mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Existing collection in use without an OMB control number.

(2) *The title of the form/collection:* Office of Legal Education Nomination Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DOJ Form Number, none. Office of Legal Education, Executive Office for United States Attorneys, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency training services. Respondents may represent Federal agencies, as well as State, local, and tribal governments. The Executive Office for United States Attorneys will use the collected information to select class participants, arrange for transportation and reserve rooms; have an address to contact the participant, and an emergency contact.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 2,140 responses annually. It is estimated that each form will take 5 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 1,750 hours.

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

Dated: November 7, 2003

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–28484 Filed 11–13–03; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Pursuant to 28 CFR 507 notice is hereby given that on October 16, 2003, eleven proposed Consent Decrees in the case *United States* v. *Brothers Machine & Tool, Inc., et al.* Civil Action No. LACV 03–07406 DDP (RNBx) were lodged with the United States District Court for the Central District of California.

In this action, under sections 106 and 107 of CERCLA, 42, U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the ''Site'').

The defendants in this action are as follows: Brothers Machine & Tool, Inc.; Chasin Trust; Hanson Trust; Searing Revocable Trust; Lucille F. Ferris Living Trust; John I. Maple Family Partnership; Thomas J. Mersits; Irene L. Mersits Trust; David Joseph Neptune Family Trust; O.R.P. LLC; Danny R. Peoples and Dena Peoples, Eddie E. Timmons; Eugene Geraldine Welter Trust; Graziano Trust; Los Nietos Property LLC. and Jovita L. Ortega.

Each of the defendants in this action own a portion of the Site (''Landowner(s)''), and the purpose of each of the settlements is to provide to the United States the access and institutional controls which are required to perform the remedial action at the Site. In return, the United States has given, to each Landowner in each decree, its covenants not to sue and contribution protection.

Each Landowner settlement is related to a prior consent decree in the case of *United States* v. *Archer Daniels, et al.* Civil Action No. 03–CV–1593WJR, wherein defendants which had allegedly arranged for the disposal of hazardous substances at the Site had agreed to perform the Site Remedy. This decree was entered by the United States District Court for the Central District of California on August 12, 2003.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to any of the Landowner Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Brothers Machine & Tool, Inc., et al.*, D.J. Ref. 90–11–2–1000/1. As each Consent Decree includes a covenant not to sue under Section 7003 of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

Each Consent Decree may be examined at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94107. During the public comment period, each Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of each Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of each Landowner Consent Decree from the Consent Decree Library, please enclose a check in the amount of $63.50 (25 cents per page reproduction cost) per Consent Decree payable to the U.S. Treasury. In requesting a copy of each Consent Decree, exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 03–28459 Filed 11–13–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10957, et al.]

Proposed Exemptions; *John Hancock Life Insurance Company, et al*

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@.dol.gov'',* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

John Hancock Life Insurance Company, Located in Boston, Massachusetts

[Application No. D–10957]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed purchases and sales of farmland asset(s) (the Farmland Asset(s)), as defined in Condition 12(b), or entire farmland account(s) (the Entire Farmland Account(s)), as defined in Condition 12(n), between various account(s) (the Account(s)), as defined in Condition 12(a), that are managed by Hancock Natural Resource Group, Inc. (HNRG) or the affiliate(s) (the Affiliate(s)), as defined in Condition 12(e), of John Hancock Life Insurance Company (JHLIC).

Conditions and Definitions

This exemption is subject to the following conditions:

1. A plan or plans covered by the Act (the ERISA-Covered Plan(s)), as defined in Condition 12(c), may participate in a subject transaction only if each such plan has total assets in excess of $100 million.

2. At least 30 days prior to entering a subject transaction, each affected customer (the Customer(s)), as defined in Condition 12(l), invested in an Account participating in such transaction will be provided with information regarding the Farmland Asset(s) or the Entire Farmland Account involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of each such affected Customer. Notice of any change in the purchase price will be provided to each affected Customer at least 30 days prior to the consummation of the transaction.

3. An independent fiduciary (an Independent Fiduciary), as defined in Condition 12(h), is appointed by JHLIC or an Affiliate as follows:

(a) One Independent Fiduciary is appointed to represent the Account(s) in which an ERISA-Covered Plan or ERISA-Covered Plans is/are invested, whether the Account(s) is/are the buyer(s) or the seller(s) in a subject transaction, where one side of such transaction involves one or more: (i) ERISA-Covered Plan(s), (ii) pooled separate account(s)(the Pooled Separate Account(s), as defined in Condition 12(k), in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Account(s) holding ''plan assets'' subject to the Act [1] and the other side of such transaction involves one or more plan(s) or other customer(s) not covered by the Act (the Non-ERISA Plan(s) or Non-ERISA Customer(s), as defined in Condition 12(d)),

(b) One Independent Fiduciary is appointed to represent the buying account(s) (the Buying Account(s)), as defined in Condition 12(f), in a subject transaction, where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding ''plan assets'' subject to the Act, and the decision to liquidate the Farmland Asset(s) or Entire Farmland Account is the result of one or more ''triggering events,'' as described below. A ''triggering event'' will exist whenever:

(1) JHLIC or an Affiliate receives a direction from a Customer to liquidate such Customer's Entire Farmland Account, and the decision to liquidate such Entire Farmland Account is outside of the control of JHLIC and its Affiliates; or

(2) JHLIC or an Affiliate receives a request by a Customer to liquidate a specified Farmland Asset or Farmland Assets held in the Customer's Account, and the decision to liquidate the Farmland Asset(s) is outside of the control of JHLIC and its Affiliates; or

(3) a liquidation of all of the Farmland Assets held in a selling account(s)(the Selling Account(s)), as defined in Condition 12(g), or an Entire Farmland Account, or a particular Farmland Asset or Farmland Assets held by such Account(s) is required under the terms of the investment contract, insurance contract, or investment guidelines

[1] See 29 CFR 2510.3–101 for the Department's definition of ''plan assets'' relating to plan investments.

governing the Account(s), and the decision to select any particular Farmland Asset(s) to be sold or the decision to sell an Entire Farmland Account is outside of the control of JHLIC and its Affiliates; and

(c) One Independent Fiduciary is appointed to represent the Buying Account(s) and one Independent Fiduciary is appointed to represent the Selling Account(s) involved in a subject transaction:

(1) Where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding ''plan assets'' subject to the Act, and there is no ''triggering event,'' as described above in Condition 3(b), or

(2) Where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding ''plan assets'' subject to the Act, and one or more of the participants in such transaction is a Pooled Separate Account and/or other Account holding ''plan assets'' subject to the Act in which a John Hancock plan (the Hancock Plan(s)), as defined in Condition 12(m) participates.

4. With respect to each transaction requiring the participation of an Independent Fiduciary, as described in Condition 3, the purchase and sale of a Farmland Asset or Farmland Assets or an Entire Farmland Account shall not be consummated, unless the Independent Fiduciary determines that the transaction, including the price to be paid or received for each Farmland Asset or Entire Farmland Account, would be in the best interest of the particular Account(s) involved based on the investment policies and objectives of such Account(s).

5. Each Account which buys or sells a particular Farmland Asset or Farmland Assets or Entire Farmland Account pays no more than or receives no less than the fair market value of each Farmland Asset or Entire Farmland Account at the time of the transaction. For a Farmland Asset, fair market value shall be determined by a qualified, independent real estate appraiser experienced with the valuation of farmland properties similar to the type involved in the transaction, and may include customary closing adjustments, as described in Condition 12(o).

For an Entire Farmland Account, fair market value shall be determined by a qualified, independent entity experienced in the auditing and valuation of farmland accounts similar to the type involved in the transaction and the valuation of assets or liabilities other than Farmland Assets, including but not limited to assets such as short-term investments or accounts receivable from prior crop sales or leases, and liabilities such as investment or property management fees payable or property taxes payable, and may include customary closing adjustments, as described in Condition 12(o).

6. Each purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account between Accounts is a one-time cash transaction. A Buying Account may assume liabilities associated with an Entire Farmland Account, subject to valuation procedures described in Condition 5, above.

7. Each Account involved in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account pays no real estate commissions or brokerage fees relating to the transaction.

8. JHLIC or an Affiliate acts as a discretionary investment manager for the assets of the Account(s) involved in each transaction, provided that this condition will not fail to have been satisfied solely because the Customer retains the right to veto or approve the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account.

