

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Agency Information Collection  
Activities: Proposed Collection;  
Comments Requested**

**ACTION:** 30-day notice of information collection under review: National Clandestine Laboratory Seizure Report.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) 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 and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 190, page 56650 on October 1, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 4, 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 and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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:* New Collection.

(2) *Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EPIC Form 143, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Agencies. Other: None. Records in this system are used to provide clandestine laboratory seizure information for the El Paso Intelligence Center, Drug Enforcement Administration, and other law enforcement agencies, in the discharge of their law enforcement duties and responsibilities. It is a criminal offense under title 21, United States Code, to illegally manufacture controlled substances and their counterfeits. 21 U.S.C. 873(a) authorizes the Attorney General to, among other things, arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances. This form provides a consistent method by which state and local authorities can report incidents relating to the seizure of clandestine laboratories for illegal drug manufacturing or of materials evidencing clandestine laboratory operations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete the information within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 10,000 total annual burden hours associated with this collection.

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

Dated: December 29, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

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**DEPARTMENT OF LABOR****Employee Benefits Security  
Administration**

**[Prohibited Transaction Exemption 2003-40; Exemption Application No. D-11191]**

**United States Steel and Carnegie  
Pension Fund (UCF or the Applicant),  
Located in Atlanta, GA**

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains a final exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code).

The exemption permits the in kind contribution of certain timber rights (the Timber Rights) under two timber purchase and cutting agreements (the Timber Rights Agreements) to The United States Steel Corporation Plan for Employee Pension Benefits (the Plan) by the United States Steel Corporation (US Steel), the Plan sponsor and a party in interest with respect to the Plan. The exemption also permits ancillary transactions between the Plan and US Steel arising from certain rights retained by US Steel related to the timberland (the Property) on which the Timber Rights are based. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Plan.

**EFFECTIVE DATE:** This exemption is effective as of December 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Silvia M. Quezada of the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8553. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On November 14, 2003, the Department published a notice of proposed individual exemption (the Notice) in the **Federal Register** at 68 FR 64650. The Notice was requested in an application filed on behalf of the Plan pursuant to 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, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is being issued solely by the Department.

The Notice set forth a summary of the facts and representations (the Summary) contained in the Applicant's June 2, 2003 application for exemptive relief and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC.

The Notice also invited interested persons to submit written or faxed comments with respect to the Notice and/or requests for a public hearing on or before December 18, 2003. All comments were made a part of the record. In response to the solicitation of comments from interested persons, the Department received 54 written comments, including 2 comment letters submitted by the Applicant. Among these, a number of interested persons requested a public hearing. Of the comments received, 3 commenters supported the merits of the proposed transactions, while 51 commenters opposed the transactions for a variety of reasons. The Department also received 39 general telephone inquiries concerning the proposed transactions.

The Department forwarded copies of all of the comment letters to the Applicant and requested that the concerns raised by the commenters be addressed in writing by either the Applicant or The Campbell Group (TCG) of Portland, Oregon, which will serve on behalf of the Plan as the independent fiduciary (the Independent Fiduciary) with respect to the proposed transactions.

Following is a discussion of the comments and responses provided by the Applicant, the Independent Fiduciary, or the Department.

### The Applicant's Comments

The Department received comment letters from the Applicant dated December 2, and December 23, 2003. In these letters, the Applicant requested certain changes and clarifications to the conditions of the exemption as proposed in the Notice. The Applicant's comments on the conditions of the Notice and the Summary are discussed

below in the order of appearance in the Notice.

1. *Section I(B) and Section I(B)(1) of the Notice.* The Applicant notes that Section I(B) of the proposal provides relief for ancillary transactions arising from certain rights retained by US Steel, but limits that relief to four specified types of ancillary transactions (See Section I(B)(1) through (4)). By contrast, the Applicant points out that on page 64655 of the Summary, in the first full non-bulleted paragraph appearing in column 1, Representation 14, in describing these transactions, precedes the same list of the four types of transactions by stating that the subsequent dealings with US Steel "include the following." The Applicant explains that while the list in Section I(B) covers the principal examples of ancillary transactions that may arise from the Timber Rights contribution, there may be other matters that arise during the course of the operation of the Timber Rights Agreements that involve dealings between the Plan and US Steel. Therefore, the Applicant believes there should be no need to limit these types of transactions, which may benefit the Plan, so long as all the protections of the exemption apply to them. In the exemption request under consideration, all such transactions would be subject to the oversight of the Independent Fiduciary, who would represent the interests of the Plan. Accordingly, the Applicant requests that Section I(B) be amended by adding the phrase "including the following" at the end of the initial paragraph, before the list of the four types of transactions to conform with the Summary.

The Department does not concur with the Applicant's comment. The Department does not believe that it would be appropriate to provide broad exemptive relief for "other transactions" that have not been identified in the Applicant's submission. Therefore, the Department did not make the revision as requested by the Applicant. Instead, the Department requested that the Applicant provide a listing of additional ancillary transactions that could arise between the Plan and US Steel following the Timber Rights contribution. The Applicant and the Independent Fiduciary identified additional ancillary transactions which are referenced in new Sections I(b)(5) and Section III(e) of the Notice.

