

### Request To Withdraw the NPRM

One commenter, American Trans Air, suggests several reasons why an AD is unnecessary for Lockheed Model L-1011-385 series airplanes. The commenter points out that Model L-1011-385 series airplanes do not have the adverse service history with "blue ice" leakage that some other airplane models have. The commenter suggests that this may be due, in part, to certain basic differences between the forward lavatory waste system of Model L-1011-385 series airplanes and certain other airplanes such as Boeing Model 727 and 737 airplanes. In support of this statement, the commenter submitted a drawing showing basic differences between the forward lavatory waste system of Model L-1011-385 series airplanes and Model 727 series airplanes. Additionally, the commenter states that normal preflight inspections for blue streaks on the fuselage are adequate for detecting valve leakage without requiring mandatory action.

The FAA infers that the commenter is requesting that the NPRM be withdrawn. We agree with the commenter's statements. In addition, for the reasons stated below, we are withdrawing the NPRM.

### Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, we have determined that it is unnecessary to regulate the actions proposed in the NPRM for certain airplane models equipped with potable water systems and lavatory fill and drain systems, including Model L1011-385 series airplanes. Based on analysis of various service information and data accumulated in the last several years, we have determined that, for airplanes without a history of engine damage resulting from "blue ice," such as Model L-1011-385 series airplanes, the hazards of "blue ice" to persons or property on the ground may be more appropriately addressed by the issuance of a special airworthiness information bulletin (SAIB).

### FAA's Conclusions

Upon further consideration, we have issued SAIB NM-06-57, dated July 27, 2006, which contains recommendations for owners and operators of certain transport category airplanes regarding maintenance and ground handling practices and procedures that are intended to adequately address issues involving "blue ice." Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude

the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 98-NM-200-AD, published in the **Federal Register** on September 3, 1998 (63 FR 46927), is withdrawn.

Issued in Renton, Washington, on September 1, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2509

RIN 1210-AB09

#### Independence of Employee Benefit Plan Accountants

**AGENCY:** Employee Benefits Security Administration, DOL.

**ACTION:** Request for Information.

**SUMMARY:** This document requests information from the public concerning the advisability of amending Interpretive Bulletin 75-9 (29 CFR 2509.75-9) relating to guidelines on independence of accountants retained by employee benefit plans under section 103(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA, unless otherwise exempt, the plan administrator is required to retain on behalf of all plan participants an "independent qualified public accountant" to examine the financial statements of the plan and render an opinion as to whether the financial statements and schedules required to be included in the plan's annual report are presented fairly in conformity with generally accepted accounting

principles (GAAP). The purpose of this notice is to obtain information to assist the Department of Labor in evaluating whether and to what extent Interpretive Bulletin 75-9 provides adequate guidance to meet the needs of plan administrators, other plan fiduciaries, participants and beneficiaries, accountants, and other affected parties on when a qualified public accountant is independent.

**DATES:** Written responses must be received by the Department of Labor on or before December 11, 2006.

**ADDRESSES:** Responses should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attn: Independence of Accountant RFI (RIN 1210-AB09). Responses also may be submitted electronically to *e-ori@dol.gov* or by using the Federal eRulemaking Portal *www.regulations.gov* (follow instructions for submission of comments). EBSA will make all responses available to the public on its Web site at *www.dol.gov/ebsa*. The responses also will be available for public inspection at the Public Disclosure Room, N-1513, EBSA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

