

public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes are also available at: http://www.blm.gov/rac/co/rrac/co_fr.htm.

Dated: November 18, 2004.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. 04-26420 Filed 11-29-04; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; Claims of U.S. Nationals Against Albania.

The Department of Justice (DOJ), Foreign Claims Settlement Commission (FCSC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 156, on page 50215, on August 13, 2004, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until December 30, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and

suggestions from the public concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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 through the use of appropriate automated, electronic, 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:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Claims of U.S. Nationals Against Albania.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number FCSC 1-04, Foreign Claims Settlement Commission.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Others: Not-for-profit institutions. The Information collected will be used as the basis for determining the entitlement of claimants to awards payable by the Department of the Treasury, out of the Albania Compensation Fund in claims of U.S. nationals against the Albanian government for expropriation of property.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 one-time annual respondents at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Department 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 23, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04-26353 Filed 11-29-04; 8:45 am]

BILLING CODE 4410-BA-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D-11211, et al.]

Proposed Exemptions; J.C.O., Inc. Retirement Plan and Trust (the Plan)

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:

moftitt.betty@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.

J.C.O., Inc. Retirement Plan and Trust (the Plan) Located in Boulder, CO

[Application No. D-11211]

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 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).¹ 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 (1) the cash sale (the Sale) of certain improved real property (the Property) to the Plan by Cynthia G. Vogels, a party in interest with respect to the Plan and a 50% shareholder of J.C.O., Inc. (JCO), the Plan sponsor; and (2) the simultaneous lease (the New Lease) of the Property by the Plan to JCO, provided that the following conditions are met:

(a) The terms and conditions of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction between unrelated parties.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Plan for the Property is not more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the Property that is acquired by the Plan does not exceed 20% of the Plan's assets at the time of the Sale nor throughout the duration of the New Lease.

(e) The Plan does not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) Mrs. Vogels indemnifies and holds the Plan harmless from any liability arising from the Sale, including but not limited to hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(g) The New Lease is a triple-net lease under which the JCO, as lessee, pays, in addition to the base rent, all expenses incurred by the Property, including all taxes and assessments, insurance, maintenance, utilities and any other expenses.

(h) The annual rental amount under the New Lease is the higher of \$40,800 or the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the New Lease is entered into by the parties.

(i) The rent payable under the New Lease is adjusted every year after the first 12 months of the New Lease by an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers for the Denver Metropolitan Area (the CPI). In addition, the Property is reappraised every five years by a qualified, independent appraiser selected by the Plan's

independent fiduciary and the independent fiduciary then adjusts the rental for the Property based on the appraisal. However, in no event is the rent adjusted below the rental amount paid for the preceding year.

(j) The Plan is represented at all times and for all purposes with respect to the Sale and the New Lease by a qualified, independent fiduciary.

(k) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Sale and the New Lease and has determined that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

(l) The Plan's independent fiduciary monitors and enforces compliance with the terms and conditions of the New Lease and this exemption throughout the duration of the New Lease.

Summary of Facts and Representations

1. JCO is a Colorado corporation and maintains its principal place of business in Boulder, Colorado. JCO publishes the *Journal of Clinical Orthodontics*, a monthly professional journal. The stock of JCO is owned equally by Cynthia G. Vogels and her husband, David S. Vogels III (the Vogels). Mrs. Vogels is Secretary/Treasurer of JCO and Mr. Vogels is President and Managing Editor of JCO.

2. The Plan is a defined benefit pension plan. The Plan was established by JCO on January 1, 1978. As of December 31, 2003, the Plan had total assets of \$4,916,444, and as of October 27, 2003, the Plan had eight participants,² including the Vogels and Eugene and Jacqueline Gottlieb, the parents of Mrs. Vogels. Mr. Vogels and Mr. Gottlieb are trustees of the Plan and are the only persons who have investment discretion over any assets involved in the exemption transactions.

3. Mrs. Vogels is the owner of certain improved real property that is located at 1828 Pearl Street in Boulder, Colorado. The Property is a rectangular, 7,000 square-foot site, measuring 50 feet by 140 feet, and is improved with a 1,630 square-foot, brick building which was constructed, according to Boulder County records, in 1898, and includes a 352 square-foot brick garage. Mrs. Vogels originally acquired the Property by a series of gifts beginning November 30, 1978, and ending December 27, 1996, from her father, Eugene L. Gottlieb. The Property is currently leased (the Current Lease) to JCO. The

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

² There are six active participants and two participants who are separated and are either receiving benefits or have elected to defer the receipt of benefits.

Current Lease is a 15 year, triple net lease which commenced on October 1, 2003 and expires on November 30, 2018. Under the Current Lease, JCO is required to pay Mrs. Vogels all expenses relating to the Property, including property taxes, utilities, insurance, and janitorial services. The annual rental under the Current Lease is \$40,800, payable in monthly installments of approximately \$3,400.

4. The Property was initially appraised by Russell C. Bowie, MAI, Certified General Appraiser, a qualified, independent real estate broker/appraiser affiliated with Bowie Appraisal Service located in Boulder, Colorado. Mr. Bowie states that he has been active in Colorado real estate since 1972 and is experienced in sales, leasing, management, and appraisal of commercial, industrial, and residential properties. Mr. Bowie represents that he has specialized in commercial and industrial appraisals for the past 20 years, including easements, rights-of-way, standardized form reports, and narrative appraisal reports, and has completed over 700 appraisals of commercial properties in Boulder County. In addition, Mr. Bowie certifies that he has no present or prospective interest in the Property and has no personal interest or bias with respect to the parties involved.

