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Modifications to General Wage Determination Decisions

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General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 6th day of November 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98-30233 Filed 11-12-98; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-54; Application Number D-09643]

Class Exemption Relating to Certain Employee Benefit Plan; Foreign Exchange Transactions Executed Pursuant to Standing Instructions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974

(ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The class exemption permits certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers which are parties in interest with respect to such plans, pursuant to standing instructions. The exemption affects participants and beneficiaries of employee benefit plans involved in such transactions, as well as banks and broker-dealers which act as dealers in foreign exchange.

EFFECTIVE DATES: Section II is effective for transactions occurring from June 18, 1991 to January 12, 1999. Section III is effective for transactions occurring after January 12, 1999.

FOR FURTHER INFORMATION CONTACT:

Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 219-8971 (not a toll-free number) or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 219-4600, ext. 105 (not a toll-free number).

Paperwork Reduction Act Analysis: Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13, 44 U.S.C. Chapter 35 and 5 CFR Part 1320, the information collection request (ICR) in this class exemption was published for public comment on February 3, 1997 (62 FR 5051). Based upon information received by the Department of Labor (the Department), the estimated information collection burden has been adjusted (see Respondents and Proposed Frequency of Response and Estimated Annual Burden, below). The Office of Management and Budget (OMB) has approved this ICR with the control number OMB 1210-0111, which expires on November 30, 2001. Persons are not required to respond to this ICR unless it displays a currently valid OMB control number.

Respondents and Proposed Frequency of Response: The Department staff estimates that approximately 35 parties will seek to take advantage of the class exemption in any given year. The respondents will be banks and broker-dealers acting as fiduciaries of plans which engage in foreign exchange transactions with such plans.

Estimated Annual Burden: The Department staff estimates the annual burden hours for preparing disclosure materials and maintaining records required under the class exemption to be 4,200 hours.

Supplementary Information

The proposed exemption was initially requested in an application dated July

18, 1984 (Application No. D-5700), submitted by the American Bankers Association (ABA) pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Pursuant to the foregoing authority, the Department proposed additional conditions with respect to the relief requested by the Applicant.

On February 17, 1994, the Department granted PTE 94-20 (59 FR 8022), a class exemption which permits purchases and sales of foreign currencies between employee benefit plans and certain banks or broker-dealers which are parties in interest with respect to such plans provided that such transactions are directed by a plan fiduciary who is independent of the bank or broker-dealer and the other conditions of the exemption are met. PTE 94-20 provides an exemption from the prohibited transaction restrictions of section 406(a)(1)(A) through (D) of the Act and from the sanctions resulting from section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code. PTE 94-20 did not provide relief for all of the transactions described in the 1984 ABA exemption request.

In response to the notice of proposed exemption for PTE 94-20, a number of commenters (the Commenters) expressed concern regarding the lack of relief for foreign exchange transactions executed pursuant to standing instructions. As explained in greater detail in the preamble to PTE 94-20, the Commenters requested that the Department expand the exemption to include retroactive and prospective relief for foreign exchange transactions entered into pursuant to a "standing authorization" (hereinafter standing instruction). Many of the Commenters also requested that the Department amend the definition of the term "directed transaction" by modifying the requirement that the independent plan fiduciary effect the foreign exchange transaction at a specific exchange rate.

The Commenters represented that the utilization of standing instructions is an integral component in foreign exchange transactions involving employee benefit plans. In this regard, the Commenters indicated that, without the ability to execute foreign exchange transactions with plans pursuant to standing instructions, plans would lose investment income and incur higher exchange rates on small transactions.

Based upon the comments and additional information received following publication of the proposal to PTE 94-20, the Department concluded

that it might be appropriate, under limited circumstances, to provide relief from section 406(b)(1) and (b)(2) of the Act for foreign exchange transactions entered into pursuant to standing instructions. However, pursuant to the requirements of section 408(a) of the Act, the Department is required to offer interested persons an opportunity to present their views and an opportunity to request a hearing before granting an exemption from section 406(b) of the Act. Therefore, in order not to have delayed the publication of PTE 94-20, the Department determined to separately consider exemptive relief from sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act for foreign exchange transactions between a plan and a party in interest bank or, broker-dealer where such transactions are engaged in pursuant to a standing instruction.