Section I(b)(5) refers to: "(5) Any additional ancillary transactions defined in Section III(e)." Section III(e) provides that the term "additional ancillary transactions" means:

(1) The allocation and contesting of property taxes, fees, licenses, fines and other charges or assessments imposed on the Plan, the Timber Rights or (as relevant) the Property; (2) the allocation of payments in connection with the granting of easements or use permits; (3) the use of timberlands in connection with government-mandated environmental cleanup or other construction or maintenance activities occurring on US Steel owned adjacent properties; (4) the negotiation by the Independent Fiduciary with US Steel of a premium price to be paid to the Plan to permit US Steel to buy out the Timber Rights on a parcel in order to sell the parcel to a third party; (5) the coordination between the Independent Fiduciary and US Steel of access to the Property on a continuing basis, such as where to place a gate or to whom to permit access; (6) the allocation of costs and responsibilities related to participation in cooperatives for fire protection, research on land use, or other matters relating to the Property and the Timber Rights; (7) the representation of the Plan in regulatory matters, such as changes in laws or regulations affecting the Property, that also would impact US Steel; (8) the allocation of insurance coverage for the Property and Timber Rights between the Plan and US Steel; (9) the joint hiring by, or the allocation of costs between, the Plan and US Steel of contractors to cut or maintain roads for fire protection or other joint uses; (10) the joint action by, or allocation of costs between, the Plan and US Steel to maintain Property boundaries, monitor for violations, and determine damages if any from third party trespass or other intrusion onto the Property; (11) the joint representation of the Plan and US Steel to an agency or other governmental body in the event of any regulatory dispute or other regulatory issue involving the Timber Rights and the Property; (12) working with government agencies on environmental projects, enhancements, conservation easements, or similar matters that may affect the value of the Timber Rights and the Property; (13) the negotiation of a joint sale of the Timber Rights owned by the Plan and the underlying Property owned by US Steel to a third party; (14) the enforcement and settlement arising from US Steel's obligations under the Timber Rights Agreements; and (15) the joint defense and prosecution of lawsuits involving the Timber Rights and/or the Property.

The Department notes that the exemption requires that the Independent Fiduciary represent the Plan's interest with respect to the ancillary transactions and approve of the terms prior to entering into any of the transactions.

The Applicant also notes that, with regard to Section I(B)(1) of the Notice, an early termination may not apply to a Timber Rights Agreement as a whole, but rather to a portion of the Property covered by that Agreement, as described in Representation 7 of the Summary. Therefore, the Applicant suggests that the initial clause of subparagraph (a) be revised to read as follows:

US Steel exercises its right to early termination of an Agreement or with respect to a portion of the Property covered by an Agreement, \* \* \*

The Department concurs with the Applicant and has modified the initial clause of subparagraph (a) of Section I(B)(1) accordingly.

2. *Section II(j) of the Notice.* In response to the Department's concern over the authority of the Independent Fiduciary with respect to the disposition of Timber Rights to third parties, the Applicant agreed to amend Section II(j) of the Notice. Section II(j) pertains to the disposition of the Timber Rights under the Timber Rights Agreements and related instruments. The Applicant proposes that its oversight role in approving or directing sales to third parties under the Management Agreement with TCG be turned over to a Second Independent Fiduciary appointed for that purpose. Section II(j) of the final exemption reads as follows:

The Independent Fiduciary, acting on behalf of the Plan, retains the right to sell or assign, in whole or in part, any of the Plan's Timber Rights interests to any third party purchaser. Notwithstanding the above, UCF retains the authority to appoint a second independent fiduciary (the Second Independent Fiduciary) to determine whether to approve a proposed disposition, or to determine whether to direct the Independent Fiduciary to make a disposition.

The Department concurs with the Applicant's amendment to Section II(j) and has revised the Notice, accordingly.

3. *Section III(a) of the Notice.* Under Section III(a) of the Notice, the Applicant states that one of the circumstances under which a fiduciary will not be deemed independent of and unrelated to US Steel is where "the annual gross revenue received by such fiduciary, during any year of its engagement, from US Steel and its affiliates exceeds 5% of the Independent Fiduciary's annual gross revenue from all sources for its prior tax year."

The Applicant interprets this to mean that if, during the course of a particular year, the gross revenue received by TCG from US Steel and its affiliates were to exceed 5% of its total annual gross revenue for the prior year, TCG would, at that point in time, cease to be "independent" for purposes of the exemption. This means that the relief provided by the exemption for any transaction entered into under TCG's authority as Independent Fiduciary prior to the date on which its revenue exceeds the 5% threshold would not be affected. Violation of the 5% condition would therefore have only a prospective effect, requiring UCF to hire another

Independent Fiduciary in order to continue using the exemption going forward, and would not retroactively invalidate all past transactions that have been entered into pursuant to the exemption. The Applicant requests that the Department confirm this interpretation.

In response to this comment, the Department concurs with the Applicant's interpretation of the Independent Fiduciary's 5% earnings cap and the unavailability of the exemption in the event this limitation is exceeded.