In an independent appraisal report dated April 28, 2003 (the 2003 Appraisal), Mr. Bowie placed the fair market value of the Property in fee simple³ at \$525,000 as of April 15, 2003 utilizing the Sales Comparison Approach to valuation. As of the same date, and as confirmed in a letter from Mr. Bowie dated July 15, 2004 (the July 2004 Letter), Mr. Bowie also placed the annual fair market rental value of the Property at \$27,710 as of April 15, 2003 or approximately \$2,309 per month on a triple net basis.

In a full, updated independent appraisal report dated June 3, 2004 (the 2004 Appraisal), Mr. Bowie determined that the fair market value of a leased fee interest⁴ in the Property was \$530,000 as of June 2, 2004, utilizing the Sales Comparison Approach to valuation. As of the same date, Mr. Bowie also placed the monthly fair market rental value of the Property at \$2,037.50 and its annual fair market rental value at \$24,450.⁵ Mr.

Bowie will update the 2004 Appraisal on the date of the Sale and New Lease transactions.

5. Due to the recent rapid appreciation of real estate within Boulder, Colorado, the applicant has deemed acquisition of the Property by the Plan to be a better long-term investment on behalf of the Plan than most other available investments. Therefore, the applicant proposes that the Plan purchase the Property from Mrs. Vogels for \$530,000 or an amount that is not more than the fair market value of the Property on the date of the Sale, as determined by a qualified, independent appraiser. Contemporaneously with the Plan's purchase of the Property, the Current Lease will be assigned by Mrs. Vogels to the Plan to reflect the new ownership of the Property, at which time the New Lease will go into effect.

The terms of both the Sale and the New Lease will be not less favorable to the Plan than those obtainable in an arm's length transaction between unrelated parties. In this regard, the Sale will be a one-time transaction for cash. The Property will not represent more than 20% of the Plan's assets. The Plan will not be required to pay any real estate fees, commissions or other expenses in connection with its acquisition of the Property or with the administration of the New Lease. Finally, Mrs. Vogels will indemnify and hold the Plan harmless from any liability arising from the Sale, including but not limited to, hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

Accordingly, the applicant requests an administrative exemption from the Department with respect to the Sale of the Property by Mrs. Vogels to the Plan and the leasing of the Property by the Plan to JCO under the New Lease. The exemption will also be subject to the terms and conditions described herein.

6. The proposed New Lease will have the same terms as the Current Lease. In this regard, it will have a 15 year term and be triple-net to the Plan. Under such circumstances, JCO will pay the Plan all expenses related to the Property including real estate taxes, insurance, common area maintenance and property management. In addition, JCO will continue to pay the Plan an initial

monthly rent of \$3,400 per month, or \$25 per square foot, based upon the rental amount paid currently by JCO. This amounts to an additional \$10 per square foot over the fair market rental value of the Property as reported in Mr. Bowie's 2004 Appraisal.

The rent payable under the New Lease will be increased, if necessary, to equal the fair market rental value of the Property, as determined by a qualified, independent appraiser at the time it becomes effective. Then, every year after the first 12 months of the New Lease, the rent will be adjusted in accordance with the CPI. In no event will the rent be adjusted below the \$25 per square foot presently being paid by JCO to Mrs. Vogels.

In addition, the New Lease requires that the Property be reappraised every five years by a qualified, independent appraiser selected by the Plan's independent fiduciary. The independent fiduciary will then adjust the rental for the Property based on the independent appraisal. In no event will the rent be adjusted below the rental amount paid for the preceding year.

Although the New Lease contains no renewal provisions, it will terminate upon any termination of the Plan. However, such termination must be determined, by the qualified, independent fiduciary, to be in the best interests of the Plan and its participants and beneficiaries.

7. An independent party, Mr. Richard B. Hayes, began his service as the Plan's independent fiduciary in August 2003, followed by a formal agreement to serve as the Plan's independent fiduciary executed on October 27, 2003. Mr. Hayes represents that he is qualified to act as an independent fiduciary for the Plan because he has been a certified public accountant for twenty-nine years. Mr. Hayes further states that he serves as a trustee for three different trusts with assets of \$4.2 million, and as manager of a family partnership with assets of \$3 million. In such capacities, Mr. Hayes states that he is responsible for determining the appropriate investment objectives and policies for such entities, monitoring and reviewing the investment strategy and asset allocation of such trusts and partnership, and making investment decisions for such entities. Mr. Hayes confirms that he is independent of JCO, and, in any one year, he will derive less than one percent of his gross annual income from JCO.

8. Mr. Hayes, acting as the Plan's independent fiduciary, represents that the transactions are in the interests of the Plan participants and beneficiaries, and comply with the Plan's investment

³ The Property was not encumbered by the Current Lease at the time of the 2003 Appraisal.

⁴ At the time of the 2004 Appraisal, the Property was encumbered by the Current Leases.

