint on Plaintiff and defendant, 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 be evidence against or an admission by any party to any issue of fact or law. Defendant has agreed to be bound by the provisions of this final judgment pending its approval by the Court.

Therefore, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows.

### I

#### Jurisdiction

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

### II

#### Definitions

As used in this final judgment:

A. "Agreement" means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.

B. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

C. "Tampico fiber" is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported to the

United States and worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

D. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to tampico fiber sold by distributors.

### III

#### Applicability

A. This final judgment applies to the defendant and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this final judgment by personal service or otherwise.

B. The defendant shall require, as a condition of any sale or other disposition of all, or substantially all, of its stock or assets used in the manufacture or sale of tampico fiber, that the acquiring party or parties agree to be bound by the provisions of this final judgment, and that such agreement be filed with the Court.

### IV

#### Prohibited Conduct

As to tampico fiber imported into or sold in the United States, the defendant is enjoined and restrained from:

A. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, arrangement, understanding, plan, program, combination or conspiracy with any other distributor or with any supplier of tampico fiber to:

- (1) raise, fix, or maintain the prices or other terms or conditions for the sale or supply of tampico fiber;
- (2) allocate sales volumes, territories or customers for tampico fiber;
- (3) discourage or eliminate any new entrant into the tampico fiber market; and
- (4) restrict or eliminate the supply of tampico fiber to any customer;

B. communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber any current or future price, price change, discount, or other term or condition of sale charged or quoted or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed;

C. distributing to any distributor or supplier (other than its own supplier) of tampico fiber price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber;

D. communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber information regarding the volume of sales of tampico fiber or the location or identity of customers;

E. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by defendant or any other distributor; and

F. participating or engaging directly or indirectly through any trade association, organization or other group in any activity which is prohibited in Section IV (A)-(E) above.

### V

#### Permitted Conduct

A. Other than Section IV(A) of this final judgment, nothing contained in this final judgment shall prohibit the defendant from negotiating or communicating with any distributor or supplier of tampico fiber or with any agent, broker or representative of such distributor or supplier solely in connection with *bona fide* proposed or actual purchases of tampico fiber from, or sale of tampico fiber to, that distributor or supplier.

B. Nothing contained in this final judgment shall prohibit the defendant from unilaterally deciding to resell tampico at prices suggested by its supplier. However, any instance in which a supplier suggests the prices at which the defendant should resell tampico shall be reported in writing with a copy to the defendant's Antitrust Compliance Officer. This report shall state the date, time and place of the communication, whether it was oral or written, the name and title of the other person or persons involved in the communication, briefly describe the pricing information provided, and if the communication was written, have attached a copy of the document containing the reference to the suggested resale prices. Such reports shall be retained in the files of the defendant, and copies thereof shall be delivered to the Antitrust Division by the defendant on or about such anniversary date of this final judgment.

VI

*Compliance Program*

The defendant shall establish within thirty (30) days of entry to this final judgment and shall, thereafter, maintain a program to insure compliance with this final judgment, which program shall include at a minimum the following:

A. designating an Antitrust Compliance Officer responsible, on a continuing basis, for achieving compliance with this final judgment and promptly reporting to the Department of Justice any violation of the final judgment;

B. within sixty (60) days after the date of entry of this final judgment, furnishing a copy thereof to each of its own, its subsidiaries' and its affiliates' (1) officers, (2) directors, and (3) employees or managing agents who are engaged in, or have responsibility for or authority over, the pricing of tampcio fiber; and advising and informing each such person that his or her violation of this final judgment could result in a conviction for contempt of court and imprisonment and/or fine;

C. within seventy five (75) days after the date of entry of this final judgment, certifying to the plaintiff whether it has designated an Antitrust Compliance Officer has been distributed the final judgment in accordance with Sections VI (A) and (B) above;

D. within thirty (30) days after each such person becomes an officer, director, employee or agent of the kind described in Section VI(B), furnishing to him or her copy of this final judgment together with the advice specified in Section VI(B);

E. annually distributing the final judgment to each person described in Sections VI (B) and (D);

F. annually briefing each person described in Sections VI (B) and (D) as to the defendant's policy regarding compliance with the Sherman Act and with this final judgment, including the advice that defendant will make legal advice available to such persons regarding any compliance questions or problems;

G. annually obtaining (and maintaining) from each person described in Sections (VI) (B) and (D) a certification that he or she:

(1) has read, understands, and agrees to abide by the terms of this final judgment;

(2) has been advised of and understands the company's policy with respect to compliance with the Sherman Act and the final judgment;

(3) has been advised and understands that his or her non-compliance with the

final judgment may result in conviction for criminal contempt of court and imprisonment and/or fine; and

(4) is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer; and

H. on or about each anniversary date of the entry of the final judgment, submitting to the plaintiff an annual declaration as to the fact and manner of its compliance with this final judgment, including any reports responsive to Section V of this final judgment.