4. *Representation 7 of the Summary.* The Applicant wishes to clarify certain matters relating to a "temporary" termination of the Timber Rights with respect to Property under the Timber Rights Agreements discussed in Representation 7 of the Summary. First, in the second sentence of the second full paragraph on page 64653 of the Notice, pertaining to the terms of the Timber Rights Agreement for the 135,000 acre parcel, the phrase which states "the fair market rental value of the affected timberland surface plus" should be deleted. For purposes of clarification, the Applicant requests that the following sentence be added at the end of the paragraph: "In the event of surface or strip mining, US Steel must also pay the fair market rental value of the affected timberland surface."

Second, in Footnote 8 on the same page, the Applicant requests that in the 5th line, the phrase stating "in less than 15 years" should be deleted. The Applicant explains that the reason for these changes is that certain mining activities (namely, those described in clauses (i) through (xvi) of Section 12.2 of the Timber Rights Agreements, which also are listed in Footnote 8 of the Notice) are deemed to be "temporary" even if the use is for longer than 15 years. In accordance with prevailing practice in Alabama, the Applicant further explains that these mining activities give rise to a requirement to reimburse the timber owner only for the value of the standing timber, but not for the fair market rental value of the Property, itself. The only "temporary" mining activity for which the Plan will receive fair market rental value during mining use, in addition to timber value, is surface or strip mining, because surface or strip mining could involve a large amount of land being out of use for an indeterminate period. According to the Applicant, activities other than those enumerated in Footnote 8 would be characterized as "temporary" if (a) they are for less than 15 years, (b) they do not pose a material risk of contamination or nuisance, and (c) the

surface will be substantially restored to its prior condition upon cessation of activities.

Third, the Applicant states that the same comments and changes apply to the 4th full paragraph on page 64653 of the Notice, which describes the parallel provisions in the Timber Rights Agreement covering the 35,000 acre parcel of the Property.

In response to the foregoing comments, the Department notes these clarifications to the Summary and, particularly, the Timber Rights Agreements.

5. *Representation 11 of the Summary.* The Applicant notes that Representation 11 of the Summary describes negotiations that were taking place at the time the exemption application was filed to sell the mineral rights held by US Steel and its affiliate, US Steel Mining Co., with respect to the underlying land. Since that time, the Applicant states that US Steel has agreed to sell its mineral rights to a third party (the USS Mineral Sale). The Applicant further states that the mineral purchaser's interest will be subject to the terms of the Timber Rights Agreements with regard to compensation due to the Plan for damaged or destroyed timber.

On June 30, 2003, the Applicant indicates that the Oak Grove Mine, owned by US Steel Mining Co., was separately sold. The area affected by the sale involved approximately 12,000 acres and related only to certain identified coal seams that are expected to be fully mined in approximately 10 years (which may be extended if options for any of five different option parcels totaling 22,000 acres are exercised). Rights to any other minerals on those acres were retained by US Steel and are included in the USS Mineral Sale.

Because the Oak Grove Mine was sold prior to the date on which the Timber Rights Agreements were finalized, the Applicant explains that the documents associated with its conveyance are to be treated as "Current Leases" that pre-date the Timber Rights Agreements, so that their compensation terms will technically supersede the mining use provisions of the Timber Rights Agreements. The Applicant further explains that these compensation terms, like those in the Timber Rights Agreements, provide for compensation at fair market value for any timber that might be damaged or destroyed for mining purposes. According to the Applicant, the negotiation of those terms was overseen by TCG as Independent Fiduciary, and those terms are viewed by TCG as fair and reasonable to the Plan. Furthermore, the

Applicant indicates that the terms of the Oak Grove Mine sale were taken into account by the independent appraiser and Independent Fiduciary in valuing the Timber Rights.

The Department takes note of the Applicant's clarifications regarding the USS Mineral Sale in Representation 11 of the Summary.

6. *Representation 14 of the Summary.* The Applicant wishes to clarify that the last paragraph of Representation 14 of the Summary reflects the Applicant's original statement that TCG's representations regarding its independence from U.S. Steel are contained in the "Management Agreement." Because the Management Agreement had not been finalized by the time TCG was required to begin its work, the Applicant notes that these representations are contained in a letter agreement between UCF and TCG dated August 25, 2003.

The Department acknowledges the Applicant's clarification of the written instrument wherein TCG memorializes its independence from either the Applicant and US Steel.

7. *Representation 17 of the Summary.* The Applicant wishes to clarify that with regard to TCG's incentive fee (the Incentive Fee), the Management Agreement provision regarding such fee is being amended. As described in the last sentence of Representation 17 of the Summary, 50% of the Incentive Fee was originally payable every third year for the duration of the Management Agreement. The Applicant explains that the amendment will permit UCF and TCG, by mutual agreement, to defer payment of all or a portion of the Incentive Fee due in a particular year to any subsequent year. The Applicant further explains that this action may be taken to spread out the Incentive Fee payments more evenly from period to period.

In response to this comment, the Department notes the proposed amendment regarding the payment of TCG's Incentive Fee. The Department further notes that no exemptive relief is provided herein for the payment of incentive compensation to TCG.