During the Department's consideration of the standing instruction issue, the ABA made a supplemental submission on September 1, 1992, in which they limited their request for relief for standing instruction transactions and suggested additional conditions regarding such transactions. Over the course of the following two years, the Department solicited further information from the ABA and other interested parties. As a result of the suggestions and comments received from those parties, as well as the imposition of additional conditions by the Department, the Department believed that a number of its concerns regarding standing instruction¹ transactions have been addressed.

On February 3, 1997, the Department published a notice in the **Federal Register** (62 FR 5051) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code for foreign exchange transactions, between a bank or broker-dealer and an employee benefit plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction.

The notice of pendency gave all interested persons an opportunity to submit written comments or request a public hearing on the proposed class exemption by April 4, 1997. The Department received three public comment letters and no requests for a public hearing in response to the notice.

¹ For a discussion of those Comments, see the proposed exemption at 62 FR 5052-54.

Upon consideration of the record as a whole, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the comments are discussed below.

Discussion of the Comments

Section III(i) of the proposed exemption contains a condition which requires that a bank or broker-dealer which engaged in a covered transaction, furnish the authorizing plan fiduciary with a confirmation statement for each covered transaction. The confirmation statement must disclose the time of the exchange.² All of the Commenters objected to this requirement. According to the Commenters, time stamping confirmation statements is not a current industry practice, nor a practice which could be easily implemented. The Commenters indicated that the cost of disclosing the time of the transaction on the confirmation statements would far outweigh any benefits to be gained.

One Commenter explained in greater detail why the inclusion of the time on the confirmation statement was not only impractical but also unresponsive to our concern that a plan fiduciary be able to monitor the rates charged in foreign exchange transactions. According to the Commenter, a time-stamp enables a plan to look at the rates available at the time stamped, without regard to whether those rates would have been available for transactions the size of that particular plan's transaction. In addition, the information may be misleading because the trade may or may not have been batched with other trades to achieve a better rate for the client plan. Where trades are aggregated prior to conversion, it may take several hours before the investment manager desegregates the trades and allocates pieces to each of its clients. The trade is not time-stamped until it has been allocated to each client and booked into the trade entry system. The trade entry system uses a current time-stamp and cannot be manipulated to reflect the time when the actual transaction occurred. Thus, the rate at the time that the order is stamped may have nothing to do with the rate at which the trade was executed.

In addressing the Department's concern regarding the ability of plan fiduciaries to monitor the rates charged in foreign exchange transactions, the

²Under the proposal, this requirement would be deemed satisfied if the bank or broker-dealer engaged in the covered transactions only once a day and the time of such conversions is set forth in the bank's or broker-dealer's written policies and procedures which are provided to the independent plan fiduciary.

Commenter noted that there are a variety of sources from which foreign exchange price quotes are available. These include Reuters, electronic brokerage systems and the Internet. The Commenter indicated that the foreign exchange market is very transparent as a result of new technologies and that any plan which engages in foreign exchange trading can easily access at least one of the sources of foreign currency rates. Thus, plan fiduciaries have the ability to monitor prices for trades by reviewing the highs and lows of the day as displayed on one of the reporting services. In addition, the Commenter noted that in order to comply with banking safety and soundness requirements, banks must have a system for detecting trades which are off market i.e., whose currency spreads deviate significantly from other trades in the same currency. These internal safeguards enable a bank to monitor its own traders to maintain the integrity of their foreign currency pricing systems.

The Department has considered the comments regarding the requirement for inclusion of the time of the transaction on the confirmation statement and has determined to delete this requirement from the final exemption.