⁵ In the 2004 Appraisal, Mr. Bowie explained that the fair market value of the Property increased from the value reached in the 2003 Appraisal due to a strong market for small office properties in Boulder that can be owner-occupied. Mr. Bowie also

explained that the fair market rental value decreased from the value reached in the 2003 Appraisal due to abnormally high vacancy rates for office space in the surrounding area resulting from the strained economic conditions in the current market.

objectives and policies. In reaching this conclusion, Mr. Hayes represents that he has analyzed the Plan's overall investment portfolio as well as the Plan's liquidity and diversification requirements. In addition, after reviewing both the 2003 Appraisal and the 2004 Appraisal and considering the New Lease terms compared to similar leases in the area, Mr. Hayes also certifies that the terms of the New Lease, including CPI adjustments to the rent, are no less favorable to the Plan than those obtainable in an arm's length transaction with unrelated parties.

In addition, Mr. Hayes represents that he will monitor the performance of the New Lease over its term and has been empowered to direct the Plan trustee to divest the Plan of the Property in the event it exceeds 20% of the Plan's assets when added to other transactions with interested parties to the transactions. Moreover, Mr. Hayes states that he has also been empowered to direct the Plan trustee to sell the Property or take other appropriate legal action against JCO in the event JCO defaults on the New Lease.

9. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the transactions will not be less favorable to the Plan than those the Plan would receive in an arm's length transaction with an unrelated party.

(b) The Sale will be a one-time transaction for cash.

(c) The acquisition price that is paid by the Plan for the Property will be no more than the fair market value of the Property, as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the Property that is acquired by the Plan will not exceed 20% of the Plan's assets at the time of the Sale and throughout the duration of the New Lease.

(e) The Plan will not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) Mrs. Vogels will indemnify and hold the Plan harmless from any liability arising from the Sale, including but not limited to hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(g) The annual rental amount under the New Lease will be the higher of \$40,800 or the fair market rental value of the Property, as determined by a qualified, independent appraiser on the

date the New Lease is entered into by the parties.

(h) The New Lease will be a triple net lease under which the JCO, as lessee, will pay, in addition to the base rent, all expenses incurred by the Property, including all taxes and assessments, insurance, maintenance, utilities and any other expenses.

(i) The rent payable under the New Lease will be adjusted every year after the first 12 months of the New Lease by an amount equal to the percentage increase in the CPI. In addition, the Property will be reappraised at least every five years by a qualified, independent appraiser selected by the Plan's independent fiduciary and the independent fiduciary will then adjust the rental for the Property based on the appraisal. However, in no event will the rent be adjusted below the rental amount paid for the preceding year.

(j) The Plan will be represented at all times and for all purposes with respect to the Sale and the New Lease by a qualified, independent fiduciary.

(k) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Sale and the New Lease and has determined that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

(l) The Plan's independent fiduciary will monitor and enforce compliance with the terms and conditions of the New Lease and this exemption throughout the duration of the New Lease.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

Wheeling-Pittsburgh Corporation and Wheeling Pittsburgh Steel Corporation Located in Wheeling, WV

[Application No. L-11200]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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 sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act, shall not apply to: (1) The initial acquisition of 4,000,000 shares on August 1, 2003 (Initial Shares) of publicly traded Employer Stock through the in-kind contribution of such Initial Shares, and subsequent in-kind acquisitions of Employer Stock, by the Wheeling-Pittsburgh Steel Corporation

Retiree Benefits Plan (the Plan) for the purpose of pre-funding welfare benefits provided by the Plan; (2) the holding by the Plan of Employer Stock acquired pursuant to the contributions; and (3) the extension of credit between Wheeling Pittsburgh Corporation (WPC), Wheeling-Pittsburgh Steel Corporation (WPSC) and the Plan, which will occur in conjunction with WPC's and WPSC's contributions of Employer Stock and cash for the benefit of the retirees, provided that the following conditions are satisfied:

(a) An Independent Fiduciary will represent the Plan and its participants and beneficiaries for all purposes related to such contributions for the duration of the Plan's holding of such Employer Stock and will have sole responsibility relating to the acquisition, holding, disposition, ongoing management, and voting of Employer Stock. The Independent Fiduciary will authorize the Trustee to accept or dispose of Employer Stock only after such Independent Fiduciary determines, at the time of each transaction, that such transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of such Plan, subject to the terms of the Registration Rights Agreement, Stock Transfer Restriction and Voting Agreement;

(b) The appropriate fair market value of any Employer Stock contributed by WPC and WPSC to the Trust will be established by the Independent Fiduciary;

(c) The Plan or Trust incurs no fees, costs or other charges (other than those described in the Engagement Letter Agreement and the Trust Agreement) as a result of any of the transactions described herein;

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

(e) Employer Stock contributed in-kind to the Plan will be held in a separate account under a Trust which is qualified under section 501(c)(9) of the Code;

(f) The Committee maintains, for a period of six years from the date of the initial acquisition of shares by the Plan and from the date of any subsequent contributions of Employer Stock, any and all records necessary to enable the persons described in paragraph (g) below to determine whether the conditions of this exemption have been met, except that: (1) If the records necessary to enable the persons described in paragraph (g) to determine

whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of unavailability of those records; and (2) no party in interest other than the Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (g) below;

(g)(1) Except as provided below in paragraph (g)(2) and notwithstanding any provisions of subsections 504(a)(2) and (b) of the Act, the records referred to in paragraph (f) above shall be unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The USWA or any duly authorized representative of the USWA; and

(C) Any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B) and (C) of this paragraph (g) shall be authorized to examine the trade secrets of WPC or WPSC or commercial or financial information that is privileged or confidential.