VII

*Inspection and Compliance*

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

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

(1) access, during the defendant's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which have counsel present, relating to any matters contained in this final judgment; and

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

(B) upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this final judgment, as may be requested;

C. no information or documents obtained by the means provided in this Section VII of the final judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this final judgment, or as otherwise required by law;

D. if at the time information or documents are furnished by the

defendant to plaintiff, the 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 such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party; and

E. nothing set forth in this final judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. 1311-1314 or a federal grand jury, to determine if the defendant has complied with this final judgment.

VIII

*Retention of Jurisdiction*

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

IX

*Ten-Year Expiration*

This final judgment will expire on the tenth anniversary of its date of entry.

X

*Public Interest*

Entry of this final judgment is in the public interest.

Dated:

UNITED STATES DISTRICT JUDGE

*Competitive Impact Statement*

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment as to *United States v. Brush Fibers, Inc.*, submitted for entry in this civil antitrust proceeding.

I

*Nature and Purpose of the Proceedings*

On \_\_\_\_\_, the United States filed a civil antitrust complaint alleging that under Section 4 of the Sherman Act, as

amended, 15 U.S.C. 4, certain companies and individuals, including the above-named defendant, combined and conspired from at least as early as January 1990 to April 1995, to lessen and eliminate competition in the sale of tampico fiber in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Specifically, BFI agreed with its supplier to fix and maintain resale prices for tampico fiber in the United States at amounts set by the supplier. Moreover, the complaint alleges, BFI continued to adhere to the resale price agreement even after learning that it was part of a larger agreement involving its supplier and other co-conspirators, including the only other major United States distributor of tampico fiber. The overall conspiracy, which also included an allocation of sales and production levels, had the effect of cartelizing nearly all sales of tampico fiber in the United States and artificially inflating the price of tampico fiber.

The complaint seeks a judgment by the Court declaring that the defendant engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin and restrain the defendant from any such activities or other activities having a similar purpose or effect in the future.

The United States and the defendant have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against the defendant, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

## II

### *Description of The Practices Giving Rise to the Alleged Violations of the Antitrust Laws*

As defined in the complaint, tampico fiber is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

The complaint further alleges that the defendant accounted for aggregate United States sales of tampico fiber of approximately \$10 million during the

period from January of 1990 through April of 1995. During this time, the defendant obtained from a Mexican processor, through an intermediary company, substantial quantities of tampico fiber. The defendant, acting as the Mexican processor's exclusive United States distributor, sold this tampico fiber to its customers throughout the United States, including those located in the Eastern District of Pennsylvania, in a continuous and uninterrupted flow of interstate commerce. Similarly, the complaint alleges that non-defendant co-conspirators sold and shipped additional substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from another processing facility in Mexico through their exclusive United States distributor to customers throughout the United States, including some located in the Eastern District of Pennsylvania.

The complaint alleges that the defendant and co-conspirators engaged in an agreement, the effect of which was to fix the resale prices of tampico fiber sold in the United States. Resale price sheets were provided to the defendant and another co-conspirator United States distributor by their respective co-conspirator suppliers. As a condition of becoming and remaining a United States distributor of tampico fiber, the defendant agreed by written contract with its supplier to sell at the prices listed on the price sheet. From at least January 1990 on, the defendant and the other United States' distributor of tampico fiber had identical price sheets prepared by their respective co-conspirator suppliers, and the majority of sales were made by the distributors at these list prices or other agreed-upon prices.