#### FOR FURTHER INFORMATION CONTACT:

Michael G. Leventhal, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8523 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Employee Retirement Income Security Act (ERISA) was enacted in 1974 to remedy certain abuses in the nation's private-sector employee pension benefit plan and employee welfare benefit plan system. ERISA contains provisions designed to protect the interests of plan participants and beneficiaries by requiring the establishment of effective mechanisms to detect and deter abusive practices. These provisions include requiring annual reporting of financial information and activities of employee benefit plans to the Department of Labor (Department). An integral component of ERISA's annual reporting provisions is the requirement that employee benefit plans, unless otherwise exempt, be subjected to an annual audit performed by an independent qualified public accountant (IQPA) and that the accountant's report be included as part

of the plan's annual report filed with the Department.<sup>1</sup>

The IQPA requirements in ERISA were intended to provide participants, beneficiaries, plan administrators, other plan fiduciaries, and the Department with reliable information about an employee benefit plan and its financial soundness. The precursor to ERISA, the Welfare and Pension Plan Disclosure Act of 1958 (WPPDA), required a certified audit only when the Secretary of Labor found reasonable cause to investigate a plan. Legislative history of ERISA indicates that Congress found this requirement to be insufficient, and specifically replaced it with the annual certified audit requirements in section 103(a)(3)(A) of ERISA.

Section 103(a)(3)(A) of ERISA sets forth the requirements governing the IQPA's annual audit. The administrator of an employee benefit plan is required to engage, on behalf of all plan participants, an IQPA to conduct an examination of the plan's financial statements, and other books and records of the plan, as the accountant deems necessary to allow the accountant to form an opinion as to whether the financial statements and schedules required to be included in the plan's annual report are presented fairly in accordance with generally accepted accounting principles (GAAP) applied on a basis consistent with that of the preceding year. The accountant's examination must be conducted "in accordance with generally accepted auditing standards (GAAS), and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant." The accountant's report must contain certain opinions with respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected in such report. Further, the accountant's report must identify any matters to which the accountant takes exception, whether the matters to which the accountant takes exception are the

result of Department's regulations and, to the extent practicable, the effect on the financial statements of the matters to which the accountant has taken exception. If the auditor's independence is considered to have been impaired after the audit is completed, a new audit by another accountant may be required.

Section 103(a)(3)(D) of ERISA states that the term "qualified public accountant" means—(i) a person who is a certified public accountant, certified by a regulatory authority of a State; (ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State, or (iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by the Secretary for a person who practices in States where there is no certification or licensing procedure for accountants. ERISA does not, however, define what would constitute "independence" for purposes of the audit requirements.

In the Department's view, an accountant's independence is at least of equal importance to the professional competence he or she brings to an engagement in rendering an opinion and issuing a report on the financial statements of an employee benefit plan. Pursuant to the authority provided to the Department by section 103(a)(3)(A), the Department issued Interpretive Bulletin 75-9 in 1975 to provide guidelines for determining when an accountant is independent for purposes of ERISA's annual reporting requirements. The bulletin explains that the Department will not recognize any person as an independent qualified public accountant with respect to an employee benefit plan who is not in fact independent.

The rule also specifically describes three kinds of relationships that will cause an accountant not to be independent. During the audit engagement and during the period covered by the audit, the accountant, his or her firm, and any member of the firm cannot: (1) Have or be committed to acquire any direct financial interest or any material indirect financial interest in the plan or the plan sponsor; (2) have a connection to the plan or plan sponsor as a promoter, underwriter, investment advisor, voting trustee, director, officer or employee of the plan or plan sponsor; and (3) maintain financial records for the employee benefit plan. The Interpretive Bulletin defines "member" of an accounting firm as all partners or shareholder employees in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit. The Interpretive

Bulletin provides that independence is required during the period of professional engagement, at the date of the opinion, and during the period covered by the financial statements. In addition to the specific proscriptions, the Bulletin cautions that the Department will give appropriate consideration to all relevant circumstances in determining whether an accountant or accounting firm is not, in fact, independent with respect to a particular plan, including evidence bearing on all relationships between the accountant or accounting firm and that of the plan sponsor or any affiliate. In that regard, Interpretive Bulletin 75-9 notes that an accountant will not fail to be recognized as independent merely because the accountant or his or her firm is retained or engaged on a professional basis by the plan sponsor, provided none of the three specific proscriptions are violated. Further, the Interpretive Bulletin states that the rendering of services to the plan or plan sponsor by an actuary associated with the accountant or accounting firm will not impair the accountant's independence.

