and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Clark County service center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a multi-use service center. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 16, 2002.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–29826 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ET, CARI 04221 01]

Notice of Proposed Modification of Withdrawal, and Transfer of Administrative Jurisdiction, and Opportunity for Public Meeting; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy has filed an application to modify Public Land Order 3457, which withdrew 1,078.81 acres of public lands on behalf of the Department of Navy for use as a Microwave Space Relay Station. The Department of the Navy has requested that the withdrawal be changed to allow the land to be used as a mountain warfare training site. The Department of the Navy also requested that the administrative jurisdiction for the land be permanently transferred to them. Public Land Order 3457 was published in the **Federal Register** on October 7, 1964 (29 FR 13815). The land has been and will remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by February 24, 2003.

ADDRESSES: Comments and meeting requests should be sent to Howard K. Stark, Chief, Branch of Lands Management (CA–930), Bureau of Land Management, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, 916–978–4675.

SUPPLEMENTARY INFORMATION:

1. The Department of the Navy has filed an application to modify Public Land Order 3457, which withdrew the following described public land from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights for military purposes:

San Bernardino Meridian

T. 17 S., R. 5 E.,
Sec. 23, lot 2, E½SW¼ and SE¼;
Sec. 24, lots 20 and 22, and SW¼;
Sec. 25, W½;
Sec. 26, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼.

The area described contains 1,078.81 acres in San Diego County.

2. The Department of the Navy has requested that the administrative jurisdiction of the land described above in paragraph 1 be permanently transferred to the Department of the Navy, so that the land can be managed for use as a mountain warfare training site and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights.

3. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, objections, or requests for public meetings in connection with the proposed actions described in this notice, may present their views in writing to the Chief, Branch of Lands Management, California State Office, Bureau of Land Management, at the address listed above. If the authorized officer determines that a public meeting should be held, it will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the time and place would be published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

4. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

5. The subject land is currently withdrawn for the Department of the Navy for military purposes and therefore is segregated from settlement, sale, location, or entry under the general land laws, location and entry under the United States mining laws, and the operation of the mineral leasing laws. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land, as determined by the Bureau of Land Management and the Department of the Navy.

Dated: September 19, 2002.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 02–29822 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Final Judgment in United States v. The Manitowoc Co., Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States hereby publishes the two public comments on the proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.,* Civil No. 1:02 CV 01509 (RL), filed in the United States District Court for the District of Columbia, together with the government's responses to the comments.

On July 31, 2002, the United States filed a Complaint that alleged that The Manitowoc Company Inc.'s proposed acquisition of Grove Investors, Inc. (and its subsidiary, National Crane Corp.) would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in production and sale of medium- and heavy-lift boom trucks in North America. The proposed Final Judgment, requires the defendants to divest either Manitowoc's

or Grove's boom truck business to a purchaser acceptable to the United States.

Public comment was invited within the statutory 60-day comment period. The public comments and the United State's responses thereto are hereby published in the **Federal Register**, and shortly thereafter these documents will be attached to a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act and filed with the Court, together with a motion urging the Court to enter the proposed Judgment. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. (The United State's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act will be made available at the same locations shortly after they are filed with the Court.) Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

U.S. Department of Justice, Antitrust Division

November 11, 2002.

Mr. Richard M. Beine,

President, Busey Truck Equipment, Inc., 1840 S. Farmington Road, Jackson, M0 63755.

Re: Comment on Proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.,* No. 1:02CV01509 (D.C.C., filed July 31, 2002).

Dear Mr. Beine: This letter responds to your September 25th letter, commenting on the proposed Final Judgment submitted for entry in the above case. The government's Complaint in the case charged that a combination of Manitowoc and Grove would substantially reduce competition in production and sale of medium- and heavy-lift boom truck in North America. The proposed Judgment would resolve these competitive concerns by requiring defendants promptly to divest either Manitowoc's Grove's boom truck business.

In your comment, you observed that defendant Manitowoc has consistently failed to provide support for its line of unloader and tailgator products. In February 2002, long before the government filed its proposed Judgment in this case, you offered to purchase this line of products from Manitowoc. Manitowoc, however, has failed to respond to your offer.