9. An Account may not participate in a subject transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account.

10. No purchase or sale transaction shall be designed to benefit the interests of one particular Account over another.

11. The general accounts (the General Accounts) of both JHLIC and John Hancock Variable Life Insurance Company (JHVLIC) shall not participate, directly or indirectly, in the subject transactions;

12. For purposes of this exemption:

(a) the term, ''Account(s),'' means a separate account or separate accounts (the Separate Account(s)), as defined in Condition 12(i), including Non-Pooled Separate Account(s), or Pooled Separate Account(s), as well as holding entities (Holding Entities), such as a partnership, corporation, or trust for which JHLIC or an Affiliate serves as general partner, investment manager, or adviser and include entities established or maintained by JHLIC, and limited liability companies established by pension plan investors;

(b) the term, ''Farmland Asset(s),'' means a fee simple in farmland (and appurtenant rights), an interest in related equipment, a farmland lease, farm improvements, contractual agreements with respect to the production and harvesting of farm products, such as crop quotas, crop receivables, or delivery contracts, stock in farm cooperatives, and direct or indirect interest in entities holding such assets. With respect to any farmland lease: (i) the underlying fee simple must be owned by a person other than JHLIC or an Affiliate or any Account at the time of sale; and (ii) the entire lease originally acquired by the Selling Account must be sold to the Buying Account;

(c) the term, ''ERISA-Covered Plan(s),'' means an employee benefit plan or plans as defined under section 3(3) of the Act and not excluded from coverage under section 4 of the Act;

(d) the terms, ''Non-ERISA Plans'' or ''Non-ERISA Customers,'' mean entities or investors not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, or other institutional investors, whose assets are managed in an Account for which JHLIC or an Affiliate acts as investment manager;

(e) the term, ''Affiliate(s),'' means any person(s) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(f) the term, ''Buying Account(s),'' means the Account(s) that seeks to purchase a Farmland Asset or Farmland Assets or an Entire Farmland Account from another Account;

(g) the term, ''Selling Account(s),'' means the Account(s) that seeks to sell a Farmland Asset or Farmland Assets or an Entire Farmland Account to another Account;

(h) the term, ''Independent Fiduciary,'' means a person or entity with authority to both review the appropriateness of a subject transaction for an Account, that is considered to hold ''plan assets'' subject to the fiduciary responsibility provisions of the Act, based on the investment policy established for that Account, and to negotiate the terms of the transaction, including the price to be paid for the Farmland Asset, the Farmland Assets, or the Entire Farmland Account. An individual or firm selected to serve as an Independent Fiduciary shall meet the following criteria:

(1) The individual or firm shall have no current employment relationship with JHLIC or an Affiliate, although a prior employment relationship would not disqualify the individual or firm;

(2) No individual or firm shall serve as an Independent Fiduciary during any year in which gross receipts received from business with JHLIC and its

Affiliates for that year exceed five (5) percent of such individual's or firm's gross receipts from all sources for the prior year;

(3) The individual or firm must be an expert with respect to farmland valuations;

(4) The individual or firm must have the ability to access (itself or through persons engaged by it) appropriate farmland sales comparison data and make appropriate adjustments to the subject property, properties, or Account; and

(5) The individual or firm must not have a criminal record involving fraud, fiduciary standards, or securities laws violations.

(i) the term, ''Separate Account(s),'' means a segregated asset Account or Accounts which receive premiums or contributions from Customers, including employee benefit plans subject to the Act, in connection with group annuity contracts and funding agreements, with investments held in the name of JHLIC, but where the value of the contract or agreement to the Customer (contract holder) fluctuates with the value of the investment associated with such Account;

(j) the terms, ''Non-Pooled Separate Account(s)'' or ''Non-Pooled Account(s),'' mean a Separate Account or Separate Accounts established to back a single contract issued to one Customer, which may be an employee benefit plan subject to the Act;

(k) the terms, ''Pooled Separate Account(s),'' or ''Pooled Account(s),'' mean a Separate Account or Separate Accounts established to back a group of substantially identical contracts issued to a number of unrelated Customers, including employee benefit plans subject to the Act;

(l) the term, ''Customer(s),'' means a person or persons or entity or entities that act as the authorized representative for the investor in an Account involved in a proposed purchase or sale of Farmland Assets or an Entire Farmland Account, that is independent of JHLIC and its Affiliates, provided, however, that for any Hancock Plan, as defined in Condition 12(m), below, a ''Customer'' shall mean the Plan Investment Advisory Committee of JHLIC;

(m) the term, ''Hancock Plan(s),'' means an employee benefit plan or employee benefit plans sponsored by JHLIC or an Affiliate which invest(s) in an Account;

(n) the term, ''Entire Farmland Account(s),'' means all the assets and liabilities of an Account or Accounts, as defined in Condition 12(a), including but not limited to the Farmland Assets in such Account or Accounts; and

(o) ''customary closing adjustments'' means adjustments that may arise where agricultural land bearing crops is sold prior to harvest and may involve an agreement between the buyer and seller that either: (1) The buyer reimburse the seller for documented expenses incurred during the growing period in the cultivation of such crops, up to the date of closing; or (2) the buyer retain a certain amount of the crops and the seller receive the proceeds for any crops in excess of the amount retained by the buyer.

Summary of Facts and Representations

1. The applicant for the exemption is JHLIC, acting on behalf of itself and on behalf of HNRG. HNRG, which was established in 1995, is a wholly-owned indirect subsidiary of JHLIC. JHLIC is a wholly-owned subsidiary of John Hancock Financial Services, Inc.

2. JHLIC offers group annuity contracts and funding agreements to Customers (contract holders), including employee pension benefit plans subject to the Act. JHLIC, through HNRG, manages farmland for Customers. HNRG currently manages over 115,000 acres of farmland in the United States valued at approximately $363 million, and 460 acres of farmland in Australia valued at approximately $3.8 million.

3. Customers, including employee pension benefit plans, may invest directly or indirectly in farmland through Pooled and Non-Pooled Separate Accounts available under JHLIC group annuity contracts and funding agreements.[2]

The Pooled Separate Accounts and Non-Pooled Separate Accounts that invest in farmland are known as farmland separate accounts (the Farmland Separate Account(s)). JHLIC has established a total of five (5) such Farmland Separate Accounts. Five contract holders participate in these Farmland Separate Accounts. ERISA-Covered Plans, including Hancock Plans, and Non-ERISA Plans are contract holders of these Farmland Separate Accounts.

Over 23,000 acres of farmland are allocated to the Farmland Separate Accounts which had a value of over $81 million, as of September 30, 2000. JHLIC is the sole legal owner of the assets of each Farmland Separate Account. Assets invested in the Farmland Separate Accounts are managed by JHLIC and HNRG in accordance with the investment policies established for these accounts. The investment policy for each Non-Pooled Account is established jointly by JHLIC and the contract holder. For each Pooled Account, the investment policy is established by JHLIC and adopted by each contract holder when choosing to participate in the Pooled Account.

Under the applicable contract or agreement, JHLIC or, as described below, HNRG has the right to control, manage, and administer the Farmland Separate Account in accordance with the investment policy established for the Farmland Separate Account. The management responsibilities of JHLIC under the Farmland Separate Accounts are performed by HNRG. HNRG is responsible for all decisions regarding the acquisition and disposition of farmland properties held in the Farmland Separate Accounts, although such decisions must be reviewed and approved by JHLIC's internal investment committees. In addition, HNRG has responsibility for the ongoing management of JHLIC's farmland properties, including site preparation and planting, road building and construction, leasing to tenants, maintenance, acquisition of insurance, and payment of taxes.

4. Customers desirous of obtaining JHLIC's farmland management expertise typically invest in the Farmland Separate Accounts. However, Customers and the Farmland Separate Accounts may also invest directly in Holding Entities that themselves own farmland, directly or indirectly. These Holding Entities include corporations, partnerships, or trusts. It is represented that these Holding Entities currently include entities established or maintained by JHLIC (such as separate accounts), and limited liability companies established by pension plan investors. That is, there are no unaffiliated non-plan investors currently invested in the Holding Entities. As of June 30, 2003, JHLIC and its Affiliates owned interests in farmland through such Holding Entities totaling over $100 million in value, including investments valued at $947,719 in JHLIC's Australian farmland investment entities.

HNRG is usually appointed the investment manager of the Holding Entity, or HNRG (or an employee) may be appointed an officer of the entity that holds the property. HNRG's

[2] It is represented that these contracts and agreements provide that, in accordance with a contract holder's direction, the premiums or contributions received from the contract holder will be allocated internally on the books of JHLIC to segregated asset account(s)(Separate Account(s)). The Investments of a Separate Account are held in the name of JHLIC, but the value of the contract or agreement to the contract holder fluctuates with the value of the investments allocated to the Separate Account. The direct expenses of managing the investments and JHLIC's fees are charged against the value of the Separate Account.

management responsibilities are exercised in accordance with investment guidelines contained in the Holding Entity's governing agreements. HNRG may have full investment discretion with respect to the management of the Holding Entity's farmland, or it may be required to seek Customer approval for acquisition and disposition decisions.