Definitions

(a) For purposes of this exemption, the term "Independent Fiduciary" means a fiduciary with respect to the Plan who is: (1) Independent of and unrelated to WPC, WPSC or its affiliates; and (2) appointed to act on behalf of the Plan with respect to the acquisition, holding, management, and disposition of the shares. In this regard, the fiduciary will not be deemed to be independent of and unrelated to WPC and WPSC if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with WPC or WPSC; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption; except that the Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from WPC 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 the Independent Fiduciary, during any year of its

engagement, from WPC exceeds one percent (1%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(c) The term "Initial Shares" means the 4,000,000 shares of common stock of WPC that were contributed to the Trust on August 1, 2003.

(d) The term "Participant" shall mean former employees of WPC, WPSC and its subsidiaries who separated from service from USWA-represented bargaining units and who are designated as beneficiaries of the newly-created WPSC Retiree Benefit Plan, as well as any dependent, surviving spouse or other beneficiary of a bargaining unit retiree who is entitled to receive benefits under the Plan.

(e) The term "Plan" refers to the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan. The Plan is an employee welfare benefit plan established and maintained by the Committee.

(f) The term "Shares" or "Employer Stock" means shares of publicly traded common stock of WPC.

(g) The term "Trust" means a Code section 501(c)(9) trust which is established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plan.

(h) "USWA" shall mean the United Steelworkers of America, AFL-CIO-CLC.

Summary of Facts and Representations

1. Wheeling-Pittsburgh Corporation (WPC), the parent company of Wheeling-Pittsburgh Steel Corporation (WPSC), is a metal products company with 3,100 employees in facilities located in Steubenville, Mingo Junction, Yorkville, and Martins Ferry, Ohio; Beech Bottom and Follansbee, West Virginia; and Allenport, Pennsylvania. WPC owns a 50% equity interest in Ohio Coatings Company and a 35.7% equity interest in Wheeling-Nisshin, Inc. WPC is the holding company for WPSC, its wholly owned operating subsidiary. WPSC is located in Wheeling, West Virginia, and produces carbon flat rolled products for the construction, container, appliance, automotive, and other markets. WPSC's products include sheet products, such as hot rolled, cold rolled, and hot dipped galvanized steel. The proposed exemption is requested on behalf of the applicants, WPC and WPSC (collectively, the Companies), whose former employees are covered under the recently established WPSC Retiree Benefit Plan.

2. WPC and WPSC filed for Chapter 11 bankruptcy protection in November

2000 and operated under bankruptcy protection until August 1, 2003.

According to the applicants, WPC and WPSC provided retiree health benefits to an estimated 10,000 participants and beneficiaries under a predecessor retiree health plan. While under bankruptcy protection, WPSC maintained post-retirement benefits (as defined in Section 1114(a) of the Bankruptcy Code) for its USWA-represented retirees in accordance with an existing collective bargaining agreement. However, the applicants represent that WPC and WPSC could not emerge from bankruptcy as a viable integrated steel company while also maintaining the existing welfare benefit programs.

3. A key issue in the negotiation between the Companies and the USWA was the extent to which the Companies could satisfy the claims of current and future retirees who would lose their welfare benefits post bankruptcy. On October 1, 2003, in accordance with both section 1114(e) of the Bankruptcy Code and the plan of reorganization, the Companies terminated all existing welfare benefit programs, and established a new retiree medical insurance Plan, the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan, pursuant to a new collective bargaining agreement (CBA or 2003 Settlement Agreement) on the same date. Thus, the termination of benefits under the predecessor retiree health plan was coincident with the implementation of the Plan. The applicants state that both the Companies and the USWA recognize that the establishment of the Plan was the only viable alternative for funding welfare benefits for current and future retirees. According to the applicants, terminating the predecessor retiree health plan was the only financially viable option because of cash scarcity and the inability of WPSC to adequately fund existing and future obligations under the predecessor plan. The applicants state that during the pendency of the bankruptcy, the Companies and the Union agreed to numerous modifications in an effort to address the Companies' cash shortage caused by continuing operating losses. In October 2001, the Union agreed to temporarily modify its agreement during bankruptcy to provide for, among other things, reductions of wages and medical benefits to active and retired employees in exchange for improvement in wages and pension benefits for hourly employees upon emergence from bankruptcy protection. The Companies estimate that this agreement, together with related reductions in compensation for salaried employees, reduced cash

advances for wages, salaries, and other benefits by more than \$47 million during the period of October 1, 2001 through December 31, 2002.

4. The Companies emergence from bankruptcy was dependent on the achievement of a number of interrelated agreements among its creditors, lenders, interested government agencies, and unionized employees. In particular, on July 30, 2003, members of the USWA successfully negotiated a new post-reorganization collective bargaining agreement with WPC and WPSC.⁶ The applicants represent that this CBA provided for: wage concessions; workforce reductions of both hourly and salaried employees; discontinuance of WPSC's participation in the WHX Corporation defined benefit pension plan which covered, among others, substantially all of the employees of WPSC; and the termination of all predecessor existing retiree medical and life insurance programs and the implementation of the new retiree health Plan to satisfy existing and future claims of retirees who lost their welfare benefits in connection with the reorganization. An exemption is needed because the transactions that are intended to adequately fund the Plan will result in violations of sections 406(a)(1)(E), 407(a)(2), 406(b)(1) and 406(b)(2) of the Act.