#### **The Applicant's Response to Issues Raised by the Commenters**

In a letter dated, December 10, 2003, the Applicant provided the Department with a written response to the issues raised by interested persons who responded in writing to the Department concerning the Notice. Discussed below are the issues raised by the commenters and the responses to these comments made by the Applicant and the Independent Fiduciary.

1. *Effect of Contribution on Benefits Provided under the Plan.* Several commenters questioned whether the proposed contribution would affect benefits under the Plan. In response, the Applicant states that the proposed transaction would not, in itself, have any effect on the benefits provided under the Plan. If anything, the Applicant states that the proposed transaction would offer greater assurance that the benefits will ultimately be paid, by providing the Plan with a larger and more diverse asset base.

In addition, the Applicant points out that several comment letters raised questions about increasing benefit levels. Because the Applicant considers this matter outside the scope of the proposed transactions and the exemption request, it has not chosen to comment.

2. *Plan Merger Questions.* Some of the commenters raised questions regarding the merger of the US Steel pension plans. Because this merger is occurring separately from, and unrelated to, the Timber Rights contribution, the Applicant states that US Steel will respond directly to the Plan participants on those issues, outside of the exemption proceeding.

3. *Persons to Whom Independent Fiduciary Is Responsible.* A commenter questioned to whom in UCF would TCG be responsible. The Applicant states that the Independent Fiduciary would report to the officers of Plan LLC, the limited liability company that is created to hold the Timber Rights on behalf of the Plan. They would be M. Sharon Cassidy, the General Counsel of UCF; William Donovan, the Vice President—Investments of UCF; and Katherine Stults, the Staff Analyst—Forest Products Industry of UCF.

#### **The Independent Fiduciary's Response to the Commenters**

In a letter to the Department dated December 9, 2003, the Independent Fiduciary responded to the following issues raised by a number of commenters:

1. *Risk of Short-Term Loss on the Investment, No Returns to the Plan, and Transaction Costs Outweighing Benefits.* A commenter thought the proposed transaction would subject the Plan to a risk of short-term loss on the investment and generate no investment return at all to the Plan.

In response to this comment, the Independent Fiduciary states that based on the cruise (*i.e.*, inspection with reference to possible timber yield) and inventory work and cash flow projections by Larson & McGowin, the

independent appraiser, it anticipates that there will be sufficient timber available for harvest in 2004 and subsequent years so as to provide a positive cash flow from the outset of the proposed transaction. Consequently, the Independent Fiduciary does not expect a loss to the Plan, and in fact, believes there will be a positive return, from the first year of the investment forward over the course of the first five years. Also, as demonstrated by the appraisal report, the Independent Fiduciary anticipates positive cash flows and a positive investment return for the Plan over the long term from this investment, net of any related costs. Therefore, in its considered judgment, and as expressed in its report, the Independent Fiduciary believes the proposed transaction would be a prudent investment for the Plan.

The Independent Fiduciary notes that another commenter cited the specific risk of adverse affects to the Plan from lawsuits related to environmental issues, given the nature of the assets involved. The Independent Fiduciary states that the parties have taken several precautions to limit any environmental risk, including an indemnification obligation in favor of the Plan from US Steel as owner of the underlying land. Therefore, the Independent Fiduciary believes this risk to be limited and that it will not outweigh the potential benefits of the proposed transaction.

2. *Preferability of Selling the Property to a Third Party and Donating the Sale Proceeds to the Plan.* A commenter suggested the preferability of selling the Property outright to an unrelated party and then donating the proceeds to the Plan.

In response to this comment, the Independent Fiduciary states that if US Steel were to attempt to sell the Timber Rights, the proceeds would be relatively low compared to their long-term expected cash flow, because of the young age of the timber. The Independent Fiduciary represents that it would be difficult to invest the proceeds in a manner that would achieve the same expected investment return with a commensurate level of risk compared to the Timber Rights. In addition, the Independent Fiduciary states that the contribution provides an opportunity for the Plan to receive Timber Rights without incurring transaction costs. For these reasons, and because of the diversification benefits of expanding the Plan's investments to include timber rights, the Independent Fiduciary believes that it is prudent and in the interests of the Plan to receive the Timber Rights as a contribution rather than the proceeds of the sale of the Timber Rights.

3. *Risk of Loss from Floods, Fires, Vandalism and Other Causes, Natural and Otherwise.* A commenter questioned the risk of loss to the Plan from the Timber Rights investment caused by floods, fire, vandalism and other causes.

In response to this comment, the Independent Fiduciary states that based on its past experience in managing timber property, there would be only a small risk of loss from fire or other natural disasters. The Independent Fiduciary explains that it would take steps to minimize fire and disease risk through active timber management aimed at maintaining healthy and vigorous stands. Further, the Independent Fiduciary asserts that the nature of the Property, being interspersed with other land uses and close to an urban center (Birmingham), would lead to quick detection of fire and quick response. The Independent Fiduciary notes that although tornado damage to timberlands is generally confined to small areas, and hurricane damage tends to occur closer to near-coastal areas, flooding and drought are generally not significant risks in the area where the Property is located.