The gravamen of Busey Truck's complaint is Manitowoc's apparent unwillingness to sell its unloader and tailgator product lines. However, we can find no competitive justification for requiring a divestiture of Manitowoc's unloader and tailgator product lines. Unloaders and tailagors are small material handling vehicles similar to forklifts that are primarily used for loading and unloading delivery trucks and in warehouse stocking operatings. The United States is unaware of any evidence that suggests a combination of Manitowoc and Grove would adversely affect competition in the production and sale of unloader and tailgator products. Unloaders and tailgators are, at best, minor complements to, not competitive alternatives for, medium- and heavy-lift boom trucks. Divestitures of unloader and tailgator product lines unloader and tailgator product lines is not required either to cure an alleged violation or to ensure the viability of the divested boom truck assets. The Judgment, as currently written, fully addressed the competitive issues raised by Manitowoc's acquisition of Grove's boom truck business.

Thank you for bringing your concern to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Busey Truck Equip., Inc.

J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, US Department of Justice, 1401 H Street NW Suite 3000, Washington DC 20530.

September 25, 2002.

Re: The Manitowoc Co., Inc.

Dear Sir: In February 2002, we had our attorney prepare a letter of intent to the Manitowoc Co to express our interest in purchasing the Trolley Boom Line (Unloaders, tailgators) of products. They have never responded to our letter of intent. May 1, 2002 FEMCO a subsidiary of the Manitowoc Co informed us they would be taking over management of this line of products.

Our primary interest in acquiring the Trolley Boom Line (unloaders, tailgators) of products is because Manitowoc has continuously failed to provide the product support needed for this product as it is such a small part of their conglomeration. Sir, these trolley booms are our business' lifeblood.

When we tried to purchase this line in February we had the support of all of the dealers that already sell this line. They believe we can continue on the great USTC name of these trolley booms.

We are still interested in the purchase of the Trolley Boom Line of products. We have the expertise and experience needed to support this product line. However we have no interest in the purchasing of the Boom Truck Line ran out of Georgetown TX.

We trust these comments are relevant to your inquiry of the Manitowoc Co Inc. Please contact us if you need any other information.

Thank you,

Richard M. Beine,

President,

rbeine@atprs.net.

U.S. Department of Justice, Antitrust Division

November 11, 2002.

Mr. S.M. Oliva,

President, Citizens for Voluntary Trade, 2000 F Street, NW, Suite 315, Washington, DC 20006.

Re: Comment on Proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.,* No. 1:02CV01509 (D.D.C., filed July 31, 2002).

Dear Mr. Oliva: This letter responds to the comment on the proposed Final Judgment (''Judgment''), which you submitted on behalf of Citizens for Voluntary Trade (''CVT''), a nonprofit association that purportedly provides supporters of capitalism and individual rights an opportunity to participate in public policy discussions related to antitrust and government regulation of business. The Complaint in this case charged that a combination of Manitowoc and Grove would substantially reduce competition in medium- and heavy-lift boom trucks. The proposed Judgment would resolve the serious competitive concerns by requiring defendants to divest either Manitowoc's or Grove's boom truck business.

In its comment, CVT asserted that the Court should not require defendants to divest either Manitowoc's or Grove's boom truck business until after the United States demonstrates that defendants' combination actually will result in higher prices charged to purchasers of medium- and heavy-lift boom trucks. Even then, CVT contends, the Court should not order a divestiture since consumers can simply decide not to purchase boom trucks. In essence, CVT's argument is that the antitrust laws are an unnecessary (and perhaps unconstitutional) government infringement on defendants' contracting freedom, and in that context, the boom truck business divestiture ordered by the proposed Judgment is an unauthorized government ''taking'' of defendants' private property.