5. After several months of arms length negotiations, on October 1, 2003, WPC, WPSC, and the USWA announced the establishment of the Plan. The Plan provides retiree health and death benefits to retirees.⁷ The Plan will be funded through a separate Trust designed to meet the requirements contained in section 501(c)(9) of the

Code pertaining to voluntary employees' beneficiary associations (VEBAs).⁸

The Trustee, Wesbanco Bank, Inc., a West Virginia banking corporation, shall hold the assets and income of the Trust Fund for the exclusive purpose of providing welfare benefits to participants and beneficiaries in accordance with the Plan. According to the applicants, the Trustee has no discretionary authority with respect to the Employer Stock and shall hold the Employer Stock in one or more segregated accounts and shall be subject to direction by the Independent Fiduciary with respect to the acquisition, management, disposition, and voting of such Employer Stock.⁹ The applicants represent that the Trustee shall be responsible only for the management and disbursement of amounts from the Trust Fund in accordance with the Trust Agreement.

6. The applicants note that the transactions described herein require the oversight of an Independent Fiduciary. In this regard, the Employer Stock will be managed by an Independent Fiduciary, U.S. Trust, who is independent of WPC, WPSC, and the Trustee, and shall have exclusive authority with respect to the acquisition, management, and disposition (including the valuation of the shares) of the shares of stock contributed to the Plan, subject to the provisions of the Stock Transfer Restriction and Voting Agreement of August 1, 2003 (Stock Agreement), and the Registration Rights Agreement of August 1, 2003 (RRA). The applicants note that the Independent Fiduciary's sole responsibilities were to (i) conduct a due diligence review of the proposed transaction; (ii) negotiate such additional terms or different terms on behalf of the Plan as it deems necessary, and; (iii) determine whether to cause the Plan to participate in the proposed transaction.

Prospectively, the Independent Fiduciary shall have sole authority and control with respect to the Employer Stock, including authority to direct the trustee, to effect (directly or indirectly) any purchase, sale, exchange, or liquidation of the stock and to enter into any agreements relating to the stock for

the benefit of the Plan.¹⁰ The applicants represent that the Independent Fiduciary is not responsible for any assets of the Plan except the management of the Employer Stock. Additionally, the investment of the proceeds of the sale, exchange, or liquidation of the stock shall be the responsibility of the other fiduciaries.

The Companies will provide the Independent Fiduciary with access to all information that the Independent Fiduciary reasonably requires pertaining to the Employer Stock, including but not limited to financial statements, annual reports, materials filed with the Securities and Exchange Commission, and independent research and reports.

The Independent Fiduciary has notified the Department that since August 1, 2003 it has: (1) Conducted a due diligence review of the proposed contribution of WPC stock to the Plan; (2) made a determination to cause the Plan to accept the contribution of Employer Stock, subject to negotiated terms, including the Registration Rights Agreement, Stock Transfer Restriction and Voting Agreement; and (3) managed the Employer Stock that was contributed to the Plan, in accordance with the terms of the Registration Rights Agreement, and Stock Transfer Restriction and Voting Agreement.

In March 2004, the Independent Fiduciary filed Form 144 with the Securities and Exchange Commission evidencing its intent to sell Employer Stock pursuant to Rule 144 under the Securities Act of 1933. The Independent Fiduciary sold 42,000 shares of Employer Stock from March 25, 2004 to April 20, 2004 at an average share price of \$20.84 pursuant to Rule 144.

In June 2004, WPC advised the Independent Fiduciary of its intent to register the offer and sale of Employer Stock (the Offering). The Registration Statement permitted the Plan to participate as a selling shareholder for up to 357,600 shares of Employer Stock held by the Plan. In September 2004, the

⁶ Pursuant to the CBA, the USWA is responsible for appointing and retaining half of the fiduciaries (other than the Independent Fiduciary) that will administer the Plan. The transactions that are subject of this proposed exemption were negotiated by the USWA and both WPSC and WPC.

⁷ The applicants represent that retirees covered by the plan will include: (1) Retirees from USWA represented bargaining units (and their dependents) who, by reason of any collectively bargained agreement between the Union and the companies, were eligible for retiree insurance benefits as of the effective Plan date, and are adversely affected by the elimination of such coverage; (2) employees from USWA represented bargaining units who retire from the Companies after the Plan's effective date in connection with the window buyout program with eligibility for retiree insurance coverage as of the effective date who were adversely affected by the elimination of such coverage, to the extent of their eligibility as of that date and; (3) employees not described above from USWA represented bargaining units who retire from the Companies, who were eligible for retiree insurance coverage and who were adversely affected by the elimination of such coverage.

⁸ The applicants represent that the Plan is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

⁹ Under ERISA section 403(a)(1), a plan may expressly provide that a trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the Act. 29 U.S.C. 1103(a)(1).

¹⁰ The Department notes that the Act's general standards of fiduciary conduct would apply to the transactions permitted by this proposed exemption, if granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his or her duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner.

