

## II. Nominations

The agency is seeking men and women with an interest in the safety and health of workers in the maritime industry. Interested persons may submit their own name or the name of another whom they believe to be qualified to serve on MACOSH. The Agency is looking for nominees to represent the following interests:

*Employees*

*Employers*

*State or Federal Safety and Health Organizations*

*Professional Organizations or National Standards-Setting Groups*

The Agency invites all persons appropriately qualified by experience or training to apply for membership on this important committee. Nominations of women and minorities are encouraged.

Nominations and applications should be submitted to Mr. Larry Liberatore, Office of Maritime Standards, Room N-3621, Occupational Safety and Health Administration (OSHA), U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D.C. 20210.

## III. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D.C. 20210, pursuant to Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 and the Federal Advisory Committee Act, 5 U.S.C. App.2.

Signed at Washington, D.C. this 20th day of February 1998.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 98-4987 Filed 2-25-98; 8:45 am]

BILLING CODE 4510-26-U

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. H-372]

RIN: 1218-AB58

### Metalworking Fluids Standards Advisory Committee: Notice of Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Metalworking Fluids Standards Advisory Committee: Notice of meeting.

**SUMMARY:** Notice is hereby given that the Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the

Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Sharonville (Cincinnati), Ohio on Wednesday and Thursday, March 25 and 26, 1998 at the Woodfield Suites Hotel, 11029 Dowlin Drive (1-800-338-0008).

**DATES:** The meeting will be held on March 25 and 26, 1998. On March 25, the meeting will begin at 9:00 A.M. and adjourn at approximately 5:00 P.M. The meeting will reconvene at approximately noon on March 26, after an information gathering visit to the Ford Motor Company Sharonville plant by various working groups of the committee, and will adjourn at approximately 4:00 P.M.

**ADDRESSES:** The meeting will take place at the Woodfield Suites Hotel, 11029 Dowlin Drive, Sharonville (Cincinnati), Ohio 45211. Mail comments, views or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N-3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 219-8151.

**SUPPLEMENTARY INFORMATION:** All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee, including this one, at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 219-8615 ext. 106 (Fax: 202-219-5986) no later than March 20, 1998, to obtain appropriate accommodations.

### Meeting Agenda

This meeting will focus on technology used in large plants to control employee exposure to metalworking fluids. There will be presentations and the committee will discuss general techniques used to control metalworking fluid mist; considerations in selecting and implementing metalworking fluid control technology; ventilation considerations for the design, installation and use of machine tools using metalworking fluids; performance evaluation of mist control filtration systems; exposure comparisons between transfer lines with different levels of control technology on mist control performance, problems with maintenance of control technology and economic and technological feasibility

of reducing metalworking fluid mist exposure in the American automobile industry. The Metalworking Fluids Standards Advisory Committee will meet as a whole and also in small working groups.

### Public Participation

Written data, views or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 20 copies, to Dr. Peter Infante at the address provided above. Submissions received by March 20, 1998 will be provided to the members of the committee and will be included in the record of the meeting. At this meeting it is unlikely that there will be any time for oral presentations by members of the public. However, anyone wishing to make a presentation to the committee should notify Dr. Peter Infante of this fact at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

**Authority:** This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, D.C. this 20th day of February, 1998.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 98-4922 Filed 2-25-98; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10410, et al.]

### Proposed Exemptions; SmartRetirement: The OLDE 401(k) Plan

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of

proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### SmartRetirement: The OLDE 401(k) Plan (the Plan) Located in Detroit, MI

[Application No. D-10410]

#### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup>

#### Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, (1) effective October 4, 1996, to the past and continuing receipt, by OLDE Discount Corporation (OLDE Discount), a wholly owned subsidiary of OLDE Financial Corporation (OLDE Financial), the Plan sponsor, of a portion of certain distribution fees that are paid by third party mutual funds (the Funds) to OLDE Discount pursuant to Rule 12b-1 (Rule 12b-1; the 12b-1 Fees) under the Investment Company Act of 1940 (the 1940 Act) and which are attributable to Plan assets that are invested in the Funds; and (2) the proposed cash rebate of such 12b-1 Fees, by OLDE Discount, to either the Plan or to the individually-directed accounts (the Accounts) of the participants in the Plan.<sup>2</sup>

The transactions are conditioned on the requirements set forth below in Section II.