5. The General Accounts of both JHLIC and JHVLIC also invest in farmland. Assets held in the General Accounts are used to support various lines of insurance business. JHLIC and JHVLIC each have the right to control, manage, and administer their respective General Accounts, including the sole discretion to select and dispose of investments held by the General Accounts. As of September 30, 2000, the General Accounts held over 60,000 acres of U.S. Farmland Assets, with a value of over $185 million. In addition, the General Accounts' holdings in Australian farmland investment entities had a value of approximately $1.9 million. Although the applicant initially requested relief for the participation of the General Account in the subject transactions, in a letter, dated, May 16, 2003, the applicant amended the requested exemption to eliminate the General Account from the Accounts that are eligible to participate in the transactions covered by the proposed exemption.

6. The types of farmland held by the Farmland Separate Accounts and the Holding Entities are diversified by geography and by crop type. Farmland Assets include direct or indirect:[3] (a) Interests in real property that produces row crops or permanent crops including, but not limited to, orchards, vineyards, and citrus groves, and (b) other interests, such as interests in equipment related to the production or harvesting of crops, farmland leases, farm improvements, contractual agreements with respect to the production and harvesting of farm products (such as crop quotas, crop receivables, or delivery contracts), and stock in farm cooperatives. It is represented that with respect to any farmland lease, the underlying fee simple will be owned by a person other than JHLIC, its Affiliates, any Farmland Separate Accounts, General Accounts, or Holding Entities at the time of any covered transaction, and the entire lease will be sold in any covered transaction. As a practical matter, the Farmland Assets are generally illiquid investments, considered by JHLIC, HNRG, and their Customers to be long-term investments.

7. It is represented that from time to time, it may be appropriate to liquidate a Farmland Asset held in a Farmland Separate Account, even though the Farmland Asset remains an attractive investment. For example, a Farmland Separate Account's investments may have so increased in value that the farmland-related portion of such Account's aggregate portfolio exceeds the Customer's current asset allocation guidelines for that investment class. In addition, a Customer may request that JHLIC liquidate a portion of its Farmland Assets in order to recognize some of the portfolio's gains, to raise cash, or for other reasons unrelated to investment performance, even though the particular Farmland Asset remains an attractive investment. Also, JHLIC or HNRG may conclude that a particular Farmland Asset, though individually an attractive investment, is no longer appropriate, in light of the composition of the Account, its liquidity needs, and other available investment opportunities. In these and other situations in which a Farmland Asset might be sold, the Farmland Asset chosen for liquidation could be an appropriate investment for another Farmland Separate Account.

The applicant represents that it does not expect a Farmland Asset to be broken into separate parcels for investment by more than one Customer in most cases. It is represented that the Hancock Agricultural Investment Group, Inc. (HAIG),[4] will evaluate Farmland Assets to determine whether they could be broken into smaller parcels to satisfy a particular Farmland Account's portfolio needs but as noted above, the applicant expects that such a separation would be suitable rarely, if ever.

In some situations, a Farmland Separate Account may decide to sell a group of Farmland Assets and would sell those assets to a single purchaser, if possible. Where a group of Farmland Assets is sold by a Farmland Separate Account to another Farmland Separate Account, the sale will be treated as a single transaction.

On occasion, an Entire Farmland Account might be sold to a Farmland Separate Account. In that case, Farmland Assets and other assets of the Account, such as short term investments, would be transferred to the buyer, as well as the liabilities associated with the Entire Farmland Account. These other assets might include short-term investments or accounts receivable from prior period crop sales or leases. Liabilities might include investment or property management fees payable or property taxes payable. In the event that an Entire Farmland Account could not be sold to a single buyer, it is represented that JHLIC will separate the Farmland Assets held in such Entire Farmland Account and sell these Farmland Assets individually or in groups of multiple Farmland Assets.

8. When more than one Farmland Separate Account is interested in purchasing a particular Farmland Asset or Farmland Assets, investments are allocated by HAIG, based on its Investment Selection and Allocation Policy (the Allocation Policy). Pursuant to the Allocation Policy, HAIG reviews the investment policies and guidelines for each potential Farmland Separate Account investor to determine whether the available Farmland Asset or Farmland Assets is/are suitable for allocation to that Farmland Separate Account. Suitability is determined based on the anticipated effect on the Farmland Separate Account's crop type and geographic diversification, cash flow and capital appreciation goals, current income targets, and the Farmland Separate Account's property size limitations. In addition to the suitability analysis, HAIG will perform financial analyses that project and measure future portfolio performance both with and without the proposed Farmland Asset(s) as part of a Farmland Account's portfolio. In most situations, the characteristics of Farmland Assets and Farmland Separate Accounts will be sufficiently varied, such that a Farmland Asset will not be suitable for multiple Farmland Separate Accounts seeking investment when such asset is available.

In the event that two or more Farmland Separate Accounts have objectives and constraints that are sufficiently similar, HAIG implements its investment queue procedures. The investment queue is based on the length of time that funds of a Farmland Separate Account have been waiting for investment in a Farmland Asset or Farmland Assets. Funds that have been committed to a farmland investment program, but are not yet allocated, receive priority in the chronological order each Farmland Separate Account committed to the farmland investment program. It is represented that when an Entire Farmland Account is to be sold and more than one investor holds assets awaiting investment in Farmland

[3] Occasionally, a Farmland Separate Account may own farmland real property or other Farmland Assets indirectly through an interest in an entity, such as a corporation, that owns the property or assets.

[4] HAIG is the agricultural investment subdivision of HNRG.

Assets, the sale of the Entire Farmland Account will follow the same investment queue procedures, as described above for individual Farmland Assets.

The applicant maintains that the Allocation Policy is objective, because there is an established and easily administered rule that determines the priority among competing Farmland Separate Accounts. The Farmland Separate Account with the oldest outstanding commitment is allocated the investment. The applicant further maintains that this approach is also fair. In this regard, the applicant points out that unlike other types of investments, the identification of appropriate real estate investments, including farmland, takes time. Accordingly, the applicant maintains that it is appropriate and fair to allocate opportunities to those Farmland Separate Accounts that have the longest outstanding commitments to JHLIC or HNRG awaiting investment. In this regard, customers know that their commitments will be filled in full before new competing requests are accommodated.

9. Assets held in the Farmland Separate Accounts are considered assets of the plans participating in such Farmland Separate Accounts, pursuant to 29 CFR 2510.3–101(h)(1)(iii) of the Department's regulations. In addition, the assets of certain Holding Entities through which JHLIC's Customers hold Farmland Assets may also constitute plan assets if the Customer is an ERISA-Covered Plan and the Holding Entity is a pass-through entity, pursuant to 29 CFR 2510.3–101(a)(2) of the Department's regulations.

As investment managers for the Farmland Separate Accounts, JHLIC and HNRG are both fiduciaries and parties in interest to ERISA-Covered Plans participating in the Farmland Separate Accounts, pursuant to section 3(14)(A), and (B) of the Act. As a discretionary manager of the Farmland Assets held by the Holding Entities that are pass-through entities, HNRG is a fiduciary and party in interest with respect to any ERISA-Covered Plans that invest in these Holding Entities.

10. The transfer of a Farmland Asset or Farmland Assets or an Entire Farmland Account from one Farmland Separate Account to another could constitute a violation of section 406(b)(2) of the Act, if one of the Accounts holds plan assets. Section 406(b)(2) of the Act provides that a plan fiduciary shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Because JHLIC or its Affiliate serves as investment manager to both the Buying and Selling Account, it could be viewed as representing adverse parties in a transaction involving a plan. Accordingly, the applicant requests an exemption from the prohibitions of section 406(b)(2) of the Act to cover the subject transactions.

11. The applicant maintains that the proposed exemption is administratively feasible, because each transaction involving an ERISA-Covered Plan can be readily identified and audited. The proposed exemption would not require continued monitoring or other involvement on behalf of the Department of Labor or the Internal Revenue Service.

12. The applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of ERISA-Covered Plans that are Customers, because decisions regarding which Farmland Asset or Farmland Assets or Entire Farmland Account to be transferred and the timing of the transfers will be made by JHLIC and its Affiliates in conformance with each Customer's investment guidelines, which have been agreed upon by the Customer. In addition, if JHLIC or HNRG determines that it should liquidate a Farmland Asset or Farmland Assets held in an Account or an Entire Farmland Account or if as a result of certain "triggering events," described in Condition 3 of this proposed exemption, such liquidation must occur and JHLIC concludes that the particular Farmland Asset, Farmland Assets, or Entire Farmland Account to be sold is an appropriate investment for the portfolio of another Farmland Separate Account, JHLIC will engage an Independent Fiduciary to represent the interests of any ERISA-Covered Plans, as set forth in Condition 3. The individual or firm selected to serve as an Independent Fiduciary; must satisfy the criteria, as set forth in Condition 12(d) of this proposed exemption.