Accordingly, the Independent Plan Fiduciary must act prudently with respect to: (1) The decision to enter into the transactions described herein; and (2) the negotiation of the terms of such a transaction, including, among other things, the specific terms by which the Plan will acquire, hold, and sell WPC stock. The Department further emphasizes that it expects the Independent Fiduciary, prior to authorizing each acquisition of WPC stock and any sale of such stock, to fully understand the benefits and risks associated with such transactions.

Independent Fiduciary concluded it was in the best interest of the Plan to offer and sell 357,600 shares of Employer Stock in the Offering. The proceeds of the Plan's sale of 357,600 shares of Employer Stock (\$9,774,102) and \$596,298 (reimbursement of underwriting commissions and fees) were credited to the Plan's account with the Trustee of the Plan. The applicants represent that WPC reimbursed the Plan for the underwriting commissions from the sale of Employer Stock although WPC was not obligated to pay for the underwriting commissions.

7. The Plan will be administered by a VEBA Committee consisting of four individuals, two appointed by the Companies and two appointed by the Union.¹¹ Both the Union and the Companies will also have the power to remove and replace the committee members which they appoint.¹² The applicants state that the Committee members will serve without compensation from the Plan. The VEBA Committee shall serve as the named fiduciary and plan administrator. According to the Retiree Benefit Trust Agreement under which the Plan operates, the VEBA Committee shall have the discretion to determine the benefits to be provided to the beneficiaries of the Retiree Trust, including the form and amount of such benefits, and the contributions that the beneficiaries will make to help defray the cost of their coverage.¹³ The VEBA Committee may also retain independent service providers that it deems necessary to administer the Plan and Trust.

8. The transactions described in this proposed exemption involve the pre-funding of the Plan by the Companies. The CBA is conditioned on the Companies' contribution to the Plan of employer stock representing forty (40%) percent of WPC fully-diluted common equity and certain cash payments described further in this proposed

exemption. The Employer Stock is common stock issued by WPC. The applicants represent that the Employer Stock is widely held, publicly traded, and may be freely exchanged on the Nasdaq National Market with the ticker symbol WPSC. Based on an independent appraisal, before WPSC became a publicly traded company, the estimated equity value of WPC was between \$111 million and \$176 million, resulting in an estimated equity value for the new Plan between \$44.4 and \$70.4 million from the 40% contribution of the shares.¹⁴

Initial Company Contributions

9. The applicants represent that on August 1, 2003, WPC issued to the Trust 4,000,000 shares of common stock of WPC (Initial Contribution) representing 40% of its fully diluted common equity as of the reorganization date. Pursuant to the terms of the CBA, the parties agreed that 2,000,000 shares of the Initial Contribution may be applied by WPC, in its discretion, as a credit against future stock contributions that WPC may be required to make in connection with the variable profit-based contribution schedule described in further detail below. Furthermore, the Initial Contribution of shares are maintained in a separate sub-account within the Plan and will be utilized for the exclusive benefit of the retirees.¹⁵

On October 1, 2003 and continuing for five months thereafter, WPC contributed cash to the Plan at the rate of \$1.5 million per month. This \$7.5

¹⁴ The independent appraisal was performed by Conway, Del Genio, Gries & Co., LLC for the purpose of developing an estimated reorganized enterprise value for WPC and WPSC.

¹⁵ The applicants represent that if the proposed exemption is not granted the Trust would likely hold no shares of Employer Stock. WPC requests exemptive relief because of its belief that contributions of WPC stock would not meet the requirements for the acquisition of "employer securities" under section 408(e) of the Act. In this regard, 407(d)(5) of the Act provides that term "qualifying employer security" means an employer security that is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan, other than an individual account plan, stock is considered a "qualifying employer security" only if such stock satisfies the requirements of subsection 407(f)(1) of the Act. Section 407(f)(1) of the Act provides that stock satisfies such requirement if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by the persons independent of the issuer. In this regard, after all the contributions of Employer Stock is contributed to the Plan, substantially more than 25 percent of all issued and outstanding shares of WPC will be held by the Plan. Moreover, the requirement that 50 percent of the shares of WPC be held by persons independent of the issuer would not be met.

million is held by the Plan as a credit against contributions that WPC and WPSC will make in connection with the Variable Profit-Based Contribution schedule set forth below for that five-month period. According to the applicants, if the Variable Profit-Based Contributions total an amount less than \$7.5 million, the balance of the credit shall be applied against future contributions made by WPC and WPSC in equal installments over the succeeding 18 months. To the extent the Variable Profit-Based Contributions for this period total an amount greater than \$7.5 million, the difference was paid by WPC and WPSC to the Plan no later than April 1, 2004.

On April 1, 2004, and continuing for 6 months thereafter, WPC began making contributions of \$300,000 in cash to the Plan on the first day of each month. This total contribution of \$1.8 million was also credited against future Variable Profit-Based Contributions in equal installments over the period commencing on April 1, 2005 and ending on October 1, 2006.

Variable Profit-Based Contribution Schedule

10. Subject to the possibility of credits described above, WPC and WPSC shall make quarterly contributions to the Plan in accordance with the following formula, to be known as the Variable Profit-based Contribution Schedule:

- (i) 40% of operating cash flow, between \$16 and \$24 dollars of operating cash flow per ton shipped, payable to the Plan in cash.¹⁶
- (ii) 12% of operating cash flow, above \$24 and no more than \$65 dollars of operating cash flow per ton shipped, payable to the Plan at WPC or WPSC's discretion in cash or common stock of WPC.
- (iii) 25% of operating cash flow, above \$65 dollars of operating cash flow per ton shipped, payable to the Plan in cash.