#### Section II. General Conditions

(a) The decision to invest the assets of an Account in the Funds is made by a Plan participant and not by OLDE nor is OLDE providing "investment advice" to the participant within the meaning of section 3(21) of the Act.

<sup>1</sup> For purposes of this proposed exemption, reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>2</sup> Unless otherwise noted, OLDE Financial and its affiliates are collectively referred to herein as OLDE.

(b) No sales commissions, other than 12b-1 Fees, are paid by an Account in connection with the purchase or sale of shares in the Funds and no redemption fees are paid by an Account with respect to the sale of shares of the Funds.

(c) The Plan, or if applicable, Account, receives a rebate from OLDE Discount in the form of cash equal to such Plan's or Account's *pro rata* portion of all 12b-1 Fees charged by OLDE Discount to the Funds under a rebate program (the Rebate Program).

(d) For purposes of the Rebate Program:

(1) During the course of each calendar year, as it receives 12b-1 Fees from the Funds, OLDE Discount calculates that portion of the 12b-1 Fees that are attributable to the Plan, including interest based on the Federal Funds Rate plus 2 percent.

(2) Within 30 days of receipt by OLDE Discount of the 12b-1 Fees, OLDE Discount separates and transfers the Plan's allocable portion of the 12b-1 Fees, together with interest earned on such fees (as determined in Step 1 above), to a money market account that has been established in the Plan's name with an unrelated bank, Comerica Bank of Detroit, Michigan (Comerica).

(3) The Plan may draw upon its Comerica money market account during the course of the year for the purpose of paying the Plan's administrative expenses owed to third parties.

(4) Immediately following the end of each calendar year, any remaining rebated 12b-1 Fees that are not drawn upon, after the payment of the Plan's administrative expenses, are allocated by the Plan to the participant Accounts.

(5) OLDE establishes and maintains a system of internal and external accounting controls for the Rebate Program.

(6) OLDE retains an independent auditor outside of the control of OLDE to audit, on an annual basis, OLDE Discount's rebating of 12b-1 Fees to either the Plan or the Accounts.

(e) Prior to purchasing shares in the Funds, each Plan participant receives full written disclosure of information concerning the Funds, including, but not limited to the following:

(1) Copies of applicable prospectuses for the Funds discussing the investment objectives of the Funds, the policies employed to achieve these objectives, the relationship, if any, existing between OLDE Discount with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents to the Funds and a statement describing the fee structure and the 12b-1 Fees. (OLDE will

supplement such disclosures with information describing the Rebate Program.)

(2) Upon written or oral request to OLDE, a statement of additional information supplementing the applicable prospectus, which describes the types of securities and other instruments in which the Funds may invest, the investment policies and strategies that the Funds may utilize, including a description of the risks.

(3) Upon written request to OLDE, a copy of OLDE Discount's distribution agreements pertaining to the various Funds.

(4) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(f) After receiving the disclosures noted above, the participant acknowledges receipt of the documents in writing and provides authorization to OLDE with respect to investing in the Funds.

(g) Each additional purchase or redemption of shares in the Funds is directed by the participant, provided OLDE makes available to the participant, copies of the applicable Fund prospectus and disclosures regarding the fee structure and the 12b-1 Fees.

(h) Each Plan participant receives the following written or oral disclosures from OLDE with respect to ongoing investment in the Funds:

(1) Written confirmations of each purchase or redemption transaction involving shares of a Fund.

(2) Telephone quotations of such participant's Account balance.