In determining whether to enter the proposed Judgment, the Court must decide whether entry of the Judgment would be in the ''public interest.'' To make that determination the Court, inter alia, must carefully review the relationship between the relief that has been ordered in the proposed Judgment and the allegations of the government's Complaint. Applying that standard in this case, the Court's entry of the proposed Judgment surely would be ''within the reaches'' of the public interest (*United States* v. *Bechtel Corp., Inc.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)), for it would alleviate the serious competitive concerns regarding the proposal to combine two of the nation's three major boom truck producers by requiring defendants promptly to divest one of their boom truck businesses. To require the government to prove the allegations of its Complaint before the Court rules on the appropriateness of the parties' agreed-upon

relief would effectively turn every government antitrust case into a full-blown trial on the merits of the parties' claims, and thereby seriously undermine the effectiveness of antitrust enforcement by use of consent decrees. And in any event, the government is not required to demonstrate, as CVT asserts, an actual post-merger price increase in order to establish that an acquisition will prove anticompetitive. ''Section 7 is, after all, concerned with probabilities, not certainties.'' *F.T.C.* v. *H.J. Heinz Co.,* 246 F.3d 708, 719 (D.C. Cir. 2001) (emphasis original, citations omitted).

As to CVT's suggestion that the antitrust laws constitute an unconstitutional infringement upon freedom to contract, the Supreme Court has consistently held, in a line of cases stretching as far back as Standard Oil, that is it not the antitrust laws that impair individual freedom to contract, but private agreements or acts that unduly diminish competition and tend to raise prices to consumers. By purging our nation's economy of such private restraints on competition, the antitrust laws protect and enhance, not undermine, individual freedoms, and these laws do not otherwise contravene the Constitution. *See also United States* v. *Standard Oil Co.,* 221 U.S. 1, 52–70, esp. 58, 68–70 (1911). *See also United States* v. *E.I. duPont de Nemours & Co.,* 366 U.S. 316, 327 (1961) (''If the Court concludes that other measures will not be effective to redress a violation, and that complete divestiture is a necessary element of a effective relief, the Government cannot be denied the latter remedy because economic hardship, however severe, may result. * * * This proposition is not novel; it is deeply rooted in antitrust law and has never been successfully challenged.'')

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

United States of America, Plaintiff, v. The Manitowoc Company, Inc., Grove Investors, Inc., and National Crane Corp., Defendants; Comments of Citizens for Voluntary Trade to the Proposed Final Judgment

[Case No. 02CV0159]
Judge: Royce Lamberth

Pursuant to 15 U.S.C. 16(b)–(h) and the **Federal Register** notice filed by the United States on August 22, 2002, Citizens for Voluntary Trade respectfully submits the following comments to the proposed final judgment filed by the parties on July 31, 2002.

Introductory Statement

Citizens for Voluntary Trade (''CVT'') is a District of Columbia nonprofit association organized in 2002. CVT's mission is to provide supporters of capitalism and individual rights with opportunities to participate in public policy discussions related to antitrust and government regulation of business. CVT performs this function, in part, by filing comments in antitrust cases brought by the Department of Justice, the Federal Trade Commission, and other federal and state regulatory agencies.

Neither CVT nor its members have a financial interest in the outcome of this case. CVT has no pre-existing relationship with the defendants, and has not received any financial support from the defendants or any outside corporation in connection with this case.

Comments

The government employs a simple premise in this case: Combining the first and third largest boom truck crane manufacturers will harm consumers by increasing prices and reducing innovation. As with most pre-merger prosecutions, the government can produce no evidence to prove their allegations; instead, the public is forced to accept speculation as to what might happen in the future. Relieved of any burden to present facts, the government can easily demonstrate the possibility of consumer harm, and thus justify its preemptive acts against the defendant companies.

CVT believes, however, that ignoring facts is dangerous. It's one thing to draw inferences from limited facts; it's quite another to predict outcomes without any factual basis. The latter is a function best left to gypsies and psychics. The Department of Justice's track record shows they are poor predictors of events that may never take place. Traditionally, governments limit themselves to prosecuting defendants after the alleged crime has taken place. With the exception of antitrust, there is no other area of law where the government grants itself the power to act before any crime (or victim) is established.

The government claims, in rebuttal, that the defendants committed a crime just by agreeing to merge. This, they say, is evidence of anticompetitive actions that violate the Clayton Act.[1] But if this is a crime, then where's the victim? The government says consumers are the victim, because the merger will ''increase the likelihood'' of price increases.[2] This begs two questions. First, will the merger actually increase prices, or does it just raise the mathematical probability of such an act? And second, assuming prices are raised post-merger, does this constitute an actual harm to consumers? We believe the answer to both questions is no.