The Department wishes to point out that ERISA's general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this class exemption. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion.³ Specifically, the investment manager or independent plan fiduciary must be capable of periodically monitoring the actions taken by the bank or broker-dealer in the course of its execution of foreign exchange transactions pursuant to standing instructions. In considering whether to authorize a bank or broker-dealer to execute foreign exchange transactions pursuant to standing instructions, a fiduciary should take into account its

³The investment manager or other independent plan fiduciary must act prudently with respect to the decision to enter into such an arrangement, such as considering the effect of restrictions on funds transfers by foreign governments, as well as to the negotiation of the specific terms under which the bank or broker-dealer will engage in foreign exchange transactions on behalf of the plan including whether the bank or broker-dealer may use non-affiliated foreign custodians. In addition, the investment manager or other independent plan fiduciary must fully understand the benefits and risks associated with engaging in foreign exchange transactions pursuant to standing instructions, following disclosure by the bank or broker-dealer of all relevant information.

ability to provide adequate oversight of the bank or broker-dealer.

Under section I of the proposed exemption, relief was provided for transactions involving income item conversions, as well as for *de minimis* purchase or sale transactions. The definition of "income item conversion" under section IV(g) was limited to transactions involving the exchange of income conversion items into U.S. dollars. The Department imposed this limitation because of concerns regarding the ability of a bank to maintain converted funds in an interest bearing account. The ABA requested that the Department expand the scope of the final exemption to include the conversion of foreign denominated income receipts into another foreign currency pursuant to standing instructions. The Commenter represents that plans benefit from foreign exchange conversions under standing instructions because the foreign exchange trades can be done quickly and the plans can begin to earn interest on the funds as soon as possible. The ABA further represents that some financial institutions have interest bearing investments or investment pools that will accept currencies that are not U.S. dollars. Accordingly, the ABA suggested that the Department modify the final exemption to permit the conversion of income items into non-U.S. dollars under any of the following circumstances: (1) Income items which are received in a foreign currency are exchanged into another foreign currency and the exchanged funds are held in an interest bearing investment vehicle pending further investment instruction; (2) the conversion is executed pursuant to a standing instruction and the reinvestment of the exchanged foreign currency occurs within a prescribed period of time, such as 24 hours; and (3) the standing instruction directs that an income item be converted from one foreign currency into another foreign currency. According to the ABA, plans will receive the benefit of only going through one conversion instead of two, thus, saving the cost of one foreign exchange transaction. In this regard, the Department is unable to conclude that income item conversions into non-U.S. dollars should be permitted under the final exemption if the plan is not able to earn interest on the conversion amounts which are held by the bank for more than 24 hours after conversion. We note, however, that such conversions may be appropriate where interest is earned on amounts held for more than 24 hours after conversion as long as the bank does not determine the non-U.S.

currency into which the income item is converted. Accordingly, the Department has determined to modify the definition of the term income item conversion in the final exemption to provide relief for transactions in which the bank has a standing instruction that requires the conversion of income items from one foreign currency into another foreign currency and either the converted funds are transferred to an interest bearing account within 24 hours of the conversion and held therein pending further investment direction from the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan. In response to the Commenter's third suggestion, the Department does not believe that the Commenter has adequately demonstrated that such further relief is warranted. Therefore, the Department has determined not to adopt the Commenter's last suggestion.

Section IV (g) and (h) of the proposed exemption define the terms "income item conversion" and "de minimis purchase or sale transaction" to limit relief to transactions involving no more than 100,000 in U.S. dollars or the equivalent thereof for each transaction. Two Commenters urged the Department to reconsider the \$100,000 limitation for such transactions. The ABA stated that the \$100,000 limitation may add costs to employee benefit plan foreign exchange transactions. It was explained, for example, that banks may hold foreign securities through a global custody network of affiliated and non-affiliated subcustodians. Under these circumstances, securities issued in a foreign country are commingled with the securities of a number of the bank's clients and held in omnibus accounts at the bank's subcustodians in that foreign country. For tax reasons, omnibus accounts may be further divided into several subaccounts maintained at the subcustodians. According to the Commenter, foreign exchange conversions are transacted at either the omnibus account level or the subaccount level to expedite the conversion and to enable the conversion to be bundled. Since the process of allocating income items to individual accounts is not done until after the conversion takes place, a bank would not know the amount of any particular plan's assets that are involved at the time of the foreign exchange transaction. Thus, the Commenter noted that a bank could not determine whether a transaction met the \$100,000 limitation proposed by the Department for income conversions. The Commenter argues that, if a plan was unable to take

advantage of the omnibus or subaccount system, the plan would be precluded from receiving the benefit of bundling its income conversion items with the bank's other customers to get a more favorable foreign exchange rate. In addition, the Commenters represent that plans would incur increased custody costs if the omnibus or subaccounts system was not available for plan foreign exchange transactions.