(3) A monthly statement of account specifying the net asset value of the assets in a participant's Account, a summary of current year contributions, contributions since inception, beginning and ending account balances, summaries of contributions, purchases and sales during the month, a summary of the participant's final Account portfolio and, to the extent applicable during one month per year only, any rebated fees that are allocated to the participant's Account.

(4) Semiannual and annual reports that include financial statements for the Funds as well as the fees paid to OLDE Discount.

(5) Investment performance histories and other information provided by the Funds to OLDE;

(6) Ratings information received about the Funds from independent sources such as Morningstar;

(7) Responses to oral or written inquiries of participants upon request.

(i) The terms of each purchase or redemption of shares in the Funds

remain at least as favorable to an Account as those obtainable in an arm's length transaction with an unrelated party.

(j) OLDE maintains for a period of six years the records necessary to enable the persons described below in paragraph (k) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of OLDE, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest, other than OLDE, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (k) below; and

(k)(1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC), and

(B) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (k)(1)(B) shall be authorized to examine trade secrets of OLDE, or commercial or financial information which is privileged or confidential.

### III. Definitions

For purposes of this proposed exemption:

(a) The term "OLDE" means OLDE Financial Corporation and any affiliate of OLDE Financial, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of OLDE includes—

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

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

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

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

(d) The term "participant" includes participants in the Plan and their beneficiaries who may invest in the Funds.

(e) The term "Fund" or "Funds" means any open-end management investment company or companies registered under the 1940 Act for which OLDE Discount provides distribution and related services.

(f) The term "net asset value" means the amount calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(g) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective as of October 4, 1996 with respect to transactions involving the past and continuing receipt, by OLDE Discount, of 12b-1 Fees that are attributable to the Plan from the Funds. However, it will be prospective for transactions involving the cash rebate, by OLDE Discount, of such fees to either the Plan or to the Accounts.

### Summary of Facts and Representations

1. The Plan is a defined contribution plan with a 401(k) cash or deferred feature permitting employee pre-tax deferrals. The Plan was established by OLDE Financial, effective July 1, 1995, and it allows participants to direct the investment of their account balances among a menu of investment options. Currently, these investment alternatives consist of a series of "load-type" Funds that are offered by parties unrelated to OLDE Financial and whose net asset values are listed daily in financial and other news publications.<sup>3</sup> The Funds have been offered to the Plan at "no-load" pursuant to agreements with the Fund sponsors.

The trustees of the Plan are Randal J. Mudge, President of OLDE Financial, and Mack Sutton, Vice President and Chief Financial Officer of OLDE Discount. As of December 31, 1997, the

<sup>3</sup> Among the mutual funds offered to Plan participants are the Franklin Age High Income Fund I, the American Mutual Fund, the Franklin Equity Income Fund, the GT Global International Growth Fund, the Growth Fund of America and the Templeton Global Real Estate Fund.

Plan had 1,146 participants and total assets of approximately \$14,872,000.

2. OLDE Financial, the Plan sponsor, is a holding company with several subsidiaries, the largest being OLDE Discount. OLDE Financial maintains its principal place of business in Detroit, Michigan. It generally performs administrative functions relating to the Plan, including recordkeeping, reporting and disclosure and the purchases of investments under the Plan. In this regard, the Plan Administration Committee, which is comprised of five voting members, all of whom are employees of OLDE, has the responsibility as a fiduciary for selecting the investment alternatives that are available under the Plan from which participants may choose, including the subject transactions that are described herein. As such, the Plan Administration Committee is empowered to add or remove mutual fund families that it makes available to the Plan.<sup>4</sup> No fee is charged to the Plan or to any participants and beneficiaries for the services provided by OLDE directly or through the Administration Committee.<sup>5</sup>

3. OLDE Discount is a full service discount broker with offices located throughout the United States. OLDE Discount maintains its principal place of business in Detroit, Michigan and its employees participate in the Plan.