13. For each transaction requiring an Independent Fiduciary, the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account may not be completed unless the Independent Fiduciary determines that the transaction, including the purchase price, would be in the best interest of the particular Account(s) involved based on investment policies and procedures of the Account(s).

Where a transaction between ERISA-Covered Plans and a triggering event has occurred, the fee for the services of the Independent Fiduciary will be charged as an acquisition expense to the Buying Account(s). In a transaction other than the one described in the above sentence, each side would pay the fee for the services of the Independent Fiduciary, to the extent that an Independent Fiduciary is required by the terms of the exemption. For example, the Buying Account would pay for an Independent Fiduciary, as required under the exemption to represent the interest of the Buying Account, and the Selling Account would pay for an Independent Fiduciary, as required under the exemption to represent the interest of the Selling Account. In a situation where more than one account is on the buying or on the selling side of the transaction, it is expected that there will not be more than one Independent Fiduciary required to represent the accounts on a single side of the transaction. In that event, the costs of the fees for the services of the Independent Fiduciary would be shared, as negotiated by the accounts whose interests the Independent Fiduciary represents in the transaction.

14. It is represented that the proposed exemption provides sufficient safeguards for the protection of the participants and beneficiaries of the ERISA-Covered Plans. In this regard, participation in the proposed transactions by ERISA-Covered Plans is limited to plans having total assets in excess of $100 million. The minimum asset requirements will help ensure that the fiduciaries reviewing these transactions are sophisticated investors familiar with complex investments.

15. Further, the applicant represents that each Account that buys or sells a Farmland Asset or Farmland Assets or Entire Farmland Account will pay no more and receive no less than fair market value of the Farmland Asset or Farmland Assets or Entire Farmland Account at that time of the transaction. For a Farmland Asset, fair market value shall be determined by a qualified, independent real estate appraiser experienced with the valuation of farmland properties similar to the type involved in the transaction, and may include customary closing adjustments. It is represented that customary closing adjustments may arise where agricultural land bearing crops is sold prior to harvest and may involve an agreement between the buyer and seller that either: (1) The buyer reimburse the seller for documented expenses incurred during the growing period in the cultivation of such crops, up to the date of closing; or (2) the buyer retain a certain amount of the crops and the seller receive the proceeds for any crops

in excess of the amount retained by the buyer.

For an Entire Farmland Account, it is represented that fair market value shall be determined by a qualified, independent entity experienced in the auditing and valuation of farmland accounts similar to the type involved in the transaction and the valuation of assets or liabilities other than Farmland Assets, including but not limited to assets such as short-term investments or accounts receivable from prior crop sales or leases, and liabilities such as investment or property management fees payable or property taxes payable, and may include customary closing adjustments. It is represented that the valuation of an Entire Farmland Account would be similar to valuation of a business or going concern in any transaction. If the entity that performs the valuation of the Entire Farmland Account is not a qualified real estate appraiser, then it is represented that such a qualified real estate appraiser will be engaged to value the Farmland Assets included in the Entire Farmland Account.

16. JHLIC will provide a notice to each Customer investing in the Accounts participating in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account. The notice will be provided at least 30 days before entering a subject transaction, and will include information regarding the Farmland Asset(s) or Entire Farmland Account involved and the proposed terms of the transaction, including the approved purchase price and how the transaction would meet the goals and investment policies of each Customer. If there is any change in the purchase price, notice of such change in the purchase price will be provided to the Customer at least 30 days prior to the consummation of the transaction.

17. An Account will not participate in a subject transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account.

18. The applicant maintains that the proposed exemption is in the interest of JHLIC's plan Customers and their participants and beneficiaries because it will provide those Customers with attractive and appropriate investment opportunities that might not otherwise be available to them. In this regard, it is represented that transfers of a Farmland Asset, Farmland Assets, or an Entire Farmland Account between Farmland Separate Accounts, including Accounts in which a Hancock Plan invests, allow the Buying Accounts to invest more quickly and to invest in Farmland Assets that might not otherwise be available to them. JHLIC believes that investors commit to establishing a farmland investment portfolio because they have identified a current need for such an asset category. Once a Customer has committed to a farmland program, it is important to invest the funds as rapidly as is prudent. As attractive farm properties are relatively scarce, allowing a transfer of farm parcels in accordance with this proposed exemption would provide an opportunity for the Buying Accounts to invest funds more rapidly than would be possible if the purchase involved a seller having no relationship to JHLIC.

Further, both the Selling and Buying Accounts will incur lower transaction or start-up costs as a result of the proposed exemption. In this regard, it is represented that a transfer of legal ownership of property is not necessary when the transfer is between Farmland Separate Accounts maintained by the same insurer. As JHLIC has legal title to all assets allocated to its Separate Accounts, and generally may reallocate these assets among such Accounts without a change in legal title, significant transaction costs can be avoided. In addition, real estate sales commissions and brokerage fees, which can amount to over half the entire cost of a transaction, will be avoided in all cases.

Furthermore, because JHLIC or HNRG is the manager of both the Selling and Buying Account, more information about the property would be available to the Buying Account than would be if both Accounts were not managed by JHLIC or HNRG. This significantly reduces the risk to the Buying Account. In addition, because JHLIC or HNRG is already familiar with the property, the Buying Account would avoid certain ''due diligence'' expenses normally associated with the purchase of a new property, such as the costs of well testing, soil and root analysis, and environmental testing.

19. The applicant maintains that denial of this proposed exemption would prevent the transfer of properties from one Farmland Separate Account to another and would require instead that a property be liquidated and sold to an unrelated third party. The Buying Account would therefore be deprived of attractive and appropriate investment opportunities, when such opportunities are scarce. In addition, the Selling and Buying Accounts would incur higher transaction or start-up costs if they were each required to enter into transactions with parties whose assets are not managed by JHLIC or HNRG.

20. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

a. The minimum asset requirement for ERISA-Covered Plan participation in the proposed transactions will ensure that the fiduciaries reviewing such transactions are sophisticated investors familiar with complex investments;

b. Prior to entering a subject transaction, each affected Customer will receive disclosures regarding the Farmland Asset(s) or Entire Farmland Account involved in the proposed transaction and the terms of such transaction;

c. Any change in the terms of a proposed transaction must be disclosed to the affected Customer at least 30 days prior to the consummation of such transaction;

d. An Independent Fiduciary will be appointed by JHLIC or an Affiliate to review and approve the proposed transactions, as set forth in Condition 3;

e. In each transaction requiring the participation of an Independent Fiduciary, the purchase and sale of a Farmland Asset or Farmland Assets or an Entire Farmland Account will not be consummated, unless the Independent Fiduciary determines that the transaction is in the best interest of the particular Account involved based on the investment policies and objectives of such Account;

f. Each Account which buys or sells a particular Farmland Asset or Farmland Assets or Entire Farmland Account will pay no more than or receive no less than the fair market value of the Farmland Asset(s) or Entire Farmland Account at the time of the transaction;

g. Each purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account between Accounts will be a one-time cash transaction;

h. Each Account involved in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account will pay no real estate commissions or brokerage fees relating to the transaction;

i. An Account will not participate in a proposed transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account;

j. No purchase or sale transaction will be designed to benefit the interests of one particular Account over another; and

k. The General Accounts of both JHLIC and JHVLIC will not participate, directly or indirectly, in the subject transactions.

Notice to Interested Persons

It is represented that those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all ERISA-Covered Plans currently participating in any Farmland Separate Account and those ERISA-Covered Plans participating in any Holding Entity whose assets are managed by JHLIC or HNRG.

JHLIC proposes to provide notification of the publication of the Notice to the plan trustee or other fiduciary of all ERISA-Covered Plans which currently participate in any Farmland Separate Account and/or in any Holding Entity whose assets are managed by JHLIC or HNRG by first class mail or overnight delivery within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such notification will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) of the Department's regulations. The Supplemental Statement will include a statement informing the plan trustee or fiduciary or other interested persons of their right, to comment and/or request a hearing on the proposed exemption.

The applicant also represents that for ERISA-Covered Plans who invest after the date of the publication of the Notice and before the publication in the **Federal Register** of the final exemption, if granted, JHLIC will provide a copy of the Notice and a copy of the Supplemental Statement via U.S. first class mail or hand delivery prior to such plan's initial investment in a Farmland Separate Account and/or Holding Entity. In addition, the applicant represents that a copy of the final exemption, if granted, will be provided by hand delivery or U.S. first class mail to the independent fiduciary of each ERISA-Covered Plan prior to any such plan's initial investment in a Farmland Separate Account.

Written comments and/or requests for a hearing on the proposed exemption must be received by the Department on or before 45 days from the date following publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

United States Steel and Carnegie Pension Fund (UCF or the Applicant), Located in New York, NY

[Application No. D–11191]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[5]

Section I. Covered Transactions

(A) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the in kind contribution of certain timber rights (the Timber Rights), under two timber purchase and cutting agreements (the Timber Rights Agreements) to The United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003) (the Plan) by the United Steel Corporation (US Steel), the Plan sponsor and a party in interest with respect to the Plan.