The government relies on market concentration to judge the ''likelihood'' of price increases. They claim that the defendants, left to merge without government interference, would control 60% of the relevant market. Furthermore, the merged defendants and the remaining principal competitor would control 90% of the market.[3] The government concludes the reduction of large competitors from three to two raises the ''likelihood'' of price increases. That's hardly a given. While the combined Manitowoc-National Crane company would have a 60% market share, the number-two firm would still have 30%. While it is likely that Manitowoc could increase prices due to its higher market share, it's just as likely the remaining competitor could lower their own prices in an effort to attract new customers. This could, conceivably, increase the competitor's market share and reduce Manitowoc's dominance. In any case, both scenarios are ''likely,'' and the government offers no conclusive evidence to favor its own scenario has a greater probability of prevailing. Since the government won't allow the merger to occur, we'll never know.

Even if a price increase did occur post-merger, it would not, by itself, constitute a harm to consumers. Certainly it wouldn't injure any legal rights of consumers. Nothing in federal law or the United States Constitution guarantee individuals the right to affordable medium- and heavy-lift boom trucks. The survival of the human race does not depend on the continued availability of such trucks. Nor does a price increase for such trucks deny any general constitutional right enjoyed by consumers, such as the right to free speech or due process of law. Indeed, ''consumers'' are not a group recognized by the Constitution; that document only addresses the rights of individuals. To the extent the Constitution recognizes groups at all, it is in the context of general citizenship (separating U.S. citizens from ''Indians not taxed,'' for example[4] or to remedy historical wrongs against a particular group, as was the case with the Reconstruction amendments.[5] In all other contexts, the Constitution frowns upon arbitrary classification of citizens.[6]

Consumers are not a historically oppressed class. Quite the contrary, American consumers enjoy an unprecedented level of power to dictate economic outcomes. Unlike the traditionally centrally planned economies of Europe, the American marketplace is principally governed by consumer demand. If customers don't want a product, they don't buy it, and the product's producer will fail to make a profit. Producers are typically in the business of satisfying customer demands. At the same time, however, it is understood that the producers own their businesses. A firm can produce as much or as little of their product as they choose, and may charge whatever price they want; the customer has the right to reject the producer's price. But in a market economy, the consumer cannot demand a producer turn over his goods to them. Capitalism requires the voluntary trade of goods and services; that is, trade according to mutually agreeable terms.

The government wants none of that. Instead, under the facade of ''antitrust'' laws, the Department of Justice seeks to award consumers the ability to demand goods and services free of the constraints of voluntary trade. If producers want to raise the prices they ask of consumers, the government smears that behavior as ''anticompetitive.'' Antitrust theory itself holds that just above any price increase initiated by producers is presumptively bad. This despite the fact that increased prices lead to increased profits, which in turn allow producers to increase

[1] Complaint at 3.
[2] Id. at 2.
[3] Id. at 7.
[4] U.S. Const. art. I, § 2, cl. 3.
[5] U.S. Const. amends. XIII, XIV, & XV.
[6] See, e.g., U.S. Const. art. IV, § 2, cl. 1.

their capacity, develop new and improved products, and focus on improving overall customer service. No firm could provide superior products to customers at a sustained loss.

The government understands this, though they're loathe to admit it. In paragraph 17 of the complaint in this case, the Department of Justice describes some of the reasons for the dominance of just three firms in the boom truck market: ''superior production capacity and capability, strong dealer networks, broad product lines and strong reputation for safety and reliability.'' The government notes, correctly, that it would be difficult for any new competitor to quickly enter the market because they would need to ''establish a strong reputation'' in order to effectively compete with the dominant firms.[7] But this is not a weakness of the market, but a strength. Every factor the government lists above is the result of honest, ethical activity. Manitowoc's superior production capacity is not the result of coercion. National Crane's strong reputation is not derived from violent acts against competitors. This, essentially, is the difference between ''market power'' derived from free trade, and ''political power'' derived from the use of force. The government's case fails to make this crucial distinction.