4. In its role as broker, OLDE Discount is often engaged in arrangements whereby it receives certain fees from the Funds for dividend distribution, tax reporting and statement distribution services provided to shareholders who have purchased their Fund shares through OLDE Discount. These 12b-1 Fees, which are paid to OLDE Discount in accordance with Distribution Plans and Related Agreements adopted under Rule 12b-1 of the 1940 Act, are calculated quarterly by the Funds based on the dollar volume of mutual fund shareholders that are customers of a given broker (i.e., who purchased the

shares through the broker and who are receiving shareholder services from that broker).<sup>6</sup>

5. OLDE Discount has 12b-1 Fee arrangements with virtually every mutual fund that is utilized by participants as investment alternatives for their Accounts in the Plan.<sup>7</sup> Although OLDE Discount receives no commissions or fees from the Plan, or for that matter, the participant Accounts, the Funds treat such transactions as purchases for which annualized fees (ranging from 0.15 percent to 0.50 percent) are due and payable to OLDE Discount.

6. OLDE Discount has attempted to identify that portion of the 12b-1 Fees it receives which are related to purchases made by it on behalf of the Plan. With nearly every Fund, this is accomplished by coding purchases made by OLDE Discount on behalf of the Plan in a distinct manner. While 12b-1 Fees are received by OLDE Discount from each Fund in a lump sum, these payments are generally accompanied by a detailed breakdown of those fees that are attributable to the Plan. For those Funds which do not provide such a breakdown, OLDE Discount calculates the breakdown of Plan's portion of the 12b-1 Fees based on its own internal coding system. Then, OLDE Discount applies the result to the formula used by the Fund to calculate the 12b-1 Fees.

7. Because there is a time lag between the accrual and payment of 12b-1 Fees, few have been paid to OLDE Discount which are attributable to the Plan. Such fees are, however, being maintained in a segregated account titled "OLDE

Trailer Fee Segregation Account." The special purpose account has been established in OLDE Financial's name with Comerica, an unrelated bank. Between October 4, 1996 and December 31, 1997, the amount of 12b-1 Fees and interest held in the segregated account totaled \$24,826.

8. Due to potential prohibited transactions that may arise from its receipt of 12b-1 Fees from the Funds which are attributable to the Plan, OLDE has considered a number of options to remove these concerns. First, OLDE considered an option that would allow OLDE Discount to waive the receipt of all 12b-1 Fees, provided the Funds would agree to remove their automatic 12b-1 Fee deductions from the Plan's investments. However, in discussions with representatives for the Funds, it became clear to OLDE that any waiver of 12b-1 Fees by OLDE Discount would not result in the removal of the 12b-1 Fee deduction presumably because the internal system for each Fund could not accommodate this action. Thus, OLDE Discount's waiver of Plan-related 12b-1 Fees, would result in the Fund's retention of the Plan's deduction. In other words, Plan participants would be still paying 12b-1 Fees even if OLDE Discount did not receive them.

As a second option, OLDE considered offering mutual funds to the Plan for which it did not have 12b-1 Fee arrangements. However, OLDE deemed this option to be untenable because it would remove virtually all Funds as investment options for Plan participants.

As a third option, OLDE considered hiring another brokerage firm to facilitate the purchase and sale of Fund shares on behalf of the Plan. Aside from the level of concern this alternative would create in participants regarding the use of a competitor to perform transactions with their Accounts, OLDE noted that this arrangement would result in transaction fees as well as 12b-1 Fees being charged to Plan participants.

Bearing these options in mind, OLDE considered a fourth alternative for Plan participants and beneficiaries which would involve the rebating, to the Plan by OLDE Discount, of the Plan's *pro rata* portion of all 12b-1 Fees received by OLDE Discount. This option is the basis for the exemptive relief that has been requested herein. Specifically, OLDE requests an administrative exemption from the Department, which will be effective as of October 4, 1996, with respect to the past and continuing receipt, by OLDE Discount, of 12b-1 Fees that are attributable to the Plan from the Funds. In addition, OLDE

<sup>6</sup>Historically, the SEC has taken the position that section 12(b) of the 1940 Act makes it illegal for a mutual fund to finance the distribution of its shares. Thus, the primary method used by mutual funds to finance sales of their shares has been a front-end sales charge deducted from the offering price of a mutual fund's shares.