The defendant continued to observe the resale price maintenance scheme even after learning of collusive agreements between the two Mexican suppliers of tampico fiber. The resale price scheme had the effects of fixing and stabilizing the resale prices of tampico fiber. The defendant's conduct also lessened or eliminated competition between the two principal United States distributors of tampico fiber. The anticompetitive effects of the defendant's conduct were heightened because it was one of only two significant United States distributors of tampico fiber. The defendant's adherence to the resale price maintenance scheme together with other acts of its co-conspirators had the effect of cartelizing nearly all sales of tampico fiber in the United States and artificially inflating the prices of tampico fiber.

BFI's supplier in this scheme has already plead guilty and agreed to enter a consent decree in response to criminal and civil charges relating to the entire agreement.

## III

### *Explanation of the Proposed Final Judgment*

The United States and the defendant have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16 (b)-(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed final judgment contains two principal forms of relief. First, the defendant is enjoined from repeating the conduct it undertook in connection with the tampico fiber conspiracy and from certain other conduct that could have similar anticompetitive effects. Second, the proposed final judgment places affirmative burdens on the defendant to pursue an antitrust compliance program directed toward avoiding a repetition of the tampico fiber conspiracy.

#### A. Prohibited Conduct

Section IV of the proposed final judgment broadly enjoins the defendant from conspiring to fix prices, allocate sales, discourage new entrants, or otherwise restrict or eliminate the supply of tampico fiber sold to any customer in the United States, or from communicating certain pricing or sales information that could further such a conspiracy (IV (A), (B), (C) and (D)); from agreeing with a supplier to set or control the resale prices of defendant or any other distributor to its customers (IV (E)); and from joining any group whose aims or activities are prohibited by Sections IV (A)-(E) of the final judgment (IV (F)).

Specifically, as regards tampico fiber sold in the United States, Sections IV (A)-(F) of the proposed final judgment provides as follows. Section IV (A) of the proposed final judgment enjoins the defendant from directly or indirectly agreeing with any other distributor or with any supplier of tampico fiber to (1) raise, fix or maintain the prices or other terms or conditions for the sale or supply of tampico fiber; (2) allocate sales volumes, territories or customers for tampico fiber; (3) discourage or

eliminate any new entrant into the tampico fiber market; and (4) restrict or eliminate the supply of tampico fiber to any customer.

Section IV(B) of the proposed final judgment enjoins the defendant from communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber any current or future price, price change, discount or other term or condition of sale charged or quoted, or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed.

Section IV(C) of the proposed final judgment enjoins the defendant from distributing to any distributor or supplier (other than its own supplier) of tampico fiber price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber.

Section IV(D) of the proposed final judgment enjoins the defendant from communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber information regarding the volume of sales of tampico fiber or the location or identity of customers.

Section IV(E) of the proposed final judgment enjoins the defendant from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by defendant or any other distributor.

Section IV(F) of the proposed final judgment enjoins the defendant from participating or engaging, directly or indirectly, through any trade association, organization or other group, in any activity which is prohibited in Sections IV (A)–(E) of the proposed final judgment.

#### B. Permitted Conduct

Two exceptions to the broad prohibitions of Section IV of the proposed final judgment are contained in Section V. Section V(A) permits any necessary negotiations or communications with any distributor or supplier, or any agent, broker or representative of such distributor or supplier in connection with *bona fide* proposed or actual purchases of tampico fiber from or sales of tampico fiber to that distributor or supplier. Section V(B) makes it clear that the final judgment does not prohibit the defendant from

unilaterally deciding to resell tampico fiber at prices suggested by its supplier. However, the defendant is obliged to make and retain written reports as to any suggestion by its supplier as to appropriate resale prices and deliver copies of the written reports to the Antitrust Division on or about each anniversary date of the final judgment.

#### C. Defendant's Affirmative Obligations

Section VI requires that within thirty (30) days of entry of the final judgment, the defendant adopt or pursue an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment and reporting any violations of its terms. It further requires that the defendant furnish a copy of the final judgment to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of tampico fiber within sixty (60) days of the date of entry, and to certify that it has distributed those copies and designated an Antitrust Compliance Officer within seventy-five (75) days. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section VI requires the defendant to brief each officer, director and employee engaged in or having responsibility over pricing of tampico fiber as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment, a fine, or both, and that the defendant will make legal advice available to such persons regarding compliance questions or problems. The defendant annually must obtain (and maintain) certifications from each such person that the aforementioned briefing, advice and a copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer. Finally, the defendant must submit to the plaintiff an annual declaration as to the fact and manner of its compliance with the final judgment, including any reports responsive to Section V of the final judgment.