Both Commenters urged the Department to raise the dollar limitation for *de minimis* purchases and sales and income conversions. According to the Commenters, \$100,000 is no longer an adequate limitation for either purchase and sale transactions or income conversions. The ABA suggested that the Department adopt a floating cap based on the size of a plan's total assets. Under this approach, a plan with \$50 million or more in total assets would be limited to \$500,000 under the exemption. Plans with total assets of less than \$50 million would be limited to \$100,000 for each foreign exchange transaction. As an alternative suggestion, the Commenter urged the Department to raise the dollar limitation to \$500,000 and inform small plans in the preamble to the final class exemption that it may be prudent to utilize standing instructions with a lower dollar limit.

One of the major reasons cited by the ABA for the utilization of standing instructions by plans was that obtaining specific directions from plans for relatively small transactions was time consuming and not in the best interests of plans because of increased transaction costs. At the time the Department proposed relief for income item conversions and *de minimis* purchases and sales, such relief was based on the premise that the exemption would only cover transactions involving the receipt of relatively small amounts of foreign currency. In this regard, the conditions proposed by the Department were specifically designed to address foreign exchange transactions in the context of small transactions. Although the ABA initially suggested a \$500,000 limitation, the Department believed at the time that a limitation of \$100,000 was a more appropriate measure for transactions which are intended to be relatively small. The Department recognizes that, over the past several years, plans have increased foreign investments so that \$100,000 may no longer be an appropriate limitation for income item conversions or *de minimis* purchases and sales. However, the Department is not persuaded by the argument that a foreign exchange transaction involving \$500,000 should

be properly viewed as a small transaction for purposes of this exemption. After considering the issue, the Department has decided to modify the final exemption to increase the limitation to \$300,000. The Department believes that increasing the dollar limitation to \$300,000 will make it easier for those banks which use the omnibus/subaccount system to monitor the amount of a plan's assets which are involved in a foreign exchange transaction. In addition, a \$300,000 limitation will ensure that the transactions that a plan is permitted to engage in pursuant to this exemption will only be those which are relatively small. Accordingly, the Department has modified the definitions of the terms "income item conversion" and "*de minimis* purchase or sale transaction" to increase the dollar limitation to no more than 300,000 in U.S. dollars or the equivalent thereof.⁴

Sections II(d) and III(d) of the proposed class exemption require banks and broker-dealers to maintain written policies and procedures regarding the handling of foreign exchange transactions for plans which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan. A Commenter represents that, since a subaccount typically holds the securities of a number of customers which are not ERISA covered plans, foreign exchange traders would not always know whether the funds involved in a specific foreign exchange transaction contain plan assets. It is the view of the Department that sections II(d) and III(d) will be deemed satisfied if bank policies and procedures for handling foreign exchange transactions require the bank or broker-dealer to always assume that foreign exchange trades of amounts held in subaccounts involve plan assets.

Section III(h) of the proposed exemption required that the written policies and procedures provided to the authorizing fiduciary disclose the time(s) each day that the bank or broker-dealer will establish the specific rate of exchange or the range of exchange rates, as well as the time(s) that the conversions will take place. The ABA requested that the Department clarify whether this condition requires that a

⁴ Although the Department believes that the \$300,000 limitation is appropriate for large plans that purchase and sell foreign securities, it further notes that such dollar limitation may not be appropriate for smaller plans (e.g., plans with aggregate plan assets of less than \$50 million). It is the responsibility of the investment manager or other plan fiduciary, consistent with its duties under section 404 of ERISA, to utilize standing instructions with a dollar limitation that is prudent under the particular circumstances.

bank with several locations in different time zones engage in foreign exchange transactions at all locations at the same time period based on a specific time zone (i.e., 10:00 a.m. New York and 4 p.m. London).