(B) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the following ancillary transactions between the Plan and U.S. Steel arising from certain rights retained by U.S. Steel related to the timberland (the Property) on which the Timber Rights are based:

(1) The receipt of compensation by the Plan from U.S. Steel under the Timber Rights Agreements in the event that either (a) U.S. Steel exercises its right to early termination of an Agreement, which requires a termination payment to the Plan at a premium over the fair market value of the Timber Rights as determined by a qualified, independent appraiser, which has been selected by the independent fiduciary (the Independent Fiduciary); or (b) U.S. Steel owes compensation to the Plan for mineral activities that interfere with the Plan's use of the land for timber purposes.

(2) The guarantee by U.S. Steel to make the Plan whole in the event of a decline in value of the Timber Rights after five years.

(3) Any ongoing obligation incurred by U.S. Steel to maintain the Property in a fashion that does not unreasonably interfere with the Plan's use thereof.

(4) The indemnity given by U.S. Steel to the Plan for any environmental claims arising out of activities engaged in prior to the execution and closing of the proposed Timber Rights contribution.

Section II. General Conditions

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following general conditions:

(a) A qualified independent fiduciary (the Independent Fiduciary) acting on behalf of the Plan, represents the Plan's interests for all purposes with respect to the Timber Rights contribution, and determines prior to entering into any of the transactions described herein, that each such transaction, including the Timber Rights contribution, is in the interest of the Plan.

(b) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plan and U.S. Steel that relate to the Timber Rights.

(c) The Independent Fiduciary manages the holding, disposition, and assignment of the Timber Rights and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Timber Rights.

(d) The terms of any transactions between the Plan and U.S. Steel are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

(e) The Independent Fiduciary determines the fair market value of the Timber Rights contributed to the Plan on the date of such contribution. In determining the fair market value of the Timber Rights Contribution, the Independent Fiduciary obtains an updated appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and ensures that the appraisal is consistent with sound principles of valuation.

(f) The fair market value of the Timber Rights does not exceed 5% of the Plan's total assets at the time of such contribution.

(g) The Plan pays no fees or commissions in connection with the Timber Rights contribution. (This condition does not preclude the Plan from paying the Independent Fiduciary's ongoing management fees once the contribution has been

[5] For purposes of this proposed exemption, reference to Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

approved and accepted. It also does not restrict the Plan from paying the due diligence costs connected with the acquisition of the Property, such as the expenses for a title search, appraisal and environmental review.)

(h) Five years from the date of the Timber Rights contribution, U.S. Steel contributes, to the Plan, an amount in cash calculated as follows:

(1) The fair market value of the Timber Rights as of the date of the contribution, less

(2) The sum of (i) the fair market value of the Timber Rights held by the Plan as of the date five years from the date of the contribution, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary, plus (ii) the net cash distributed to the Plan LLC or the Plan relating to all or any part of the Timber Rights (and/or the related timber) prior to such date; provided, that if a contribution is due and if, for the taxable year of U.S. Steel in which the contribution is to be made, such contribution (i) is not deductible under section 404(a)(1) of the Code or (ii) results in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution is deductible under section 404(a)(1) of the Code and does not result in an excise tax under section 4972 of the Code.

(i) U.S. Steel indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.

(j) The Plan retains the right to sell or assign, in whole or in part, any of its Timber Rights interests to any third party purchaser.

Section III. Definitions

(a) The term ''Independent Fiduciary'' means a fiduciary who is: (1) independent of and unrelated to U.S. Steel or its affiliates, and (2) appointed to act on behalf of the Plan for purposes related to (i) the in kind contribution of the Timber Rights by U.S. Steel to the Plan and (ii) other transactions between the Plan and U.S. Steel related to the Property on which the Timber Rights are based. For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of and unrelated to U.S. Steel if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with U.S. Steel, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption; except that an Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from U.S. Steel in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision, and (3) the annual gross revenue received by such fiduciary, during any year of its engagement, from U.S. Steel and its affiliates exceeds 5% of the Independent Fiduciary's annual gross revenue from all sources for its prior tax year.

(b) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

1. UCF is a Pennsylvania non-stock membership corporation created in 1914 to manage the pension plan of the United States Steel Corporation (predecessor to the current U.S. Steel) and an endowment fund created by Andrew Carnegie for the benefit of the company's employees. Despite its name, UCF is not itself a pension fund but rather an entity that manages pension funds. Its principal office is located in New York, New York. UCF currently serves as the plan administrator and/or trustee of several employee benefit plans sponsored by U.S. Steel and by U.S. Steel affiliates, as well as certain former affiliates of U.S. Steel. It is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940.

As a non-stock membership corporation, UCF has no shareholders, but rather is governed by its members (the Members). There are currently eleven Members, with any vacancy in the Membership being filled by the vote of the majority of the remaining Members. The Members also serve as the directors of UCF and manage its affairs in that capacity. A majority of the Members/directors of UCF are employees of U.S. Steel.

As of December 31, 2002, UCF managed a total of $8.5 billion in assets. The majority of these assets, $7.2 billion, were held in two trusts for pension plans for the employees of U.S. Steel (a union plan and a non-union plan), which are in the process of being merged into a single plan, the Plan. Another $465 million in assets was managed by UCF for funds used to provide retired U.S. Steel employees with welfare benefits. In addition, the category of investments managed by UCF include domestic and international equities, fixed-income securities, real estate, mortgage-backed loans and options. UCF makes investments in accordance with its internal investment policies, guidelines and procedures.

2. U.S. Steel is a publicly-traded company that owns and operates the former steel business of USX Corporation, which after the spin-off, effective January 1, 2002, is now known as ''Marathon Oil Corporation''. U.S. Steel is the largest integrated steel producer in North America, and through a subsidiary, the largest integrated flat-rolled producer in Central Europe. U.S. Steel's domestic operations, which employ over 20,000 people, are engaged in the production, sale and transportation of steel mill products, coke, taconite pellets and coal; the management of mineral resources; real estate development; and engineering and consulting services. In 2002, U.S. Steel had total revenues of $7.1 billion.

3. U.S. Steel has sponsored and maintained two defined benefit plans for its employees and retirees. In this regard, the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 1950) covers employees and retirees who are subject to collective bargaining agreements, which include the United Steelworkers of America, as well as a limited number of other groups of employees. The United States Steel Corporation Plan for Non-Union Employee Pension Benefits (Revision of 1998) generally covers management and other non-union employees and retirees. Effective on or before November 30, 2003, the two plans are to be merged, with the surviving plan being The United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003). As noted above, this plan is referred herein as ''the Plan''.

As of December 31, 2002, the combined assets for the two plans totaled $7.222 billion. Also as of December 31, 2002, the plans had approximately 120,500 participants and beneficiaries, including actives, retirees and deferred vesteds. The Applicant represents that the plans together were slightly overfunded, with a funding

ratio calculated in accordance with the Retirement Protection Act of 106%.

The Applicant further represents that preliminary funding valuations indicate that the newly-merged Plan will not require contributions for the 2003 or 2004 Plan years. U.S. Steel currently anticipates annual funding requirements, broadly estimated, to be approximately $90 million beginning in 2005. The actual amount will depend upon various factors such as future asset performance, the level of interest rates used to measure ERISA minimum funding levels, the impacts of business acquisitions or sales, union-negotiated changes and future government regulation. For example, the Applicant states that the obligation could be much larger if the securities markets continue to show negative returns and the interest rates required to be used for funding calculations continue to decrease.

UCF is the Named Fiduciary and Plan Administrator of the Plan. It also will serve as trustee of the Plan (the Trustee), with responsibility for managing its assets. The assets of the Plan are diversified across several asset classes. As of December 31, 2002, the overall allocation of the $7.2 billion in assets of the two plans was as follows:

Equities	63%
Fixed Income	31%
Real Estate	[6] 2%
Cash	4%

[6] This percentage does not include the Plan's investment in publicly-traded real estate investment trusts (REITs), which the Plan classifies as equity or fixed income depending on the nature of the interest held. Equity interests in the REITs constitute 2.4% of the Plan's assets, and fixed income interests in REITs constitute 2.7%.

4. In 1907, U.S. Steel's predecessor acquired approximately a quarter million acres of timberland when it bought Tennessee Coal and Iron. This land is generally situated around Birmingham, Alabama. Nearly 100,000 acres were harvested in the late 1980's and early 1990's, of which approximately 30% were clearcut harvested and replanted with pine. These areas will be available for harvest again approximately 25–30 years after planting, with harvesting to begin within the next ten years. Plantation thinning has begun on the older pine plantations, a process in which deformed and smaller trees are harvested, leaving the more valuable final crop trees to grow. More limited harvesting has occurred over the last five to seven years, with those areas also being planted with pine.

