

NAFTA-TAA-02194; *New America Wood Products, Winlock, WA: February 10, 1997.*

NAFTA-TAA-02154; *Calgon Carbon Corp., Advanced Oxidation Technologies, Tucson, AZ: January 19, 1997.*

NAFTA-TAA-02062; *Criterion Plastics, Inc., Kingsville, TX: December 5, 1996.*

NAFTA-TAA-02166; *SPM/Denver, A Dynacast Co., Denver, CO: January 28, 1997.*

I hereby certify that the aforementioned determination were issued during the month of February 1998. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 27, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-6740 Filed 3-13-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-10; Exemption Application No. D-10328, et al.]

Grant of Individual Exemptions; MS Commodity Investments Portfolio II

AGENCY: Pension and Welfare Benefits 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In

addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) 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 exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

MS Commodity Investments Portfolio II, L.P. (the Partnership) and Morgan Stanley Commodities Management, Inc. (MSCM, collectively the Applicants) Located in New York, NY

[Prohibited Transaction Exemption 98-10 Application Nos. D-10328 and D-10329]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) 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 (D) of the Code,¹ shall not apply, effective April 3, 1996, to the acquisition or redemption of units (the Units or Unit) in the Partnership by certain plans (the Plans or Plan) that invest in the Partnership, where MSCM, the general partner of the Partnership, and/or its affiliates are parties in interest and/or disqualified persons with respect to such Plans; provided that the conditions, as set forth below in Section

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

II are satisfied as of the effective date of this exemption.

Section II. General Conditions

This exemption will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

(a) Prior to the investment of the assets of a Plan in the Partnership, a fiduciary of such Plan (the Plan Fiduciary or Plan Fiduciaries) who is/are independent of MSCM and its affiliates must approve such investment.

(b) MSCM has determined and documented and will determine and document, pursuant to a written procedure, that the decision of a Plan to invest in the Partnership was and will be made by a Plan Fiduciary who was and is independent of MSCM and its affiliates and who was and is capable of making an informed investment decision about investing in the Partnership.

(c) The independent Plan Fiduciary of each Plan investing in the Partnership has retained and will retain complete discretion with respect to transactions initiated by such Plan involving the acquisition or redemption of Units in the Partnership.

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets by Plans in the Partnership nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the investment of such assets.

(e) No Plan investing in the Partnership has acquired and held or will acquire or hold Units in the Partnership that represent more than 20 percent (20%) of the assets of the Partnership.

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan does not exceed 10 percent (10%) of the assets of such Plan.

(g) At the time transactions are entered into, the terms of such transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party.

(h) No Plan has paid or will pay a fee or commission to MSCM or any of its affiliates by reason of the acquisition or redemption of Units in the Partnership.

(i) The total fees paid to MSCM have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(j) Only Plans with assets having an aggregate market value of at least \$25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the \$25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) Prior to making an investment in the Partnership, the independent Plan Fiduciary of each potential Plan investor, and/or such Plan investor's authorized representative has been and will be provided by MSCM or by an affiliate with a written copy of the following offering materials:

(1) The Private Placement Memorandum of the Partnership (the Memorandum) (which contains among other things, a description of the offering of Units, all material facts concerning the purpose, structure, and operation of the Partnership, as well as any associated risk factors, and a description of the relationships existing between MSCM, Morgan Stanley Asset Management Inc. (MSAM), Morgan Stanley & Co. Incorporated (MS&Co), and Morgan Stanley Group Inc. (the MS Group));

(2) The then-current limited partnership agreement (the LP Agreement) between MSCM and the investors in the Partnership; and

(3) The then-current subscription agreement (the Subscription Agreement) (an executed copy of which is delivered to a subscriber and/or its authorized representative as soon as practicable following such subscriber's investment in the Partnership) and the Investor Certification previously furnished by MSCM or its affiliates to the independent Plan Fiduciaries for completion which contains information about each potential Plan investor, specifies such Plan's proposed investment in such Partnership, and documents the fact that the investment decision is being made by an independent Plan Fiduciary who is capable of making an informed investment decision about investing in the Partnership.