Under Section VII of the final judgment, the Justice Department will

have access, upon reasonable notice, to the defendant's records and personnel in order to determine defendant's compliance with the judgment.

#### D. Scope of the Proposed Judgment

##### (1) Persons Bound by the Decree

The proposed judgment expressly provides in Section III that its provisions apply to the defendant and each of its officers, directors, agents and employees, subsidiaries, successors and assigns and to all other persons who receive actual notice of the terms of judgment.

In addition, Section III of the judgment prohibits the defendant from selling or transferring all or substantially all of its stock or assets used in its tampico fiber business unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

##### (2) Duration of the Judgment

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

#### E. Effect of the Proposed

##### Judgment on Competition

The prohibition terms of Section IV of the final judgment are designed to ensure that the defendant will act independently in determining the prices and terms and conditions at which it will sell or offer to sell tampico fiber, and that there will be no anticompetitive restraints (horizontal or vertical) in the tampico fiber market. The affirmative obligations of Sections VI and VII are designed to insure that the corporate defendant's employees are aware of their obligations under the decree in order to avoid a repetition of behavior that occurred in the tampico fiber industry during the conspiracy period. Compliance with the proposed judgment will prevent price collusion, allocation of sales, markets and customers, concerted activities in restricting new entrants and customers, and resale price restraints by the defendant with other tampico fiber distributors and such distributors' suppliers.

#### IV

##### *Remedies Available to Potential Private Plaintiffs*

After entry of the proposed final judgment, any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which he or she may have had if the proposed judgment had not been

entered. The proposed judgment may not be used, however, as *prima facie* evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

V

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

The proposed final judgment is subject to a stipulation between the government and the defendant which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Robert E. Connolly, Chief, Middle Atlantic Office, Suite 650 West, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI

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

The alternative to the proposed final judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

VII

#### *Determinative Materials and Documents*

No materials or documents were considered determinative by the United States in formulating the proposed final judgment. Therefore, none are being

filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Joel I. Klein,

*Acting Assistant Attorney General.*

Rebecca P. Dick,

*Deputy Director of Operations.*

Robert E. Connolly,

*Chief, Middle Atlantic Office.*

Edward S. Panek,

Michelle A. Pionkowski,

Roger L. Currier,

Joseph Muoio,

*Attorneys, Antitrust Division, U.S.*

*Department of Justice, Middle Atlantic Office,*

*The Curtis Center, Suite 650W, 7th & Walnut Streets, Philadelphia, PA 19106, Tel.: (215) 597-7401.*

[FR Doc. 96-23378 Filed 9-11-96; 8:45 am]

BILLING CODE 4410-01-M

#### **Notice Pursuant to the National Cooperative Research and Production Act of 1993; HDP User Group International, Inc.**

Notice is hereby given that, on August 20, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDP User Group International, Inc., an Arizona non-profit corporation, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change of membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Alcatel, Zaventom, BELGIUM; International Business Machines, Hopewell Junction, NY; and MCC, Austin, TX have left the group.

No other changes have been made in either the membership or planned activities of this joint venture.

On September 14, 1994, the HDP User Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register on March 23, 1995 (60 FR 15306-7).

The last notification was filed on April 23, 1996. A notice was published in the Federal Register on May 14, 1996 (61 FR 24331).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96-23374 Filed 9-11-96; 8:45 am]

BILLING CODE 4410-01-M

#### **Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing Company**

Notice is hereby given that, on August 12, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Minnesota Mining and Manufacturing Company ("3M") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a research and development venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are 3M, St. Paul, MN and Actuarial Sciences Associations, Inc. ("ASA"), Somerset, NJ.

The purpose of the venture is to develop technology to define episodes of treatment for the diseases and conditions found in the enrolled population of typical managed care organizations (MCOs). By utilizing episode definitions, MCOs will better understand and evaluate physician performance in terms of care provided to a patient for a particular set of problems, leading to better control of costs of individual services, days of care, and hospital admissions.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96-23373 Filed 9-11-96; 8:45 am]

BILLING CODE 4410-01-M

#### **Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association**

Notice is hereby given that, on August 16, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Continental Cement Company, Chesterfield, MO has resigned from PCA and Hawaiian Cement, Honolulu, Hawaii will resign