In 1980, the SEC adopted Rule 12b-1 under the 1940 Act. Rule 12b-1 allows a mutual fund to use a portion of its assets to pay for charges related to the distribution of its shares. In effect, Rule 12b-1 provides a limited exception to the general principle stated in section 12(b) of the 1940 Act by permitting a mutual fund to bear expenses pursuant to a Rule 12b-1 Plan, provided such plan is adopted and approved by the mutual fund shareholders as well as its board of directors. Once these requirements are met, a mutual fund may pay a percentage of its net assets on a periodic basis in accordance with the Rule 12b-1 Plan the mutual fund has adopted.

<sup>7</sup>In the case of the Plan, OLDE Discount serves in a facilitative role with regard to purchases of Fund shares. Based on instructions received from the Plan, OLDE Discount utilizes participant contributions that have been made to the Plan to acquire Fund shares directly from the Funds on behalf of participant Accounts. Under no circumstances will the Plan purchase Fund shares from existing holdings of OLDE Discount.

<sup>4</sup>In ERISA Advisory Opinion 97-15A (May 22, 1997), involving the Frost National Bank, the Department stated, in part, in a footnote reference (see Footnote 9, page 5) to the final regulation regarding participant-directed individual account plans (the ERISA Section 404(c) Plans) (57 FR 46906, 46924, n. 27 (October 12, 1992)) that "the act of limiting or designating investment options which are intended to constitute all or part of the investment universe of an ERISA Section 404(c) Plan is a fiduciary function which, whether achieved through fiduciary designation or express plan language, is not a direct or necessary result of any participant direction of such plan."

<sup>5</sup>The applicants believe that such services are covered by the statutory exemptive relief provided under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such services are statutorily exempt.

requests prospective exemptive relief that would permit OLDE Discount to make cash rebates of such 12b-1 Fees to the Plan or to the Accounts of individual participants.

9. To implement the proposed Rebate Program, OLDE has developed the following procedures:

(a) During the course of each calendar year, as it receives 12b-1 Fees from the Funds, OLDE Discount will calculate that portion of the 12b-1 Fees that are attributable to the Plan, including interest based on the Federal Funds Rate plus 2 percent. (It is represented that this interest rate will approximate the expected returns on the 12b-1 Fees during the period prior to their segregation by OLDE Discount.)

(b) Within 30 days of receipt by OLDE Discount of the 12b-1 Fees, OLDE Discount will separate and transfer the Plan's allocable portion of the 12b-1 Fees, together with interest earned on such fees (as determined in Step (a) above), to a money market account that will be established in the Plan's name with Comerica.

(c) The Plan may draw upon its Comerica money market account during the course of the year for the purpose of paying its administrative expenses owed to unrelated parties.<sup>8</sup>

(d) All facets of the Plan and the use of the Comerica money market account will be subject to audit each year by the Plan's independent auditors.

(e) Immediately following the end of each calendar year, any remaining rebated 12b-1 Fees, after the payment of the administrative expenses, will be allocated to the Accounts of Plan participants (including alternate payees under Qualified Domestic Relations Orders and beneficiaries of deceased participants) who had Account balances in the Plan as of the last day of the calendar year for which the calculation was made. This allocation will be made based on the relative Account balance of each such participant as of the last day of the calendar year for which the calculations was made.