In addition to ERISA's annual reporting requirements, accountants and accounting firms are subject to independence requirements of other governmental agencies and accounting industry self-regulatory bodies. For example, the Securities and Exchange Commission (SEC) has independence guidelines for auditors reporting on financial statements included in SEC filings. Those guidelines were for many years contained in Rule 2-01 of Reg. S-X, Qualifications and Reports of Accountants. On January 28, 2003, the SEC adopted final rules regarding independence for auditors that file financial statements with the SEC implementing Title II of the Sarbanes-Oxley Act of 2002. The Sarbanes-Oxley Act also authorized the establishment of the Public Company Accounting Oversight Board ("PCAOB") which itself has established ethics and independence requirements for registered public accounting firms. The United States Government Accountability Office (GAO) has auditor independence requirements under Government Auditing Standards<sup>2</sup> that cover Federal entities and organizations receiving Federal funds. The American Institute of Certified Public Accountants (AICPA) sets GAAS requirements

<sup>1</sup> Certain employee benefit plans are eligible for waivers or limited exemptions from the IQPA audit requirements under regulations issued by the Department. For example, regulation section 2520.104-44 provides a limited exemption for welfare plans which are either unfunded, insured or partly unfunded-partly insured. If a plan does not comply with ERISA's annual reporting requirements, including failure to satisfy the requirement to have an audit report and opinion of an IQPA, the Department may reject the plan's annual report. If a satisfactorily revised report is not submitted, the Department may under section 104(a)(5) of ERISA retain an independent qualified public accountant on behalf of the participants to perform a sufficient audit, bring a civil suit for whatever relief may be appropriate, or take any other enforcement action authorized under Title I.

<sup>2</sup> Information about Government Auditing Standards (commonly referred to as "Generally Accepted Government Auditing Standards," or "GAGAS") is available on the GAO Web site at [www.gao.gov/govaud/ybk01.htm](http://www.gao.gov/govaud/ybk01.htm).

including standards by which the auditor must abide to avoid impairment of independence.<sup>3</sup> Many States have an independence component in their requirements for licensed public accountants. Some have adopted the AICPA's Code of Conduct, including its independence guidelines. Others, however, have adopted specific rules, including limitations on offering or rendering services under a contingency fee arrangement as well as limitations on ownership interests in the enterprise being audited.<sup>4</sup> Further, the nature and complexity of the business environment in which accountants perform services has changed in ways that have led many accounting firms to develop expertise in an array of activities peripheral to audit services, for example, business consulting, valuation and appraisal services, applications programming, electronic data processing and recordkeeping. The Department has received public comments indicating that these developments have made it a more complicated process for accountants and accounting firms to monitor compliance with the different independence standards that apply in the different business sectors in which they provide audit services.

#### B. Request for Information

The purpose of this Notice is to obtain information to assist the Department in evaluating whether and to what extent the guidelines in Interpretive Bulletin 75-9 provide adequate guidance regarding the independence of accountants who audit employee benefit plans to meet the needs of plan officials, participants and beneficiaries, accountants, and other affected parties. Given the changes that have taken place with respect to employee benefit plans and auditing practices and standards, as well as changes in the industry since the issuance of the guidelines in Interpretive Bulletin 75-9, EBSA is inviting interested persons to submit written comments and suggestions concerning whether and to what extent the current guidelines should be modified.

In order to assist interested parties in responding, this document contains a list of specific questions. The Department recognizes that these questions may not address all issues relevant to the independence of accountants who audit employee benefit

plans. Accordingly, interested parties are invited to submit comments on other issues relating to Interpretive Bulletin 75-9 that they believe are pertinent to the Department's consideration of new or additional independence guidelines.

1. Should the Department adopt, in whole or in part, current rules or guidelines on accountant independence of the SEC, AICPA, GAO or other governmental or nongovernmental entity? If the Department were to adopt a specific organization's rules or guidelines, what adjustments would be needed to reflect the audit requirements for or circumstances of employee benefit plans under ERISA?