(iv) In addition, within 45 days after the end of each fiscal quarter, a special contribution will be made by WPC and WPSC to the Plan equal to 15% of operating cash flow below \$30 of operating cash flow per ton shipped, payable at the Companies' discretion in cash or common stock of WPC.

The applicants represent that any contribution of shares made in satisfaction of an obligation to

¹⁶ The applicants define operating cash flow as earnings before interest and taxes, calculated on a consolidated basis in accordance with Generally Accepted Accounting Principles (GAAP). The applicants also define tons shipped in the variable profit-based schedule as tons of steel products sold to third parties.

¹¹ According to the Retiree Benefit Trust Agreement, the VEBA Committee shall serve as the named Fiduciary and the Plan Administrator.

¹² The Companies intend that the Committee constitute the joint board of employer and employee representatives within the meaning of section 302(c)(5) of the Labor Management Relations Act, 1947, as amended, and section 3(16)(B) of ERISA.

¹³ The Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan Trust states that the VEBA Committee shall have the discretion to determine the amount of benefits to be paid to beneficiaries provided that the beneficiaries shall make a contribution to the cost of their coverage. In making such decisions, the VEBA Committee may take into account all relevant circumstances, including, without limitation, the degree to which beneficiaries may have alternative coverage sources, as well as the resources of the Trust based upon Company contributions.

contribute cash or shares at their discretion, in compliance with the Variable Profit-Based Contribution Schedule, will be valued based on the closing price of the shares for the ten (10) trading days immediately preceding the date on which the shares are contributed to the Plan.

11. The applicants represent that substantially all of the Plan assets will consist of shares until July 30, 2005 because the cash contributions will be applied to the payment of benefits under the Plan. The initial contribution of shares will represent forty percent (40%) of the Companies' fully-diluted common equity, and additional contributions of shares may be made in an aggregate amount of not more than ten percent (10%) of the Companies' fully-diluted common equity.

Stock Transfer Restriction

12. Upon consummation of the plan of reorganization on August 1, 2003, WPSC issued to the Trust 4,000,000 shares (Initial Shares) of Employer Stock representing forty percent (40%) of its fully-diluted common equity as of the reorganization date. Pursuant to the terms of the CBA, the parties agreed that the Initial Shares contributed to the Trust shall be subject to the following conditions:

(i) The applicants represent the Employer Stock contributed to the Plan and managed by the Independent Fiduciary is subject to a two-year disposition restriction which commenced on August 1, 2003 (First Restriction Period) so long as the Plan holds five percent or more of the Initial Shares then held by the Trust; provided that WPC may, in the exercise of its reasonable discretion, consent to the disposition of some portion of the shares during the First Restriction Period by the Independent Fiduciary to the extent that such disposition will not disrupt an orderly market for the shares or impair the Company's ability to retain or make use of its net operating loss carryover.

(ii) During the two-year period commencing on the day following the last day of the First Restriction Period described in (i) above, the Independent Fiduciary shall be permitted to dispose of the Initial Shares then held by the Trust, provided that (1) the Independent Fiduciary shall not dispose of more than one half of the Initial Shares then remaining in the Trust within any consecutive 12 month period, and (ii) the Independent Fiduciary shall dispose of such Initial Shares in a manner reasonably calculated not to disrupt the orderly trading of the WPC's common stock (such as, by way of example, by

causing the disposition to occur in several transactions over a period of weeks or months). However, WPC, in the exercise of reasonable discretion, may consent to the disposition of a greater number of Initial Shares during any consecutive 12 month period, to the extent that such disposition will not disrupt the orderly trading of WPC's common stock.

(iii) *Amendment to the CBA.* The applicants represent that on March 24, 2004, both the USWA, WPSC, and WPC amended the CBA to allow an exception from the two-year disposition restriction of selling shares of WPC common stock. The amendment authorizes 400,000 (10%) of the initial shares of WPC stock to be sold in the open market. The applicants represent that the Independent Fiduciary has commenced selling some of the Initial Shares held by the Plan in the open market. According to the applicants, as of March 31, 2004, 22,000 of the Initial Shares have been sold by the Plan at an average price of \$20.44 per share. The agreement further provides for the crediting of a portion of the proceeds from the sale of the Initial Shares (the amount in excess of \$6.3 million) against future Variable Profit-Based Contributions. WPC is further obligated within 45 days after December 31, 2007 to make an additional contribution of shares of WPC Employer Stock to the Plan equal to the difference between (i) 400,000 shares and (ii) the number of shares of WPC common stock issued to the Plan pursuant to the Variable Profit-Based Contribution Schedule. The agreement further provides that WPC is permitted to apply 1.6 million of the Initial Shares, plus the number of shares determined under the preceding sentence, as a credit against future stock contributions described in the Variable Profit-Based Contribution Schedule.