10. As stated above, OLDE will establish a system of internal and external accounting controls with respect to the Rebate Program. In this regard, internal audit employees of OLDE will review the records and statements with respect to the special

purpose accounts established by OLDE with Comerica. In addition, OLDE will retain the services of Ernst & Young, an independent accounting firm, to audit, on an annual basis, the OLDE Discount's rebating of 12b-1 Fees to either the Plan or the Accounts. Such audits will provide independent verification of the proper crediting of such fees.

Specifically, the independent auditors will be instructed to (a) review and test compliance with the operational controls established by OLDE for purposes of the rebating; (b) verify, on a test basis, the rebates made; (c) verify, on a test basis, the coding system utilized by OLDE in making the rebates; and (d) recompute, on a test basis, rebated amounts at the discretion of the auditors. In the event any shortfalls are uncovered during the audit as a result of errors made by OLDE, OLDE will make a cash payment to the Plan equal to the amount of the error plus interest paid at money market rates under the Comerica money market account for the period of time of the error until the correction is made. Any excess rebates will be corrected by a corresponding adjustment of future rebates to the Plan in the amount of the excess rebate and will not require that the Plan pay any interest.

11. It is represented that participants with Account balances in the Plan will receive full written disclosures from OLDE concerning the Funds, including, but not limited to, the following: (a) copies of applicable prospectuses for the Funds discussing the investment objectives of the Funds, the policies employed to achieve these objectives, the relationship, if any, existing between OLDE Discount and parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents to the Funds; and (b) a statement describing the fee structure and the 12b-1 Fees. (OLDE will supplement such disclosures with information describing the Rebate Program.); (c) upon written or oral request to OLDE, a statement of additional information supplementing the applicable prospectus, which describes the types of securities and other instruments in which the Funds may invest, the investment policies and strategies that the Funds may utilize, including a description of the risks; (d) upon written request to OLDE, a copy of OLDE Discount's distribution agreements pertaining to the various Funds; and (e) copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

After receiving the foregoing disclosures, the participant will

acknowledge receipt of the documents in writing and provide authorization to OLDE with respect to investing in the Funds. Each additional purchase or redemption of shares in the Funds that is directed by the participant will be conditioned on OLDE's making available to the participant, copies of the applicable Fund prospectus and disclosures regarding the fee structure and the 12b-1 Fees.

With respect to ongoing disclosures, OLDE<sup>9</sup> will provide each participant investing in the Funds with (a) written confirmations of each purchase or redemption transaction involving shares of a Fund; (b) telephone quotations of such participant's Account balance; (c) a monthly statement of account specifying the net asset value of the assets in a participant's Account, a summary of current year contributions, contributions since inception, beginning and ending account balances, summaries of contributions, purchases and sales during the month, a summary of the participant's final Account portfolio, and, to the extent applicable during one month per year only, any rebated fees that are allocated to the participant's Account; (d) semiannual and annual reports that include financial statements for the Funds as well as the fees paid to OLDE Discount; (e) investment performance histories and other information provided by the Funds to OLDE; (f) ratings information received about the Funds from independent sources such as Morningstar; and (g) responses to oral or written inquiries of participants upon request.

Finally, OLDE will maintain, for a period of six years, written records that will enable the Department, Plan participants and others to determine whether the conditions of this exemption have been met.

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

(a) The decision to invest in the Funds has been made and will be made by a Plan participant and not by OLDE.

(b) No sales commissions, other than 12b-1 Fees, have been paid or will be paid by an Account in connection with the purchase or sale of shares in the

<sup>8</sup>In this regard, the Department notes that the use of amounts in the Comerica money market account to pay third party expenses would be permissible under section 408(b)(2) of the Act and the corresponding regulations only if such expenses were incurred in connection with a service otherwise exempt under section 408(b)(2) and the Plan is obligated to pay such expenses under applicable Plan provisions.

<sup>9</sup>As noted above, OLDE Financial represents that it is a fiduciary with respect to the Plan by reason of its ability to select investment alternatives for the Plan or to add or remove mutual fund families that it decides to make available to the Plan. However, OLDE Financial represents that neither it nor OLDE Discount provides investment advice to Plan participants that would make either entity a fiduciary with respect to the Plan within the meaning of section 3(21) of the Act.