(l) With respect to the ongoing participation in the Partnership, the independent Plan Fiduciary of each Plan invested in the Partnership has received and will receive within the time periods specified below, the following additional written disclosures from MSCM or from its affiliates:

(1) Within ninety (90) days after the close of each fiscal year, audited financial statements of the Partnership,

prepared annually by a qualified, independent, public accountant including:

(i) A balance sheet; (ii) a statement of income or a statement of loss; (iii) the net asset value of the Partnership, as of the end of the two preceding fiscal years; (iv) either: (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; (v) a statement of changes in partner's capital; and (vi) the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

(2) Within thirty (30) days after the end of each calendar month, a monthly statement of account prepared by MSCM or by its affiliates containing the following unaudited financial information:

(i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

(m) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III (d) below.

(n) The Partnership has not invested in and will not invest in any entity in which the MS Group or any of its affiliates has an ownership interest.

(o) Affiliates of MSCM have not invested in and will not invest in the Partnership.

(p) The non-U.S. commodity trading activities of the Partnership have been

and will be limited to the London Metals Exchange (the LME).

(q) The Applicants have not accepted and will not accept subscriptions from Plans which permit participants to exercise control over the decision to acquire or redeem Units;

(r) MSCM has maintained and shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (s) of this Section II to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MSCM and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than MSCM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by paragraph (s) of this Section II below.

(s)(1) Except as provided in subsection (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(a) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(b) any fiduciary of any Plan investing as a limited partner in the Partnership or any duly authorized representative of such fiduciary;

(c) any contributing employer to any Plan investing as a limited partner or any duly authorized employee representative of such employer;

(d) any participant or beneficiary of any participating Plan investing as a limited partner, or any duly authorized representative of such participant or beneficiary; and

(e) any other limited partner.

(2) None of the persons described above in subparagraphs (b)-(e) of paragraph (s)(1) of this Section II shall be authorized to examine the trade secrets of MSCM or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An "affiliate" of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control of such person. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) any officer, director, or partner in such person, and

(3) any corporation or partnership of which such person is an officer, director, or a 5 percent (5%) or more partner or owner.

(b) A "Plan" or the "Plans" has not included and will not include any individual account plan(s) where participants have the right to exercise control over the decision to acquire or redeem Units.

(c) A "Plan Fiduciary" or "Plan Fiduciaries" is defined as a fiduciary or fiduciaries of a Plan who is/are independent of MSCM and its affiliates.

(d) A "swap transaction" is defined as an individually negotiated, non-standardized agreement between two parties to exchange cash flows at specified intervals known as payment or settlement dates. The cash flows of a swap are either fixed, or calculated for each settlement date by multiplying the quantity of the underlying asset (notional principal amount) by specified reference rates or prices. Depending upon the type of underlying asset, the great majority of these transactions are classified into interest rate, currency, commodity, or equity swaps. Interim payments are generally netted, with the difference being paid by one party to the other.

EFFECTIVE DATE: The exemption will be effective retroactively, as of April 3, 1996.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on November 24, 1997, 62 FR 62622.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883. (This is not a toll-free number.) National Rural Utilities Cooperative Finance Corporation (CFC), Located in Washington, D.C. [Prohibited Transaction Exemption No. 98-11; Application No. D-10394]

EXEMPTION

Section I—Transactions

A. Effective as of November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of

the Code, shall not apply to the following transactions relating to the refinancing by CFC of certain rural utility cooperative loans made to the Kansas Electric Power Cooperative, Inc. (KEPCO), and certain notes issued by KEPCO in connection with such loans which are assigned to trusts for which CFC acts as servicer, and certificates evidencing interests in such trusts:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between CFC or an underwriter and an employee benefit plan when CFC, the underwriter, or the trustee is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates;

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2); and

(4) The purchase by CFC of existing notes issued by KEPCO from the existing trusts and the contribution by CFC of new notes to new trusts pursuant to the refinancing of KEPCO's existing loans on the scheduled refinancing date (i.e. December 18, 1997).