The remedy in the proposed final judgment replaces market power with political power. The defendants are forced to divest one of their crane businesses to a yet-to-be-determined third party. The government says this will protect competition. It does no such thing. ''Competition'' only exists in a capitalist economy; a forced divestiture is hardly capitalist, since it's neither voluntary nor based on respect for property rights. In a capitalist system, the marketplace decides economic outcomes. In the Department of Justice's system, however, economic outcomes are decided by government mandates. Such is the case here. The government dislikes the potential post-merger structure of the boom truck market, so they brought this case to rearrange things to their liking. If the government did not have a monopoly on the use of political force, it would not be able to obtain this result.

And far from ''protecting'' consumers, the government's remedy here denies consumers the fundamental right to act for themselves. The government assumes consumers won't pay any price increase that may result from the merger. But there's no proof of this hypothesis in the record. Consumers often pay higher prices if they feel the product is worth it, or it they believe that the product will improve in the future. Consumers are certainly a far better judge of these things than attorneys at the Department of Justice. The final judgment's remedy wrecks all that, however. By employing its political power, the government has stripped consumers of their economic power.

Finally, there is an obvious contradiction in the government recognizing the factors behind Manitowoc's dominance on the one hand, but ignoring these same factors in fashioning the final judgment's remedy. The government says a new firm is unlikely to enter the market because of the need to ''establish a strong reputation,'' among other things. So how does creating a new competitor by force accomplish this? Does the government believe that a reputation can be established simply by handing a corporation assets and customers they didn't actually earn? If that's the case, why doesn't the Department of Justice simply allocate resources and market shares in all sectors of American industry? They obviously consider their judgment superior to consumers.

Conclusion

The government claims to serve the ''public interest'' in presenting this proposed final judgment. But it's unclear what those interests are. It's certainly not legal interests, since no constitutional or statutory right of consumers was violated by the defendants. And it's not economic interests, since a capitalist economy is built on voluntary actions free of government interference. ''Free competition enforced by law is a grotesque contradiction in terms,''[8] not to mention a highly unstable way to govern an economy. The companies prosecuted in this case did compete and are competing. The government just doesn't like the outcome of that competition, so they've come to court seeking to overrule the judgment of consumers and producers. The result of the government's actions is to introduce fear and uncertainty into a market that previously functioned well. It's hard to see how that serves any identifiable ''public interest.''

Since it is unlikely the Department of Justice will see the error of its ways, CVT respectfully asks the Court to consider our comments and take appropriate action. We believe the only just action here is to reject entry of the proposed final judgment, and to dismiss the government's complaint with prejudice.

Dated: October 18, 2002.

Respectfully Submitted,

Citizens for Voluntary Trade

S.M. Oliva,

President, 2000 F Street, N.W., Suite 315, Washington, DC 20006; Telephone: (202) 223–0071; Facsimile: (760) 418–9010; E-mail: *info@voluntarytrade.org.*

[FR Doc. 02–29779 Filed 11–22–02; 8:45 am]

BILLING CODE 4410–11–M

[7] Complaint at 7.

[8] Ayn Rand, Antitrust: The Rule of Unreason, in The Voice of Reason 255 (Leonard Peikoff, ed., 1990).

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Prohibited Transaction Exemption 2002–51; Application No. D–10933]

Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The exemption was proposed in conjunction with the Department's Voluntary Fiduciary Correction (VFC) Program, the final version of which was published in the March 28, 2002, issue of the **Federal Register**. The VFC Program allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The exemption will affect plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

EFFECTIVE DATE: The exemption is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (not a toll free number) or Cynthia Weglicki, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–5600 (not a toll free number).

SUPPLEMENTARY INFORMATION: On March 28, 2002, the Department published a notice in the **Federal Register** (67 FR 15083) of the pendency of a proposed class exemption from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The Department proposed the class exemption on its own motion pursuant to 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).[1]

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. Two (2) public comments were received by the Department. Upon consideration of the comments received, the Department has determined to grant the proposed class exemption subject to certain modifications. These

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.