2. Should the Department modify, or otherwise provide guidance on, the prohibition in Interpretive Bulletin 75-9 on an independent accountant, his or her firm, or a member of the firm having a "direct financial interest" or a "material indirect financial interest" in a plan or plan sponsor? For example, should the Department issue guidance that clarifies whether, and under what circumstances, financial interests held by an accountant's family members are deemed to be held by the accountant or his or her accounting firm for independence purposes? If so, what familial relationships should trigger the imposition of ownership attribution rules? Should the ownership attribution rules apply to all members of the accounting firm retained to perform the audit of the plan or should it be restricted to individuals who work directly on the audit or may be able to influence the audit?

3. Should the Department issue guidance on whether, and under what circumstances, employment of an accountant's family members by a plan or plan sponsor that is a client of the accountant or his or her accounting firm impairs the independence of the accountant or accounting firm?

4. Interpretive Bulletin 75-9 states that an accountant will not be considered independent with respect to a plan if the accountant or member of his or her accounting firm maintains financial records for the employee benefit plan. Should the Department define the term "financial records" and provide guidance on what activities would constitute "maintaining" financial records. If so, what definitions should apply?

5. Should the Department define the terms "promoter," "underwriter," "investment advisor," "voting trustee," "director," "officer," and "employee of the plan or plan sponsor," as used in Interpretive Bulletin 75-9? Should the Department include and define additional disqualifying status positions

in its independence guidelines? If so, what positions and how should they be defined?

6. Interpretive Bulletin 75-9 defines the term "member of an accounting firm" as all partners or shareholder employees in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit. Should the Department revise and update the definition of "member?" If so, how should the definition be revised and updated?

7. What kinds of nonaudit services are accountants and accounting firms engaged to provide to the plans they audit or to the sponsor of plans they audit? Are there benefits for the plan or plan sponsor from entering into agreements to have the accountant or accounting firm provide nonaudit services and also perform the employee benefit plan audit? If so, what are the benefits? Should the Department issue guidance on the circumstances under which the performance of nonaudit services by accountants and accounting firms for the plan or plan sponsor would be treated as impairing an accountant's independence for purposes of auditing and rendering an opinion on the financial information required to be included in the plan's annual report? If so, what should the guidance provide?

8. Interpretive Bulletin 75-9 requires an auditor to be independent during the period of professional engagement to examine the financial statements being reported, at the date of the opinion, and during the period covered by the financial statements. Should the Department change the Interpretive Bulletin to remove or otherwise provide exceptions for "the period covered by the financial statements" requirement? For example, should the requirement be changed so that an accountant's independence would be impaired by a material direct financial interest in the plan or plan sponsor during the period covered by the financial statements rather than any direct financial interest?

9. Should there be special provisions in the Department's independence guidelines for plans that have audit committees that hire and monitor an auditor's independence, such as the audit committees described in the Sarbanes-Oxley Act applicable to public companies?

10. What types and level of fees, payments, and compensation are accountants and accounting firms receiving from plans they audit and sponsors of plans they audit for audit and nonaudit services provided to the plan? Should the Department issue

<sup>3</sup> Information about AICPA's standards is available at [www.aicpa.org/about/code/index.html](http://www.aicpa.org/about/code/index.html).

<sup>4</sup> See section 29.10(a)(5), (6), and (7) of New York State's Education Department's Office of Profession's Rules of the Board of Regents (Special provisions for the profession of public accountancy) ([www.op.nysed.gov/part29.htm#cpa](http://www.op.nysed.gov/part29.htm#cpa)).

guidance regarding whether receipt of particular types of fees, such as contingent fees and other fees and compensation received from parties other than the plan or plan sponsor, would be treated as impairing an accountant's independence for purposes of auditing and rendering an opinion on the financial information required to be included in the plan's annual report?

11. Should the Department define the term "firm" in Interpretive Bulletin 75-9 or otherwise issue guidance on the treatment of subsidiaries and affiliates of an accounting firm in evaluating the independence of an accounting firm and members of the firm? If so, what should the guidance provide regarding subsidiaries and affiliates in the evaluation of the independence of an accountant or accounting firm?