U.S. Steel currently is engaged in an effort to divest itself of its ''non-strategic'' assets, *i.e.*, those not related to its core steel business. One of the assets it is expected to divest is the timberland. However, because the timber is still in the early stages of growth, the market price U.S. Steel would obtain in a sale to a third party would be relatively low, as timber assets are assigned low values in early growth years and only appreciate significantly as the timber matures and can be harvested.

To retain, at least indirectly, the benefit of the future appreciation of these assets, U.S. Steel would like to contribute certain rights in the Property toward the funding of its employee benefit plans. U.S. Steel announced this possibility in its earnings release of January 28, 2003, in describing a series of business and asset dispositions it has under consideration, and in its Form 10–K annual report for the 2002 fiscal year that was filed with the Securities and Exchange Commission in March 2003. After considering the needs and current investments of its different plans, U.S. Steel decided that because of the minimum funding requirements for defined benefit plans, the recent increases in funding liabilities due to falling interest rates, the recent declines in asset levels due to negative stock market performance, and the need for asset diversification, the Plan is in the best position to benefit from receiving growing, cutting and harvesting rights in the timber assets.

5. Accordingly, UCF requests an administrative exemption from the Department to receive the contribution of Timber Rights on behalf of the Plan from U.S. Steel and to engage, on behalf of the Plan, in subsequent transactions between the Plan and U.S. Steel (*e.g.*, compensating the Plan for the timber value on the Property in the event that a parcel is sold for development) that may arise from the retention and exercise of the Timber Rights. Such transactions will be approved and monitored by The Campbell Group (TCG), the Independent Fiduciary for the Plan with respect to the proposed transactions. However, U.S. Steel will remain in control of the underlying Property from which the Timber Rights are derived and will make decisions affecting such Property.

The Plan will pay no fees or commissions in connection with the Timber Rights contribution. Absent administrative exemptive relief from the Department or a statutory exemption, such in kind contribution of the Timber Rights in lieu of cash in satisfaction of U.S. Steel's obligation to contribute to the Plan would constitute a prohibited transaction in violation of the Act.

6. The Property on which the Timber Rights are based involves approximately 170,000 acres of land situated within a 35 mile radius south and west of Birmingham, Alabama. Environmental reports of the Property have revealed that certain areas within the Property are identified as being likely locations where hazardous substances have been released. To have the Plan avoid potential legal liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), TCG and UCF have requested (and U.S. Steel agreed) to ''carve out'' or otherwise exclude from the Timber Rights conveyance those areas which would present a higher risk or have actual evidence of hazardous substances. Nevertheless, because large portions of the subject Property present historical environmental concerns, UCF and the Independent Fiduciary have determined that it would not be prudent for the Plan to become an owner of the underlying land under CERCLA. Therefore, to minimize the Plan's legal risk, the proposed transactions have been specifically structured to convey limited timber and access rights only, as opposed to a perpetual fee simple interest in the underlying Property as initially contemplated. As a further measure to protect the Plan from CERCLA liability, U.S. Steel proposes to indemnify the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the contemplated transactions. However, U.S. Steel will not be required to indemnify the Plan for the release of hazardous substances due to the Plan's gross negligence or willful misconduct in its timber harvesting activities. Under the Timber Rights Agreements, the Plan also retains the right to sell or assign, in whole or in part, its interests in the Timber Rights to a bona fide third party purchaser. The Plan will remain liable and responsible for the sale or assignment to U.S. Steel, unless such sale or assignment is approved by U.S. Steel. U.S. Steel will not unreasonably withhold its approval, but will condition it on consideration of the technical and financial capability and integrity of the proposed successor or assignee.

7. Of the 170,000 acres of the Property from which the Timber Rights are derived, 135,000 of those acres will be covered under a long-term timber purchase and cutting agreement (the Timber Agreement) and the remaining 35,000 acres will be covered under the U.S. Steel Agreement (USS Agreement).

The Timber Rights Agreements will provide the Plan with the right to grow, cut and harvest timber from the underlying Property for 99 years, and will include a compensation formula in the event U.S. Steel, as owner of the underlying Property, interferes with the Plan's Timber Rights. Upon commencement of the Timber Rights Agreements, title to the timber will be held by a limited liability corporation (the Plan LLC). Such company through UCF, as Trustee, will be 100% owned by the Plan.

The Timber Agreement will convey to the Plan all rights and interests to timber, forest products, crops and vegetation, and includes the right to hunting, fishing, and other licensing activities derived from the Property. The Timber Agreement is for a term of 99 years, with U.S. Steel, as the owner of the Property, having a right of termination at the end of year 50, and again at the end of year 75.[7] Early termination compensation by U.S. Steel prior to the 50th and 75th year will be at a premium of the then fair market value of the remaining term of the Timber Agreement. Such premium will be 115% in the 50th year and 107% in the 75th year. After year 50, U.S. Steel may terminate on any portion of the property sold to a bona fide third party purchaser at a 115% premium in years 50 through 74, and at 107% in years 75 through 99.

Throughout the 99 year term of the Timber Agreement, U.S. Steel will retain the right to terminate the Plan's Timber Rights, temporarily, if U.S. Steel's use of such timberland is for typical mining activities or lasts less than 15 years,[8] does not pose a risk of contamination or nuisance, and U.S. Steel restores the surface land to its prior condition upon cessation of the mining activities. The Plan's compensation for said temporary termination will be the fair market rental value of the affected timberland surface plus the present fair market value of the affected merchantable and pre-merchantable timber.

The remaining 35,000 acres of the Property on which the Plan's Timber Rights are based also will remain under U.S. Steel's ownership and governed under the USS Agreement for a period of 99 years. Under the USS Agreement, this acreage will be subject to future commercial development. For this reason, U.S. Steel will retain the right to terminate the USS Agreement on any portion of this acreage at any time. Should U.S. Steel not dispose of the Property before the current timber is cut, the Plan will continue to replant and U.S. Steel will be obligated to pay the greater of (a) The fair market value of such Property, as determined by a qualified, independent appraiser which has been selected by the Independent Fiduciary, (based upon the greater of the current market value for timber or the average price for the preceding 5 years) for such replanted trees or (b) the Plan's capital investment for the timber plus an 8% per annum, compounded annually from the later of the date of acquisition or the date of planting or establishment of the timber through the date of termination.

Throughout the 99 year term of the USS Agreement, U.S. Steel also will retain the right to terminate the Plan's Timber Rights, temporarily, if U.S. Steel's use of such timberland is for typical mining activities or lasts less than 15 years,[9] does not pose a risk of contamination or nuisance, and U.S. Steel restores the surface land to its prior condition upon cessation of the mining activities. The Plan's compensation for such temporary termination will be the fair market rental value of the affected timberland surface plus the present fair market value of the affected merchantable and pre-merchantable timber.

8. To protect the Plan against economic loss related to the acceptance and holding of the Timber Rights, U.S. Steel has agreed to make the Plan whole for any economic loss sustained from the Timber Rights contribution. This "make whole" contribution will apply to the first five years of the Timber Agreements. On the fifth year, U.S. Steel will contribute to the Plan the value of the economic losses related to the Timber Rights contribution. These losses will represent an amount in cash calculated as follows: (a) The fair market value of the Timber Rights as of the date of the contribution, less (b) the sum of (i) the fair market value of the Timber Rights held by the Plan as of the date five years from the date of the contribution, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary, plus (ii) the net cash distributed to the Plan LLC or the Plan related to all or any part of the Timber Rights (and/or the related timber) prior to such date; provided, however, that if a contribution is due and if, for the taxable year of U.S. Steel in which such contribution is to be made, such contribution (i) will not be deductible under section 404(a)(1) of the Code or (ii) will result in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution will be deductible under section 404(a)(1) of the Code and will not result in an excise tax under section 4972 of the Code.

9. Under the Timber Rights Agreements, the Plan will pay Alabama state property taxes for the portion of the Property attributable to the Timber Rights. However, U.S. Steel and its successors, as underlying Property owners, will remain liable for property taxes attributable to the underlying Property and the minerals derived therefrom. According to existing Alabama law, property taxes are assessed based on the value of the property's current use, as opposed to any potential use for the property that might have a higher value. Because the subject property will be used for timber growth, its value, for property tax purposes, will be based on the value of the timber. Therefore, the process for determining the value of the timber will require a discounted cash flow analysis that will consider such factors as the timber inventory, current stumpage prices, and planned harvest, to determine the Plan's Alabama property tax assessment.