The Department notes that the purpose of this condition is to provide the authorizing fiduciary with the information necessary to effectively monitor the rates that the plans are charged. The Department does not interpret this condition to require that a bank's foreign exchange desks located in different time zones establish foreign exchange rates simultaneously with their U.S. affiliate. Accordingly, nothing contained in section III(h) would preclude a bank or broker-dealer from setting exchange rate(s) at different times if the bank or broker-dealer engages in foreign exchange transactions at locations in different time zones, provided that this information is provided to the authorizing fiduciary.

Two Commenters requested that the Department delete the requirement under section III(f) of the proposal that a non-affiliated custodian provide notice to the bank or broker-dealer that good funds have been received no later than two business days following receipt of such funds by the foreign custodian. The Commenters noted that, while non-affiliated subcustodians are generally required to send notice promptly, the banks do not control the actions of their non-affiliated subcustodians and thus cannot monitor or control when notice of good funds will be provided. The Commenters also noted that even absent this requirement, conversions will still have to be executed by the bank either at the next scheduled time for such transactions following receipt of notice from the non-affiliated subcustodian that good funds have been received or under some circumstances not more than 24 hours after receipt of such notice.

After considering the comments, the Department has determined to delete this requirement as it pertains to non-affiliated custodians of the bank or broker-dealer. In this regard, the Department expects the bank or broker-dealer to act prudently with respect to the selection and continued retention of a non-affiliated foreign custodian. Any such determination should reflect the capability of the foreign affiliate to promptly notify the bank or broker-dealer of its receipt of good funds.

The prospective conditional relief under the proposal is effective for covered transactions entered into after May 5, 1997. The ABA urged the Department to delay application of the prospective conditions of the exemption

for sixty days after publication of the final class exemption. According to the ABA, the banking industry needs sufficient time to change their practices to meet the requirements and conditions of the final exemption. The Department finds merit in this comment and has modified the final exemption to make the prospective conditions effective sixty days after publication of this final class exemption.

The proposed exemption provided conditional retroactive relief for foreign exchange transactions which were executed pursuant to standing instructions from June 18, 1991, until May 5, 1997. The ABA questioned why the Department did not provide retroactive relief for transactions which were executed pursuant to standing instructions prior to June 18, 1991.

The Department does not believe that the Commenter has sufficiently demonstrated the need for an earlier effective date. Therefore, the Department cannot conclude that an earlier effective date is warranted.

One Commenter expressed concern regarding the provision in section III(g)(1) of the proposed class exemption which limits the number of times per day that a bank or broker-dealer could establish a rate of exchange or a range of rates to be used for transactions covered by the exemption. The Commenter stated that they could see no purpose in this limitation. Moreover, the Commenter believes that in highly active markets it would not be in the best interests of plans to set an arbitrary limit.

The Department finds merit in the Commenter's argument and has determined to delete this limitation from the final exemption. We note, however, that the written policies and procedures provided to the authorizing fiduciary must disclose, among other things, the time(s) each day that the rate(s) will be established.

One Commenter requested that the final exemption be expanded to include relief for "a limited standing instruction," in order to permit transactions to occur at market prices within one business day after the instruction is given without the requirement that a specific amount of foreign currency and a specific exchange rate be directed, provided that a fiduciary independent of the broker-dealer specifies a price range and a quantity range in which the transaction should be conducted. The Department does not believe that it has sufficient information on the record at this time to make the findings necessary to provide further exemptive relief. Moreover, the Department does not believe that a

sufficient showing has been made that the conditions suggested by the Commenter would adequately protect the interests of participants and beneficiaries of plans which engage in transactions pursuant to the limited standing instructions. Finally, we note that while the class exemption is only available to banks, broker-dealers and their domestic affiliates, many of the conditions in the exemption apply to both domestic and foreign affiliates. Accordingly, we have added a new paragraph (l) which defines the term "foreign affiliate", to the final class exemption to clarify this distinction.

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 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 require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests 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) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans.

(3) The class exemption is applicable to a transaction only if the conditions specified in the class exemption are met; and

(4) The class exemption is supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Exemption

Accordingly, the following exemption is granted 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I Covered Transactions

(a) For the period from June 18, 1991 to January 12, 1999, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Employee Retirement Security Act of 1974 (ERISA or the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the following foreign exchange transactions, between a bank or broker-dealer and an employee benefit plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

- (1) An income item conversion; or
- (2) A *de minimis* purchase or sale transaction.