B. Effective as of November 18, 1997, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding trust agreement; and

(2) The trust agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.²

C. Effective as of November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a

plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates issued pursuant to this exemption or issued pursuant to Prohibited Transaction Exemption 89-93 (PTE 89-93, 54 FR 45816, October 31, 1989).³

Section II—General Conditions

A. The relief described under Section I of this exemption will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Service (S&P's) or Moody's Investors Service, Inc. (Moody's; together, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of CFC, as servicer, solely because the trustee has succeeded to the rights and responsibilities of CFC pursuant to the terms of a trust agreement providing for such succession upon the occurrence of one or more events of default by CFC;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by CFC, as sponsor, pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by CFC, as servicer, represents not more than reasonable compensation

²In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

³PTE 89-93 permits, as of July 22, 1987, certain transactions between CFC and employee benefit plans where CFC may be deemed to be a party in interest with respect to the plans as a result of providing services to a trust in situations where the assets of the trust are considered to be "plan assets" as a result of the plans acquiring significant ownership interests in the trust in the form of pass-through certificates.

for CFC's services under the trust agreement and reimbursement of CFC's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) Any swap transaction entered into by KEPCO which is assigned to a trust is entered into with a bank or other financial institution of high credit standing, initially Morgan Guaranty Trust Company of New York (Morgan), with a credit rating of at least AA or an equivalent rating from the Rating Agencies;

(8) The bank or other financial institution acting as the swap counterparty to the trust is required, if there is an adverse change in such counterparty's credit rating, to either: (i) post collateral with the trustee of the trust in an amount, determined daily, equal to all payments owed by the counterparty if the swap transaction were terminated; or (ii) find a replacement swap counterparty for the trust, within a specified period under the terms of the swap agreement with the trust, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies; provided that if the swap counterparty fails to abide by its obligations under either (i) or (ii) above, the swap agreement shall terminate in accordance with the rights and obligations of each counterparty under the terms thereof, which shall be enforced by the trustee to protect the rights of certificateholders of such trust;

(9) Each swap transaction between a trust and Morgan, or other swap counterparty, in connection with the refinancing of KEPCO's loans requires payments to be made to the trust monthly (or at such other times as required under the swap agreement) and requires payments to be made by the trust no less frequently than semi-annually, but in no event shall the trust be obligated to make payments to a swap counterparty more frequently than those which it is entitled to receive from a swap counterparty;

(10) The certificateholders have the right to exit the transaction by tendering the certificates to an underwriter (initially, Alex. Brown & Sons, Inc.) for purchase at par (plus accrued interest) on seven (7) days' notice;

(11) The U.S. Government guarantees the payment of principal and interest on the loans made by CFC to KEPCO;

(12) The purchase of notes issued by KEPCO from the existing trusts is for a price which is at least equal to the

outstanding principal balance of such notes, plus accrued (but unpaid) interest, at the time of the scheduled refinancing of the loans made by CFC to KEPCO (i.e. December 18, 1997); and

(13) The certificates are not sold to any plans established and maintained by KEPCO or CFC, or to plans for which any other member of the Restricted Group (as defined in Section III.E. below) is an investment fiduciary for the assets of the plan that are to be invested in the certificates.

B. Neither CFC nor the trustee shall be denied the relief that would be provided under Section I of this exemption if the provision of Section II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that: (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6) above.

Section III—Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust, and consists solely of:

(1) One or more notes issued by KEPCO which shall be guaranteed as to payment of principal and interest by the U.S. Government, acting through the U.S. Department of Agriculture's Administrator of the Rural Utilities Service (RUS), including fractional undivided interests in any such obligations;

(2) Property which has secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the trust agreement, and rights under any insurance policies, third-party guarantees, swap agreements, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

C. "Underwriter" means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue "asset-backed" pass-through securities to plans, that is similar in format and structure to this exemption (the Underwriter Exemptions);⁴ any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

E. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter/remarketing agent;

(2) The trustee;

(3) CFC;

(4) KEPCO;

(5) The swap counterparty/liquidity provider; or

(6) Any affiliate of a person described in subsection E.(1)–(5) above.

F. "Affiliate" of another person includes:

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

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

⁴ For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

G. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

H. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

I. "Sale" includes the entrance into a forward delivery commitment (as defined in subsection J. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of this delivery, all conditions of this exemption applicable to sales are met.

J. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

K. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

L. "Trust Agreement" means the agreement or agreements among KEPCO, CFC and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Trust Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

M. "RUS" means the U.S. Department of Agriculture, acting through the Administrator of the Rural Utilities Service or any successor to the guarantee obligations of such organization.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as that term is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions

Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

EFFECTIVE DATE: This exemption is effective as of November 18, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 24, 1997 at 62 FR 62630.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Hawaii Laborers' Apprenticeship and Training Trust Fund (the Trust Fund)

[Prohibited Transaction Exemption No. 98-12; Application No. L-10485]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Laborers International Union of North America, Local 368, AFL-CIO (a/k/a the Hawaii Laborers Union), a party in interest with respect to the Trust Fund, provided that the following conditions are met:

(a) The purchase of the Property by the Trust Fund is a one-time transaction for cash;

(b) The Trust Fund pays no more than the lesser of: (i) \$1,570,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the Hawaii Laborers Union or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund does not pay any commissions or other expenses with respect to the transaction;

(e) The Hawaiian Trust Company, Ltd. (Hawaiian Trust), acting as an independent, qualified fiduciary for the Trust Fund, determines that the proposed transaction is in the best interest of the Trust Fund and its participants and beneficiaries;

(f) Hawaiian Trust monitors various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and takes whatever action is necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represents

no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 24, 1997, at 62 FR 62643.

WRITTEN COMMENTS: The Department received one written comment from an interested person which did not raise any issues relating to the proposed transaction by the Trust Fund. No other comments or hearing requests were received by the Department. Therefore, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219-8194. (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 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 10th day of March, 1998.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 98-6613 Filed 3-13-98; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Indemnification. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before May 16, 1998. The National Endowment for the Arts is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting the electronic submissions of responses.

ADDRESSES: Alice Whelihan, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 726, Washington, DC 20506-0001, telephone (202) 682-5574 (this is not a toll-free number), fax (202) 682-5603.

Murray Welsh,

Director, Administrative Services.

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BILLING CODE 7536-01-M

PANAMA CANAL COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 109 Stat. 163), the Panama Canal Commission hereby gives notice it has forwarded to the Office of Management and Budget for review and clearance a Paperwork Reduction Act Submission (OMB 83-I) for an extension of a currently approved collection of information entitled Personnel Administration Forms, OMB No. 3207-0005. In accordance with sec. 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Commission published a notice in the **Federal Register** [62 FR 66400, December 18, 1997] requesting comment on this proposed collection. The comment period ended February 17, 1998. The Commission received no comments in response to that notice.

DATES: Written comments on this proposed action regarding the collection of information must be submitted by April 15, 1998.

ADDRESSES: Address all comments concerning this notice to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Building, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth Huff, Office of the Secretary, Panama Canal Commission, 202-634-6441.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 requires Federal agencies to provide a notice in the **Federal Register** stating the agency has made such submission and setting forth the following information:

Title: Personnel Administration Forms.

Abstract: The information requested is authorized by 35 Code of Federal Regulations (CFR), Parts 251 and 253 and sections 3652, 3654, 3661-3664 of Title 22, United States Code. The information is needed to determine the qualifications, suitability and availability of applicants for Federal employment in the Panama Canal area so U.S. Federal agencies can be supplied with eligibles to fill vacant positions.

On December 30, 1981, PCC requested OMB approval for a collection of information entitled "Personnel Administration Forms." OMB approved this collection for use through January 31, 1985 and assigned it OMB Number 3207-0005. On December 17, 1984, PCC requested another extension and received approval and use through March 31, 1988. Prior to the expiration of the collection of information in subsequent years, PCC continued requesting review and clearance for a revision of the collection and received approval through July 31, 1991, September 30, 1994, and February 28, 1998.

Needs and Uses: The information is used by Recruitment and Examining Division employees performing examining and suitability duties; by subject-matter experts on rating panels, and by agency officials making selections to fill vacancies.

Description of Respondents: Applicants for employment.

Estimated Burden: The estimated burden of providing the information varies, depending upon the applicant's individual circumstances. The burden time for a full application is estimated to vary from 40 to 300 minutes with an average of 120 minutes per response, including supplemental qualifications forms when required, and 10 to 60 minutes with an average of 30 minutes to update applications already on file.

Total Annual Reporting Hour Burden: 9082.

Frequency of Response: When persons apply or update applications.