12. Should the Department's independence guidance include an "appearance of independence" requirement in addition to the requirement that applies by reason of the ERISA requirement that the accountant perform the plan's audit in accordance with GAAS?

13. Should the Department require accountants and accounting firms to have written policies and procedures on independence which apply when performing audits of employee benefit plans? If so, should the Department require those policies and procedures be disclosed to plan clients as part of the audit engagement?

14. Should the Department adopt formal procedures under which the Department will refer accountants to state licensing boards for discipline when the Department concludes an accountant has conducted an employee benefit plan audit without being independent?

15. Should accountants and accounting firms be required to make any standard disclosures to plan clients about the accountant's and firm's independence as part of the audit engagement? If so, what standard disclosures should be required?

Signed at Washington, DC, this 5th day of September 2006.

**Ann L. Combs,**

*Assistant Secretary, Employee Benefits Security Administration.*

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**BILLING CODE 4510-29-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-148-FOR]

#### Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; extension of comment period and notice of hearing.

**SUMMARY:** We are reopening the public comment period on the proposed Pennsylvania Regulatory Program rule published on July 31, 2006. The comment period is being reopened in order to afford the public more time to comment and allow enough time to hold a public hearing which has been requested by several individuals. We are also notifying the public of the date, time and location for the public hearing.

**DATES:** Comments on the proposed rule must be received on or before 4 p.m., local time on September 28, 2006. The public hearing will be held on Thursday, September 21, 2006, at 7 p.m. local time.

**ADDRESSES:** You may submit written or electronic comments identified by PA-148, by any of the following methods:

- *E-Mail:* [grieger@osmre.gov](mailto:grieger@osmre.gov). Include docket number PA-148-FOR in the subject line of the message.
- *Mail/Hand-Delivery/Courier:* George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, Pennsylvania 17101
- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of the proposed rule published on July 31, 2006.

*Public hearing:* The public hearing will be held at The Days Inn, located at 3620 Route 31, Donegal, Pennsylvania 15628, telephone: 724-593-7536, on September 21, 2006, at 7 p.m. local time.

#### FOR FURTHER INFORMATION CONTACT:

George Rieger, Director, Pittsburgh Field Division, Telephone: (717) 782-4036, e-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION:** On July 31, 2006 (71 FR 43087), we published a proposed rule that would revise the

Pennsylvania Regulatory Program. The revisions would address blasting for the development of shafts for underground mines and make administrative changes to regulations relating to blasting in 25 Pa. Code Chapters 87, 88, 89 and 210. Specifically, the proposed changes would: (1) Clarify that the use of explosives in connection with the construction of a mine opening for an underground coal mine is a surface mining activity subject to the applicable requirements in Chapters 87 or 88 and that the person conducting the blasting activity must possess a blaster's license; (2) change the scheduling requirements applicable to the use of explosives for constructing openings for underground coal mines and changes to the requirements for protective measures to be taken when surface coal mine blasting is in proximity to a public highway or an entrance to a mine; and (3) add a category for mine opening blasting to the classifications of blaster's licenses.

We have received several requests for a public hearing on the proposed rule. We are extending the public comment period in order to afford the public more time to comment and allow enough time to schedule and hold the hearing. The date, time, and location for the public hearing may be found under **DATES** and **ADDRESSES** above.

The hearings will be open to anyone who would like to attend and/or testify. The primary purpose of the public hearing is to obtain your comments on the proposed rule so that we can prepare a complete and objective analysis of the proposal. The purpose of the hearing officer is to conduct the hearing and receive the comments submitted. Comments submitted during the hearing will be responded to in the preamble to the final rule, not at the hearing. We appreciate all comments but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or relevant publications.

At the hearing, a court reporter will record and make a written record of the statements presented. This written record will be made part of the administrative record for the rule. If you have a written copy of your testimony, we encourage you to give us a copy. It will assist the court reporter in preparing the written record. Any disabled individual who needs