The Independent Fiduciary further explains that consistent with every other property it manages, it will have a "fire plan" to serve as the basis for how it will manage the risk of fire and how it will respond to any incidence of fire. It notes that the capacity of the state of Alabama to support fire fighting efforts is only one consideration that will be accounted for in the fire plan for the Property. The Independent Fiduciary states that in its experience one of the most effective means to manage the risk of fire is through active management that maintains a healthy and vigorous forest, including the practice of periodically thinning in overly dense forest types. Therefore, the Independent Fiduciary represents that it will increase the intensity of its management practices on the Property, which will improve the health and vigor of the forest and help mitigate the inherent risk of fire, insects, and disease.

4. *Using the Proposed Transaction to Benefit US Steel.* Some commenters raised the possibility that US Steel would be using the proposed in kind contribution transaction to benefit itself in various ways.

In response to the commenters, the Independent Fiduciary states that the form of the transaction is a "contribution," and not a "sale." The Independent Fiduciary explains that US Steel is receiving no cash or other consideration from the Plan in exchange

for the Timber Rights, other than the possibility of decreasing future cash contributions. Therefore, it believes the Plan's current assets and investments are not being affected or diminished in any way.

The Independent Fiduciary explains that the exemption does not provide any relief from the requirement that the assets accepted through the in kind contribution constitute a prudent investment for the Plan. In this regard, the Independent Fiduciary explains that its role has been to assure that the terms of the transaction are fair and reasonable to the Plan. In its view, the Independent Fiduciary believes that the terms of the transaction are at least as favorable, if not more favorable, to the Plan than the terms it could obtain in an arm's length transaction with an unrelated party. The Independent Fiduciary states that it will continue to perform that role in connection with any future dealings between the Plan and US Steel relating to the Timber Rights. Therefore, the Independent Fiduciary concludes that US Steel is not obtaining any benefit at the Plan's expense.

The Independent Fiduciary further states that the Timber Rights, once contributed to the Plan, must be used for the exclusive benefit of the Plan. Any appreciation in value would belong to the Plan and would increase the security of future pension payments. Any benefit to US Steel, such as through a tax deduction or decreasing future contributions, would be incidental to the principal benefit of increasing the Plan's funding level, according to the Independent Fiduciary.

The Independent Fiduciary notes that a commenter suggested that US Steel would be using this opportunity to seek an "exemption" from or otherwise postpone its obligatory annual cash contribution to the Plan. In response to this commenter's concern, the Independent Fiduciary states that US Steel would not receive any exemption from its contribution obligations, which apply regardless of the form of contribution. The Independent Fiduciary also states that as noted in the exemption application, US Steel anticipates that it will be making a cash contribution in 2005.

5. *Risks to the Plan from Becoming a "Business" as a Result of Owning the Timber Rights.* Two commenters suggested that there are risks to the Plan from becoming engaged in a "business," with one comment describing these risks by comparison to the "unscrupulous executives" at companies such as Enron.

In response to these comments, the Independent Fiduciary explains that

managing approximately 170,000 acres of timberland in Alabama is not comparable to those well-publicized problems, where the principal issue at the root of the problems at those companies was a lack of independent oversight and control. The Independent Fiduciary asserts that it will manage the Timber Rights, subject to the oversight of UCF as Plan Trustee, so that independent oversight and controls will be in place.

6. *Risk to the Plan of Limiting the Make-Whole Contribution Period and Its Scope.* The Independent Fiduciary notes that US Steel's "make-whole" contribution obligation was limited to five years because there is a risk of loss to any prudent investment, and it did not seem appropriate to require US Steel to guarantee the long-term prudence of the Timber Rights investment to any greater extent than any other Plan investment, other than to cover any initial risk relating to the in-kind contribution. The Independent Fiduciary further explains that the make-whole contribution is therefore limited to five years to protect the Plan from risks related to the initial contribution transaction.

A commenter asked if the make-whole contribution would be designed to bring the Plan to its "proper funding level." In response to the commenter's concern, the Independent Fiduciary states that the contribution would be triggered only by changes in the value of the Timber Rights, and would not be affected by the Plan's then-current funding level. The Independent Fiduciary indicates that the make-whole payment would be required even if the Plan were overfunded, although the payment would be postponed to the extent that it would not be deductible for tax purposes or would result in an excise tax. If the Plan were underfunded, the Independent Fiduciary represents that the make-whole payment would be limited by the loss in value of the Timber Rights and would not necessarily restore the Plan to full funding, a matter addressed by the pension funding rules.

Furthermore, the Independent Fiduciary explains that the make-whole contribution obligation would take into account any loss from forest fires or other causes for damage to the timber, to the extent that loss reduces the appraised value or net cash flow from the Timber Rights over the first five years.

7. *Exclusion of Due Diligence Costs from the Make-Whole Obligation.* Another commenter argued that the make-whole contribution formula should be changed to allow the Plan to

recover its due diligence costs, "unless the Plan initiated the Timber Rights contribution activity."