10. In January 2003, UCF and The Campbell Group (TCG) of Portland, Oregon, which will serve on behalf of the Plan as the Independent Fiduciary with respect to the proposed transactions, retained the services of Larson & McGowin, Inc. (L&M), a qualified, independent appraisal firm based in Mobile, Alabama to procure a valuation of the Timber Rights, specifically the rights of the Plan to grow and harvest timber on the Property for 99 years under the terms of the Timber Rights Agreements. L&M specializes in forest timber management and related consulting. In particular, Messrs. Robert J. Foster and L. Alexander McCall, who are principals with L&M conducted the appraisal along with Mr. Edward F. Travis, an independent MAI appraiser. In a final appraisal report dated September 2,

[7] Although initially, the Timber Agreement will be with U.S. Steel, in the event that the Property is subsequently conveyed to a third party purchaser, then the third party purchaser will succeed to the rights and obligations of U.S. Steel under such agreement.

[8] Section 12.2 of the Timber Agreement states that the following types of existing and potential temporary uses by U.S. Steel related to surface or strip mining activities would cause a temporary termination of the Timber Rights Agreements in less than 15 years: Well sites for oil or gas or salt water disposal wells, roads, pipelines, power lines, telephone lines, power substations, non-commercial tower sites, dehydration facilities, tank batteries, transfer and pumping stations, conveyors, equipment yards, field offices, water disposal ponds, compressor sites, temporary sale stockpiles and temporary treatment or washing facilities.

[9] *Id.*

2003, L&M placed the fair market value of the Timber Rights at $60 million. L&M arrived at this valuation by utilizing the discounted cash flow analysis in the Income Approach and will update such valuation on the date of the contribution. Because the Plan had total assets having fair market value of $7.222 billion as of December 31, 2002, the Timber Rights will represent less than 1% of the Plan's assets at the time of contribution.

In its capacity as Independent Fiduciary, TCG represents that L&M is qualified to serve as the independent appraiser. Specifically, TCG states that its selection of L&M, as the finalist of three other independent appraisal firm candidates, to complete the appraisal of the Timber Rights was based on a review of specific methodologies that were used in developing the appraisal and the appropriateness of the methodologies utilized. TCG also represents that sample work provided by L&M was reviewed as part of the selection process. Thus, TCG concludes that the valuation of the Timber Rights is appropriate. Moreover, TCG represents that on the day of the Timber Rights contribution, it will obtain an updated appraisal of the Timber Rights from L&M, which will reflect any changes in fair market value relative to the September 2, 2003 valuation. TCG states that L&M will utilize the same valuation methodologies to update the appraised value as those used in the initial appraisal report. TCG explains that it will review the updated appraisal report and the resulting appraised value for appropriateness prior to the contribution.

11. U.S. Steel and its wholly owned subsidiary, U.S. Steel Mining Co., currently hold most of the mineral rights appurtenant to the Property, which they lease or operate for the production of coal and coal seam gas. However, U.S. Steel and U.S. Steel Mining Co. are currently negotiating with a third party to sell the mineral rights with respect to the underlying land under the terms of a mineral rights agreement (the Mineral Rights Agreement). To ensure that the Mineral Rights Agreement will be subject and subordinate to the terms of the Timber Rights Agreements, U.S. Steel will have the Timber Rights Agreements in place before the Mineral Rights Agreement is finalized.

12. Because the proposed contribution to the Plan of the Timber Rights will likely occur after the execution of the Mineral Rights Agreement, U.S. Steel LLC (US Steel LLC) will hold the Timber Rights until the Department grants the final exemption, at which point, U.S. Steel LLC will transfer the Timber Rights and its obligations to the Plan. The Plan, in turn, will create the Plan LLC to hold and exercise the Timber Rights on behalf of the Plan. The Plan LLC will be 100% owned by the Plan. As Trustee, UCF will oversee the Plan LLC's management and operations.

13. Following a selection process, UCF determined that TCG had the best overall skills and experience to act as the Independent Fiduciary for the proposed transactions and to serve as manager of the Timber Rights after the proposed contribution is made. As noted in Representation 5 above, U.S. Steel will remain in control of the underlying Property and will make decisions with respect to such Property.

14. TCG is a full-service timberland investment advisory firm founded in 1981. The firm, which focuses exclusively on acquiring, managing and disposing of timberland properties, is one of the largest timber investment managers in the world, with current assets under management that exceed $1.5 billion. Its clients include endowments, trusts, public and private pension funds and individual investors. For a ten year period ending in 1997, TCG was associated exclusively with the Hancock Timber Resource Group, handling its timber management business in the western United States and Canada.

As Independent Fiduciary, TCG represents that it has two principal responsibilities. First, TCG is responsible for reviewing the terms and conditions under which the contribution of the Timber Rights will be made to the Plan, providing an opinion on whether the contribution is in the interests of an protective of the Plan and its participants and beneficiaries, and, if warranted on the basis of such opinion, approving the contribution of the Timber Rights. As noted previously in Representation 10, in the course of its review, TCG is also required to give due consideration to the selection of the independent appraiser for the Timber Rights and the fair market value of such Timber Rights. Furthermore, TCG is required to ensure that the proposed contribution complies with the following conditions:

- The Independent Fiduciary, acting on behalf of the Plan, represents the Plan's interests for all purposes with respect to the Timber Rights contribution, and determines prior to entering into any of the transactions described herein, that each such transaction, including the Timber Rights contribution, is in the interest of the Plan.
- The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plan and U.S. Steel that relate to the Timber Rights.
- The Independent Fiduciary manages the holding, disposition, and assignment of the Timber Rights and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Timber Rights.
- The terms of any transactions between the Plan and U.S. Steel are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.
- The Independent Fiduciary determines the fair market value of the Timber Rights contributed to the Plan on the date of such contribution. In determining the fair market value of the Timber Rights Contribution, the Independent Fiduciary obtains an updated appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and ensures that the appraisal is consistent with sound principles of valuation.
- The fair market value of the Timber Rights does not exceed 5% of the Plan's total assets at the time of such contribution.
- The Plan pays no fees or commissions in connection with the Timber Rights contribution. (This condition does not preclude the Plan from paying the Independent Fiduciary's ongoing management fees once the contribution has been approved and accepted. It also does not restrict the Plan from paying the due diligence costs connected with the acquisition of the Property, such as the expenses for a title search, appraisal and environmental review.)
- Five years from the date of the Timber Rights contribution, U.S. Steel contributes, to the Plan, an amount in cash calculated as follows: (1) The fair market value of the Timber Rights as of the date of the contribution, as determined by a qualified, independent appraiser, less (2) The sum of (i) the fair market value of the Timber Rights held by the Plan as of the date five years from the date of the contribution, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary, plus (ii) the net cash distributed to the Plan LLC or the Plan relating to all or any part of the Timber Rights (and/or the related timber) prior to such date; provided, that if a contribution is due and if, for the taxable year of U.S. Steel in which the contribution is to be made, such contribution (i) is not deductible under section 404(a)(1) of the Code or (ii)

results in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution is deductible under section 404(a)(1) of the Code and does not result in an excise tax under section 4972 of the Code.

- US Steel indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.
- The Plan retains the right to sell or assign, in whole or in part, any of its Timber Rights interests to any third party purchaser.

Second, following the completion of the Timber Rights contribution, TCG will be authorized to exercise all of the rights and responsibilities otherwise exercisable by the Plan in connection with any subsequent transactional dealings with U.S. Steel, regarding the Timber Rights under the Timber Rights Agreements, or as may be required pursuant to the terms of this exemption. These rights and responsibilities and the transactions to which they pertain include the following:

- Determining that the Plan receives the compensation due to it under the Timber Rights Agreements in the event that either (1) U.S. Steel exercises its right to early termination of an Agreement, which requires a termination payment to the Plan at a premium over the fair market value of the Timber Rights, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary; or (2) U.S. Steel owes compensation to the Plan for mineral activities that interfere with the Plan's use of the land for timber purposes.
- Overseeing and enforcing the requirements of the exemption for a "make-whole" contribution that may be required in the event of a decline in value of the Timber Rights after five years.
- Enforcing U.S. Steel's ongoing obligations to maintain the Property in a fashion that does not unreasonably interfere with the Plan's use thereof.
- Enforcing the Plan's indemnification rights against U.S. Steel for any environmental claims that may arise.

In its Management Agreement with UCF, TCG represents to UCF that (a) it is independent of, and unrelated to, U.S. Steel and its affiliates; (b) to the extent it provides services to U.S. Steel, its affiliates or its retirement plans during the term of its Management Agreement with the Plan, TCG's annual gross revenues for such services will be less than 5% of its total annual gross revenues; and (c) it has experience with the type of transactions for which it is acting as an Independent Fiduciary, and acknowledges and accepts it is acting as an ERISA fiduciary with an understanding of its duties, liabilities, and responsibilities under that statute.