According to the applicants, the principal purpose of the first restriction is to assure that the Companies' net operating loss carry-over of approximately \$180,000,000 will continue to be available to the Companies following bankruptcy. The Companies note that this is a valuable asset that will enable them to operate without an excessive tax burden for a number of years.¹⁷

¹⁷ The applicants represent that in order to preserve the net operating loss carryover, the change in ownership of the Companies upon their emergence from bankruptcy must qualify under section 382(1)(5) of the Code, which requires, among other things, that the shareholders and creditors of the old loss corporation (*i.e.*, WPC), determined immediately before the ownership change, own after such ownership change and as a result of being shareholders or creditors immediately before such change, stock representing

The applicants represent that the purpose of the Second Restriction Period is to achieve a reasonable balance between the Plan's need to liquidate its holdings of WPC stock and the adverse impact on the stock price caused by the selling of stock. To that end, the Second Restriction Period is designed to assure that the Initial Shares can be liquidated, but only at a rate that does not unduly impair the market price for WPC stock.

Voting Agreement and Registration Rights Agreement

13. Pursuant to the terms of the CBA, the parties agreed that the Initial Shares contributed to the Trust shall be subject to the following conditions:

(i) The Initial Shares are subject to a voting agreement that requires the Independent Fiduciary to abstain from voting 1,300,000 of the Initial 4,000,000 Shares contributed to the Plan for the election of the WPC's Board of Directors. The applicants represent that the Independent Fiduciary agrees that, for so long as it holds any Initial Shares, it shall abstain from voting 1,300,000 of the shares (or such number of Initial Shares as the Independent Fiduciary may then hold, if less than 1,300,000) for the election of any Board of Directors and will only be able to exercise voting rights on 2.7 million of the Initial Shares.¹⁸ The agreement reflects that two of the Company's eleven directors will be appointed by the USWA.

(ii) *Registration Rights Agreement (the RRA).* The Registration Rights Agreement was entered into on August 1, 2003, by WPC, the Trustee and the Independent Fiduciary in order to comply with necessary securities laws. The applicants represent that because the Plan initially owns 40% of all the outstanding shares of WPC's Employer Stock, an agreement of this type is necessary to comply with applicable securities laws. The Independent Fiduciary is authorized to direct the Trustee to deliver to WPC written notice of a request to cause Registrable Securities to be registered for resale under the Securities Act of 1933. Registrable Securities are any or all of the shares of Employer Stock held by

at least 50% of the voting power and at least 50% of the value of the stock of WPC. Moreover, the applicants represent that the USWA-represented retirees, who will be entitled to the stock in satisfaction of their medical claims, will be considered creditors of the old loss corporation for purposes of section 382(1)(5) of the Code.

¹⁸ The applicants represent that any reference to a particular number of shares shall be automatically and proportionately adjusted in the event of any stock dividend, stock split, stock combination, recapitalization, or other similar event affecting the Employer Stock.

the Trustee, including but not limited to the Initial Shares. The portion of Employer Stock subject to this "demand registration" right is limited at any time to the number of shares that the Independent Fiduciary may sell under the Stock Transfer Restriction and Voting Agreement. Additionally, the Plan is also given "piggyback" registration rights under the Registration Rights Agreement, under which it may include a portion of its shares in any registration of shares that the company undertakes for its own account or that of any other stockholder.

14. In summary, the applicants represent that with respect to the transactions described herein, the requirements of section 408(a) of the Act have been met because:

(a) An Independent Fiduciary will represent the Plan and its participants and beneficiaries for all purposes relating to the acquisition, holding, disposition, ongoing management, and voting of Employer Stock. The Independent Fiduciary will authorize the Trustee to accept or dispose of Employer Stock only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of such Plan, subject to the terms of the Registration Rights Agreement, and Stock Transfer Restriction and Voting Agreement;

(b) The appropriate fair market value of any Employer Stock contributed by WPC and WPSC to the Trust will be established by the Independent Fiduciary;

(c) The Plan or Trust incurs no fees, costs or other charges (other than those described in the Engagement Letter Agreement and the Trust Agreement) as a result of any of the transactions described herein; and

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

Notice to interested Persons: The applicants represent that notice will be provided by first class mail by WPSC within ten (10) calendar days from the date of this publication of this Notice in the **Federal Register** to each of its retirees, surviving spouses, and/or dependents covered under the Plan. Such notice will contain a copy of the Notice, as it appears in the **Federal Register** on the date of the publication, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise

such interested persons of their right to comment and to request a hearing.

FOR FURTHER INFORMATION CONTACT:

Brian J. Buyniski of the Department, telephone (202) 693-8545. (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 23rd day of November, 2004.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-55,290]

Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd., Buildings Division, Fabricated Frames Production, Including Support Personnel, Galesburg, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 28, 2004, applicable to workers of Butler Manufacturing Company, subsidiary of BlueScope Steel, Ltd, Buildings Division, Fabricated Frames Production, Galesburg, Illinois. The notice was published in the **Federal Register** on October 4, 2004 (69 FR 62463).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of pre-engineered metal buildings.

New information shows that worker separations have occurred involving the support personnel of the Fabricated Frames Production, Butler Manufacturing Company, Galesburg, Illinois. These workers provided support services for the production of pre-engineered metal buildings systems produced by the subject firm.

Accordingly, the Department is amending this certification to extend coverage to the support personnel of the Fabricated Frames Production, Butler Manufacturing Company, Galesburg, Illinois.

The intent of the Department's certification is to include all workers of Butler Manufacturing Company, Fabricated Frames Production, including support personnel, Galesburg, Illinois who were adversely affected by a shift in production to Mexico.