In response to this comment, the Independent Fiduciary states that the due diligence process undertaken here is necessary for it and for UCF to fulfill the prudence obligations in connection with the acceptance of the Timber Rights as a Plan investment. If a cash contribution were received in place of the in kind contribution, and if it were similarly used to acquire private real estate assets, the Independent Fiduciary states that the Plan would incur similar costs in determining a prudent investment for the cash. Even if the Plan did not invest in real estate, the Independent Fiduciary explains that the Plan would likely incur costs in determining how to invest the cash through researching and performing due diligence on other investment opportunities. Therefore, the Independent Fiduciary concludes that it is in the interests of the Plan to incur these due diligence fees, which are reasonable since similar costs would be incurred even if the contribution were made in cash.

8. *Limiting Expenses for Operating the Timber Rights to Earnings from the Timber Rights.* A commenter suggested limiting expenses for operating the Timber Rights to earnings from the Timber Rights because the commenter argued that to do otherwise would violate the exclusive benefit provision of the Plan.

In response to this comment, the Independent Fiduciary states that the Timber Rights would be considered a Plan asset just like any other asset owned by the Plan, so that there is no reason to limit related expenses to related earnings. Using other Plan assets to cover Timber Rights expenses would be a use of Plan assets for the benefit of the Plan, consistent with the exclusive benefit requirement, according to the Independent Fiduciary. In any event, the Independent Fiduciary states that it anticipates positive cash flow net of expenses throughout the term of the Timber Rights, so it does not consider this matter to be an issue.

9. *Administrability and Feasibility of the Timber Rights.* A commenter questioned how the administrability and feasibility of the Timber Rights would be determined.

In response to this comment, the Independent Fiduciary indicated that it would make such determinations on behalf of the Plan.

10. *Disposal of the Timber Rights and Distribution of the Proceeds.* A commenter questioned who would determine whether to dispose of the

Timber Rights and distribute the sale proceeds.

In response to this comment, the Independent Fiduciary states that it will manage the disposition of the Timber Rights. The Department notes that the Independent Fiduciary will manage the disposition of the Timber Rights. However, UCF will retain the authority to appoint a Second Independent Fiduciary to determine whether to approve a proposed disposition disclosed to UCF by the Independent Fiduciary, or to determine whether to direct the Independent Fiduciary to make such disposition. As for the proceeds of any sale of the Timber Rights, the Independent Fiduciary states that they would go into the general assets of the Plan.

11. *Alternative Transactions and More "Stable" Products.*

A commenter asked whether alternative transactions and more stable investment products had been considered for potential investment by the Plan.

In response to this comment, the Independent Fiduciary states that the proposed contribution of Timber Rights represents a prudent opportunity for the Plan to expand and diversify its investments into an established asset class in which it does not currently invest. The Independent Fiduciary explains that these assets are available to the Plan only as a contribution in the form of Timber Rights, and under circumstances that permit the Plan to expend less in transaction costs than it otherwise would do in connection with a timber investment. The Independent Fiduciary also believes that the Timber Rights are a prudent and stable investment.

12. *Ownership of the Underlying Property.* A commenter asked whether US Steel owns the underlying Property.

In response to this comment, the Independent Fiduciary notes that US Steel owns the underlying Property in fee simple absolute.

13. *Environmental Due Diligence.* A commenter queried whether appropriate environmental due diligence had been performed on the Property underlying the Timber Rights.

In response to this comment, the Independent Fiduciary wishes to clarify that under the proposed transaction, the Plan is acquiring title only to the timber and is acquiring a contractual right to grow and harvest timber for a 99 year period under two Timber Cutting Agreements. In addition, the Independent Fiduciary states that the Plan will never be the owner of the surface or subsurface Property. Therefore, its practical exposure from

the perspective of potential environmental liability will be for any releases by the Plan or its agents.

The Independent Fiduciary explains that it engaged an environmental consultant, GeoSource, Inc., to perform a Phase I Environmental Site Assessment (ESA) of the Property in accordance with ASTM Standard E 1527-00 (Standard Practice for Environmental Assessments) and E 2247-02 (Standard Practice for Phase I Environmental Assessments for Forestland and Rural Property). In addition, the Independent Fiduciary indicates that outside environmental counsel to UCF reviewed the consultant's work and directed additional work to further expand the amount of information, as a result of which certain areas of environmental concern were excluded entirely from the proposed transaction. Based on the ESA, the Independent Fiduciary states that it advised the Plan to acquire Timber Rights only rather than to own the underlying Property or its surface or subsurface. In addition, the Independent Fiduciary notes that US Steel will indemnify the Plan against any liability arising out of any existing environmental conditions.

Moreover, the Independent Fiduciary states that it will take steps to address any potential exposure to the Plan to environmental liability from its timber operations. Based on the Phase I ESA and follow up investigation, the Independent Fiduciary indicates that areas of historical mining activities have been identified where timber harvesting will also take place. Together with environmental counsel, the Independent Fiduciary explains that it plans to develop a pollution prevention protocol for operations within these areas so that environmental concerns will be built into Plan-sponsored timber operations. The protocol will also address wetland and endangered species concerns, which protocols are customary for timber operators. Finally, the Independent Fiduciary notes that Larson & McGowin, the independent appraiser, has considered the impact of these requirements in valuing the Timber Rights.