(b) Effective after January 12, 1999, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the following foreign exchange transactions, between a bank or broker-dealer, and an employee benefit plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section III below are met:

- (1) An income item conversion; or
- (2) A *de minimis* purchase or sale transaction.

Section II Retroactive Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank or the broker-dealer in comparable arm's length foreign exchange transactions involving unrelated parties.

(c) Neither the bank, the broker-dealer nor any foreign affiliate thereof, has any discretionary authority or control with

respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the investment of those assets.

(d) The bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(e) The exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction did not deviate by more than 10% (above or below) the interbank bid and asked rates at the time of the transaction as displayed on Reuters or another independent service in the foreign currency market for such currency; provided, however, that a prohibited transaction shall not be deemed to have occurred solely because records demonstrating compliance with this section with respect to specific transactions have been lost, destroyed or are not available to the bank or broker-dealer. Nothing in this section shall be deemed to relieve the bank or broker-dealer of its responsibility to demonstrate compliance with the conditions of this exemption.

(f) A written confirmation statement is furnished with respect to each covered transaction to the independent plan fiduciary that authorized the standing instruction. The confirmation statement shall include:

- (A) Account name;
- (B) Transaction date;
- (C) Exchange rates;
- (D) Settlement date;
- (E) Currencies exchanged;
- (i) Identity of foreign currency sold;
- (ii) Amount sold;
- (iii) Identity of currency purchased; and
- (iv) Amount purchased.

The confirmation shall be issued in no event more than 5 business days after execution of the transaction.

Section III Prospective Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the

bank or broker-dealer in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) Neither the bank, the broker-dealer, nor any foreign affiliate thereof has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the investment of those assets.

(d) The bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of the bank or broker-dealer engaging in the covered transaction or any foreign affiliate thereof. The written authorization must specify:

- (1) The identities of the currencies in which covered transactions may be executed; and
- (2) That the authorization may be terminated by either party without penalty on no more than ten days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by the bank or broker-dealer that such items are good funds, and a foreign custodian which is an affiliate of the bank or broker-dealer, provides such notice to the bank or broker-dealer within "one business day" of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either the bank or broker-dealer receives notice from a foreign custodian that the proceeds of a sale of foreign securities denominated in foreign currency are good funds, or the direction to acquire foreign currency was received by the bank or broker-dealer, and a foreign custodian which is an affiliate of the bank or broker-dealer, provides such notice to the bank or broker-dealer within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, the bank or broker-dealer establishes either a rate of exchange or a range of rates to be used

for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by the bank or broker-dealer from the foreign custodian that such funds are good funds. If it is the policy of the bank or broker-dealer to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of the bank or broker-dealer to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by the bank or broker-dealer for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market, for such currency at the time such range of rates is established by the bank or broker-dealer.

(h) Prior to the execution of the authorization referred to in paragraph (e), the bank or broker-dealer provides the independent fiduciary with a copy of the bank's or broker-dealer's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that the bank or broker-dealer will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. The bank or broker-dealer shall include a description of the methodology that the bank or broker-dealer uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income item conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income item conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that the bank or broker-dealer aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which the bank's or broker-dealer's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(i) The bank or broker-dealer engaging in the covered transaction furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

1. With respect to income item conversions, the confirmation shall disclose the following information:

- (A) Account name;
- (B) Date of notice that good funds were received;
- (C) Transaction date;
- (D) Exchange rate;
- (E) Settlement date;
- (F) Identity of foreign currency;
- (G) Amount of foreign currency sold;
- (H) Amount of U.S. dollars or other currency credited to the plan; and

2. With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

- (A) Account name;
- (B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received;
- (C) Transaction date;
- (D) Exchange rates;
- (E) Settlement date;
- (F) Currencies exchanged:

- i. Identity of the currency sold;
- ii. The amount sold;
- iii. Identity of the currency purchased; and
- iv. The amount purchased;

(j) The bank or broker-dealer, maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (l) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific

exchange rate or range of exchange rates the bank or broker-dealer established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's or broker-dealer's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the bank or broker-dealer shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained by the bank or broker-dealer, or are not made available for examination by the bank or broker-dealer, or its affiliate as required by paragraph (k) of this section.