15. As Independent Fiduciary, TCG duties will encompass, but are not limited to rendering investment management and advisory services, such as buy-hold-sell analysis; coordinating appraisals; providing long-term management planning; determining investment strategies; performing price forecasting; managing regulatory changes and impact on operations; management-level services such as financial accounting, budgeting, reporting, audit supervision, performance measurement, any acquisition and disposition of services; and determining whether it is appropriate to sell or assign, in whole or in part, the Plan's interests in the Timber Rights.

UCF will oversee TCG's Property management. TCG will establish an annual management plan and budget for the Property each year that will be reviewed and approved by UCF. It will include a harvest plan, timber sale plan, capital expenditure plan, silviculture plan (with recommendations regarding such activities as site preparation, planting, fertilization, thinning and application of herbicides, stumpage management), and budget (by calendar year) for the Property. TCG will be able to make expenditures in accordance with the approved annual budget, and within 10% of any budgeted line item, without further approval by UCF, as well as to make extra-budgetary expenditures without prior approval as are required to protect the Property in case of emergencies. TCG will inform UCF promptly of any variance from a budgeted line item, and will (subject to the exception for emergencies) obtain UCF's approval before expending or failing to expend funds at variance with the limits in the management plan. UCF may modify the management plan and annual budget at any time on a prospective basis. TCG also will prepare a strategic plan, setting forth the overall objectives and strategies for the Property, and a five year operating plan to support the strategic plan that contains projections with respect to silviculture and harvesting, which will be updated at least annually. TCG will report all events that, in its judgment, make it impracticable to follow the annual or five-year operating plan and will recommend appropriate modifications. Among its duties as Property manager, TCG will also be responsible for both the on-site and management level forest operations. Services in this category will include long- and short-term harvesting planning; obtaining all necessary permits and federal, state, and local tax filings; managing log sale contracts and road planning; overseeing subcontractors, including log-harvesting, road construction and maintenance; managing timber inventory and land records; managing risk, such as fire prevention planning; and procuring geographical information systems and mapping.

16. TCG represents that the Property is expected to generate a positive cash flow during the early years of the Timber Rights contribution. The source of this income is from an expected, but small scale timber harvest and from the sale of hunting and recreation leases, which will be managed by TCG. In addition to the timber being in the early stages of growth, TCG believes that the Property will benefit from silviculture programs to improve its long-term value, and thereby enhance the overall economic benefit to the Plan of the timber contribution. TCG will run models on possible expenditures for silvicultural programs that it will then describe in its proposed management plan for the Property, which will be reviewed and approved by UCF before any funds are spent.

17. TCG will receive the following fees [10] from UCF for its services to the Plan:

- *Investment Management and Advisory Service Fees,* which are initially determined as a percentage of the initial asset value (as determined by an independent appraisal) and are thereafter adjusted annually based on the Consumer Price Index for all urban consumers. The value of the basis will be decreased by UCF to reflect land sales (including any acres that U.S. Steel has exercised its right to terminate under either the Timber Agreement or the USS Agreement).
- *Asset Management Service Fees*, which will consist of a flat rate per acre for total acres managed, and a percentage of net stumpage and net log sales provided for in the annual budget that is approved by UCF. Such fees will also include a percentage of ancillary revenue, such as hunting rights income, subject to the approved annual budget.

[10] The Applicant states that the fees will represent reasonable compensation and will be statutorily exempt under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such fees will satisfy the terms and conditions of section 408(b)(2) of the Act.

• *Incentive Fee (the Incentive Fee)*,[11] which will be based on whether the return on the amount the Plan has invested in the timber assets, as determined by the cash distributions to the Plan and the current appraised value of the timber assets, exceeds a ''hurdle rate.'' The Incentive Fee will be calculated to include both realized and unrealized gains and losses. It will be a ''rolling'' fee, inasmuch as performance will be measured based on cumulative performance over the life of TCG's Management Agreement, rather than over a discrete period. The Incentive Fee will consist of three components—a fixed hurdle rate, cash distributions, and the appraised value of the timber assets with respect to the Plan's Timber Rights. The hurdle rate will be a percentage fixed in the TCG service contract. The Incentive Fee will reflect 20% of the cumulative performance exceeding the hurdle rate, with the Plan retaining 80%. Such percentage has been approved and set by UCF, the Plan fiduciary independent of TCG, and it is not subject to TCG's discretion. The cash distributions to the Plan will be the actual outflow net after expenses of payments made to the Plan out of the timber assets and any miscellaneous income expected to be generated by the Timber Rights, such as those derived from hunting, fishing and other licensing activities, reducing the value of the timber assets being managed. Thus, the Incentive Fee will not include amounts reinvested in the timber assets nor expenses paid with respect to those assets, which would be reflected instead in the appraised value. The appraised value of the timber assets will be determined by a qualified, independent appraiser, using standard methods for valuing timber. The timber appraiser will be selected by UCF. TCG will not have any discretion over the determination of the appraised asset value component of its fee calculation. The Incentive Fee will be calculated every three years and paid at three-year intervals, subject to withholding 50% of the accrued performance fee until final disposition to avoid any overpayment in any particular period.

Duties of the Independent Fiduciary

The Department notes that the appointment of an independent fiduciary to represent the interests of the Plan with respect to the proposed transactions that are the subject of the exemption request is a material factor in its determination to propose exemptive relief. The Department believes that it would be helpful to provide general information regarding its views on the responsibilities of an independent fiduciary in connection with the in kind contribution of property to an employee benefit plan. As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d) (59 FR 66736, December 28, 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in kind contribution is consistent with the general standards of fiduciary conduct under the Act. It is the view of the Department that acceptance of an in kind contribution is a fiduciary action subject to section 404 of the Act. In this regard, section 404(a)(1)(A) and (B) of the Act requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act ''prudently,'' ''solely in the interest'' of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in kind contribution. If accepting an in kind contribution is not ''prudent,'' not ''solely in the interest'' of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of the Act.

18. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary, acting on behalf of the Plan, will represent the Plan's interests for all purposes with respect to the Timber Rights contribution, and will determine prior to entering into any of the transactions described herein, that each such transaction, including the Timber Rights contribution, is in the interest of the Plan;

(b) The Independent Fiduciary will negotiate and approve the terms of any of the transactions between the Plan and U.S. Steel that relate to the Timber Rights;

(c) The Independent Fiduciary will manage the holding, disposition, and assignment of the Timber Rights and take whatever actions it deems necessary to protect the rights of the Plan with respect to the Timber Rights;

(d) The terms of any transactions between the Plan and U.S. Steel will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties;

(e) The Independent Fiduciary will determine the fair market value of the Timber Rights contributed to the Plan as of the date of such contribution. In determining the fair market value of the Timber Rights Contribution, the Independent Fiduciary will obtain an appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and will ensure that the appraisal is consistent with sound principles of valuation;

(f) The fair market value of the Timber Rights will not exceed 5% of the Plan's total assets at the time of such contribution.

(g) In general, the Plan will pay no fees or commissions in connection with the Timber Rights contribution.

(h) Five years from the date of the Timber Rights contribution, U.S. Steel will contribute, to the Plan, an amount in cash calculated to make the Plan ''whole.''

(i) U.S. Steel will indemnify the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.

(j) The Plan will retain the right to sell, in whole or in part, any of its Timber Rights' interests to any third party purchaser.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 4 days of

[11] The Applicant represents that the Incentive Fee payable to TCG will meet the criteria in the Department's advisory opinions on performance fees (see Advisory Opinions 86–20A, 86–21A, and 89–28A). However, the Department is providing no opinion in this proposed exemption on whether the Incentive Fee payable to TCG by the Plan is or will be consistent with the fiduciary responsibilities contained in Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a)(1) of the Act requires, among other things, that the plan fiduciary act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of a plan.

publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments and hearing requests are due within 34 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone number (202) 693–8553. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–28546 Filed 11–13–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2003–32; [Exemption Application No. D–11067] et al.; Grant of Individual Exemptions; Sorensen Broadcasting Employee Stock Ownership Plan and Trust, et al

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan); Located in Sioux Falls, SD

[Prohibited Transaction Exemption 2003–32; Exemption Application No. D–11067]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to (1) the sale (the Sale) by the Plan to Sorenson Broadcasting Corporation (the Employer), a party in interest with respect to the Plan, of 930 shares of common stock (the Common Stock) of the Employer; and (2) the extension of credit by the Plan to the Employer under the terms of a subsequent adjustment to the Sale price (the True-up) in connection with the Sale.

This exemption is subject to the following conditions:

(a) The Sale occurs in the following manner:

(1) The Employer pays the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain positive adjustments indicated in an addendum to a purchase agreement dated May 26, 2000;

(2) The fair market value of the Common Stock as of the transaction date (the Closing Value) is determined no later than two months after the transaction date;

(3) As additional consideration, the Plan receives the difference between the

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.