14. *Compensation to the Plan for Loss in Timber Value Due to Mineral/Mining Activities.* A commenter questioned how the Plan would be compensated for the loss in timber value due to mineral or mining activities.

In response to this comment, the Independent Fiduciary points out that the Timber Agreements provide for compensation to the Plan for the loss of any timber to the extent mining operations require the removal of the

timber. In certain instances where the use is for a long term, where there is a risk of environmental contamination or where the Property will not be restored after the mining use, the Independent Fiduciary notes that US Steel or the mineral owner will be required to compensate the Plan for the permanent loss of the use of such Property, with the exception of surface ponds related to existing mineral operations which have been excluded.

15. *Replanting Costs.* A commenter asked who would pay the cost of replanting the acreage in a pine forest following a harvest anticipated in the next 10 years.

In response to this comment, the Independent Fiduciary states that the Plan will pay the cost of replanting, as it will continue to derive the economic benefit of such plantings under the 99 year term of the Timber Agreements. The Independent Fiduciary asserts that this cost was taken into account when Larson & McGowin completed the appraisal of the Timber Rights.

16. *Capacity of the Independent Fiduciary to Manage Timberland in Alabama.* A commenter expressed concern that while the Independent Fiduciary was qualified to manage timberland in the western United States and Canada, it had little or no experience with forest and land types present in Alabama.

In response to this comment, the Independent Fiduciary states that it has considerable experience relevant to the management of Alabama timberland. The Independent Fiduciary explains that it has been involved in the management of diverse timber types for over twenty years as a professional timber investment management organization, and that it is very experienced in providing a full range of management and fiduciary services. During that time, the Independent Fiduciary states that it was engaged by one of the largest industrial timberland owners in the Southeast to provide advice and counsel regarding timberland investment management strategies in the Southeast. Furthermore, one of the principal officers of the Independent Fiduciary assigned to the proposed Timber Rights contribution began his career as a forester trained in the southeastern United States nearly 25 years ago, receiving training specific to the predominant forest type associated with the US Steel Property.

The Independent Fiduciary explains that consistent with a proven strategy applied numerous times in the past, it sought out demonstrated forestry expertise in the local area for the purposes of assembling a team of highly

qualified foresters to provide UCF with state of the art forestry investment services on the Property. Furthermore, the Independent Fiduciary asserts that it has assembled a team of foresters that it believes are the most qualified individuals available to be part of its management team in Birmingham. For example, two of the three foresters on that team have over 20 years of experience managing timberland in the Birmingham/Tuscaloosa area.

17. *Litigation Risk.* One commenter expressed concern over the liability risk of lawsuits stemming from the Timber Rights, in particular, suits related to hunting activity associated with the Property.

In response to this comment, the Independent Fiduciary explains that according to the information provided by US Steel, there have only been two personal liability suits filed against US Steel involving the Property over the last ten years. The Independent Fiduciary explains that this is not unusual for a ten year period. It also notes that only one of those lawsuits was related to hunting.

The Independent Fiduciary states that the predominant strategy implemented by numerous industrial timberland managers and timber investment management organizations across the South to deal with hunting liability risk has been to lease hunting rights to private hunting clubs. The hunting clubs have an interest in utilizing the resource in a responsible manner, including assisting the land manager in controlling access to the property, responsible utilization of forest roads, managing the hunting activity of their members, and reporting any incidence of fire, arson, theft, etc. Furthermore, the Independent Fiduciary explains that liability insurance is typically required on the part of the hunting clubs to help manage the risks associated with these leases. As property manager, the Independent Fiduciary states that its goal will be to develop a prudent strategy for managing these liability risks. It states that it intends to examine the options and select the one that best balances the benefits to the Plan, such as income from hunting leases with the potential risks.

#### **Determination of the Department**

Accordingly, based upon the entire record, including the written comments received in response to the Notice, and the responses to the comments made by the Applicant and the Independent Fiduciary, the Department has determined to grant the exemption. The Department has also determined not to hold a public hearing. In the

Department's view, the comments did not raise any factual issues that were not adequately addressed by the Applicant or the Independent Fiduciary. Accordingly, the Department believes that no issues were identified by the commenters that would need to be further explored by a hearing. The Department notes that, in transactions of this nature, it has placed emphasis on the need for an Independent Fiduciary and on such Independent Fiduciary's considered and objective evaluation of the transactions. In its deliberations, which included its analysis of all aspects of the transactions, the Independent Fiduciary has consistently represented for the record that no contribution of Timber Rights will be accepted on behalf of the Plan unless such transactions are found by the Independent Fiduciary to be in the interests of the Plan. Finally, the Department notes that the Independent Fiduciary's satisfaction of its obligations is a critical factor in the Department's decision to grant a final exemption.

The exemption application pertaining to the final exemption, the Notice, the comments submitted to the Department and the responses to the comments, and all other documents submitted to the Department concerning this exemption have been included as part of the public record of the application. The complete application file (Exemption Application No. D-11191), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### **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 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 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of

the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the Plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) The availability of this exemption is subject to the express condition that the facts and representations contained in the application are true and complete and accurately describe all material terms of the transactions, which are the subjects of the exemption.

#### Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is:

- (a) Administratively feasible;
- (b) In the interests of the Plan and its participants and beneficiaries; and
- (c) Protective of the rights of the participants and beneficiaries of the Plan.

#### Section I. Covered Transactions

(A) 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, effective December 24, 2003, to the in kind contribution of certain timber rights (the Timber Rights), under two timber purchase and cutting agreements (the Timber Rights Agreements) to The United States Steel Corporation Plan for Employee Pension Benefits (the Plan) by the United Steel Corporation (US Steel), the Plan sponsor and a party in interest with respect to the Plan.

(B) 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, effective December 24, 2003, to the following ancillary transactions between the Plan and US Steel arising from certain rights retained by US Steel related to the timberland (the Property) on which the Timber Rights are based:

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

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

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

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

(5) Any additional ancillary transactions defined in Section III(e).

#### Section II. General Conditions

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

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

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

(c) The Independent Fiduciary manages the holding, disposition, and assignment of the Timber Rights and takes whatever actions it deems

necessary to protect the rights of the Plans with respect to the Timber Rights;

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

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

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

(g) The Plan pays no fees or commissions in connection with the Timber Rights contribution. (This condition does not preclude the Plan from paying the Independent Fiduciary's ongoing management fees once the contribution has been approved and accepted. It also does not restrict the Plan from paying the due diligence costs connected with the acquisition of the Property, such as the expenses for a title search, appraisal and environmental review.)

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

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

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

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

(j) The Independent Fiduciary, acting on behalf of the Plan, retains the right to sell or assign, in whole or in part, any of the Plan's Timber Rights interests to any third party purchaser.

Notwithstanding the above, UCF retains the authority to appoint a second independent fiduciary (the Second Independent Fiduciary) to determine whether to approve a proposed disposition, or to determine whether to direct the Independent Fiduciary to make a disposition.

### Section III. Definitions

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

(b) The term "affiliate" means:

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

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

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

(c) The term "control" means the power to exercise a controlling

influence over the management or policies of a person other than an individual.

(d) The term "Second Independent Fiduciary" means a fiduciary who meets the definition of an "Independent Fiduciary" in Section III(a) above, except that such fiduciary is appointed solely to oversee a disposition transaction as described in Section II(j) hereof.

(e) The term "additional ancillary transactions" refers to other transactions which may be entered into by the Plan and US Steel arising from rights retained by US Steel related to the Property on which the Timber Rights are based. These transactions include the following: (1) The allocation and contesting of property taxes, fees, licenses, fines and other charges or assessments imposed on the Plan, the Timber Rights or (as relevant) the Property; (2) the allocation of payments in connection with the granting of easements or use permits; (3) the use of timberlands in connection with government-mandated environmental cleanup or other construction or maintenance activities occurring on US Steel owned adjacent properties; (4) the negotiation by the Independent Fiduciary with US Steel of a premium price to be paid to the Plan to permit US Steel to buy out the Timber Rights on a parcel in order to sell the parcel to a third party; (5) the coordination between the Independent Fiduciary and US Steel of access to the Property on a continuing basis, such as where to place a gate or to whom to permit access; (6) the allocation of costs and responsibilities related to participation in cooperatives for fire protection, research on land use, or other matters relating to the Property and the Timber Rights; (7) the representation of the Plan in regulatory matters, such as changes in laws or regulations affecting the Property, that also would impact US Steel; (8) the allocation of insurance coverage for the Property and Timber Rights between the Plan and US Steel; (9) the joint hiring by, or the allocation of costs between, the Plan and US Steel of contractors to cut or maintain roads for fire protection or other joint uses; (10) the joint action by, or allocation of costs between, the Plan and US Steel to maintain Property boundaries, monitor for violations, and determine damages if any from third party trespass or other intrusion onto the Property; (11) the joint representation of the Plan and US Steel to an agency or other governmental body in the event of any regulatory dispute or other regulatory issue involving the Timber Rights and the Property; (12) working with

government agencies on environmental projects, enhancements, conservation easements, or similar matters that may affect the value of the Timber Rights and the Property; (13) the negotiation of a joint sale of the Timber Rights owned by the Plan and the underlying Property owned by US Steel to a third party; (14) the enforcement and settlement arising from US Steel's obligations under the Timber Rights Agreements; and (15) the joint defense and prosecution of lawsuits involving the Timber Rights and/or the Property.

*Effective Date:* This exemption is effective as of December 24, 2003.

For a more complete statement of the facts and representations supporting the Department's decision to grant this final exemption, refer to the proposed exemption which is cited above.

Signed at Washington, DC, this 30th day of September, 2003.

**Ivan L. Strasfeld,**

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

[FR Doc. 04-52 Filed 1-2-04; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03-164]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that JFC Technologies has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,359,107, entitled "Composition Of And Method For Making High Performance Resins For Infusion And Transfer Molding Processes"; which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

**DATES:** Responses to this notice must be received by January 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Robin W. Edwards, Patent Attorney, Mail Stop 212, NASA Langley Research Center, Hampton, VA 23681-2199.