(k)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) of this Section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine a bank's or broker-dealer's trade secrets or commercial or financial information of a bank or broker-dealer, which is privileged or confidential.

Section IV Definitions and General Rules

For purposes of this exemption,

(a) A *foreign exchange transaction* means the exchange of the currency of one nation for the currency of another nation.

(b) The term *standing instruction* means a written authorization from a plan fiduciary, who is independent of the bank or broker-dealer engaging in the foreign exchange transaction and any foreign affiliate thereof, to the bank or broker-dealer to effect the transactions specified therein pursuant

to the instructions provided in such authorization.

(c) A *bank* means a bank which is supervised by the United States or a State thereof, or any domestic affiliate thereof.

(d) A *broker-dealer* means a broker-dealer registered under the Securities Exchange Act of 1934, or any domestic affiliate thereof.

(e) A *domestic affiliate* of a bank or broker-dealer means any entity which is supervised by the United States or a State thereof and which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

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

(g) An *income item conversion* means: (1) The conversion into U.S. dollars of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by the bank or broker-dealer on behalf of the plan from the plan's foreign investment portfolio; or (2) the conversion into any currency as required and specified by the standing instruction of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends, or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by the bank or broker-dealer on behalf of the plan from the plan's foreign investment portfolio, provided that the converted funds are either transferred to an interest bearing account which provides a reasonable rate of interest within 24 hours of the conversion and held therein pending reinvestment by the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan.

(h) A *de minimis purchase or sale transaction* means the purchase or sale of foreign currencies in an amount of no more than 300,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(i) For purposes of this exemption the term *employee benefit plan* refers to a pension plan described in 29 CFR

§ 2510.3-2 and/or a welfare benefit plan described in 29 CFR § 2510.3-1.

(j) For purposes of this exemption, the term *good funds* means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(k) For purposes of this exemption, the term *business day* means a banking day as defined by federal or state banking regulations.

(l) For purposes of this exemption, the term *foreign affiliate* of a bank or broker-dealer means any non-U.S. entity which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

Signed at Washington, DC this 6th day of November 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98-30291 Filed 11-12-98; 8:45 am]

BILLING CODE 4510-29-P

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE PUBLIC MEETING

Establishment of the Medicare Commission Included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report

The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register**.

The National Bipartisan Commission on the Future of Medicare will hold a public meeting on Wednesday, December 2 and possibly on Thursday, December 3, 1998 at the Dirksen Senate Office Building, Room 106, Washington, DC. Please check the Commission's web site for additional information: [http:// Medicare.Commission.Gov](http://Medicare.Commission.Gov)

Wednesday, December 2, 1998

1:00 pm-5:00 pm

Tentative Agenda:

Members of the Commission to discuss pending issues.

(Tentative date for additional meeting)

Thursday, December 3, 1998

9:30 pm-11:30 am

Tentative Agenda:

Members of the Commission to discuss pending issues.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202-252-3380.

Authorized for publication in the **Federal Register** by Julie Hasler, Office

Manager, The National Bipartisan Commission on the Future of Medicare.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 98-30342 Filed 11-12-98; 8:45 am]

BILLING CODE 1132-00-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-388]

PP&L, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PP&L, Inc. (the licensee) to withdraw its June 17, 1998, application for proposed amendment to Facility Operating License No. NPF-22 for the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The proposed amendment would have revised the Susquehanna Steam Electric Station's Technical Specifications (TSs) to add notations to TSs 3.3.7.5, 4.3.7.5, 3.4.2, and 4.4.2 that the acoustic monitor for safety relief valve "J" may be inoperable beginning June 15, 1998, until the next unit shutdown of sufficient duration to allow for containment entry, not to exceed the ninth refueling and inspection outage (spring 1999).

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 23, 1998 (63 FR 34200). However, by letter dated July 13, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 17, 1998, and the licensee's letter dated July 13, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 5th day of November 1998.