Funds and no redemption fees have been or will be paid by an Account with respect to the sale of shares of the Funds.

(c) The Plan or, if applicable, an Account, will receive a rebate from OLDE Discount in the form of cash equal to its *pro rata* portion of all 12b-1 Fees charged by OLDE Discount to the Funds under the Rebate Program.

(d) Participants with Accounts in the Plan have received or will receive full written disclosure of information concerning the Funds at the time of, and subsequent to, such investment.

(e) The terms of each purchase or redemption of shares in the Funds have remained and will remain at least as favorable to an Account as those obtainable in an arm's length transaction with an unrelated party.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Consolidated Associations of Railroad Employees Health Care Plan (the Plan) Located in Topeka, Kansas**

[Application No. L-10527]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply, effective June 10, 1997 to: (1) The current leasing (the Lease) of certain real property (the Property) by the Plan to Century Health Solutions, Inc. (Century), a party in interest with respect to the Plan; (2) the proposed new leasing of substantially the same Property by the Plan to Century effective April 1, 1998 (the New Lease); and (3) the possible future sale of the Property by the Plan to Century pursuant to a right of first refusal under the terms of the Lease, provided the following conditions are satisfied: (a) The Property represents no more than 25% of the value of the Plan's assets; (b) The terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the fair market rental value is determined on an annual basis by a qualified, independent appraiser; (d) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Plan's independent fiduciary will continue to monitor the

transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease; and (f) the Plan's independent fiduciary acts to ensure that any sale of the Property by the Plan to Century is properly effected under the terms of the Lease, pursuant to Century's right of first refusal in the event the Plan receives a bona fide offer from a third party to purchase the Property, and Century is not in default on any of its obligations under the Lease.

**EFFECTIVE DATE:** If this proposed exemption is granted, it will be effective June 10, 1997.

**Summary of Facts and Representations**

1. The Consolidated Associations of Railroad Employees (CARE) and the Plan are the successors to the A.T. & S.F. Employees' Benefit Association (EBA) and the EBA Health Care Plan, respectively. EBA was the entity which, on behalf of the EBA Health Care Plan, initiated the Lease which is the subject of this proposed exemption. EBA was a traditional railroad hospital and medical benefit association whose sole function was to sponsor and maintain a health care arrangement for employees of the Santa Fe Railroad and their dependents. It did so for more than 100 years. By 1993, EBA no longer provided point-of-service hospitalization, but continued to provide point-of-service medical care and pharmaceuticals through a medical clinic and pharmacy located at its Topeka offices, and continued to provide indemnity benefits through its Health Care Plan, which relied exclusively on a comprehensive provider network.

2. EBA had a closely-related sister organization, the Santa Fe Employees Hospital Association (EHA). EHA provided similar medical benefits to Santa Fe Railroad employees in the southern and southwestern United States. To achieve economies of scale, and thereby to provide better benefits, EBA and EHA merged in July 1996, and became CARE, a not-for-profit Kansas corporation. Following the merger, the EBA and EHA Health Care Plans and their related trusts merged (on or about January 1, 1997) so that CARE maintains a single welfare plan, i.e., the Plan. The Plan currently has approximately 18,500 participants, and has assets of approximately \$16 million. The Property has a fair market value of approximately \$3.6 million, and the Lease, which encompasses 25% of the office space in the Property, thus involves approximately 6% of the assets of the Plan.

3. In late 1992, a group of former (or soon to be former) EBA employees formed Century. Century is a Missouri not-for-profit corporation. The applicant represents that its principals and employees are wholly independent of CARE. Its aim was to provide third party claims administration and other medically related services to employee welfare benefit plans. EBA and Century expected that Century would perform third party claims administration for the EBA Health Care Plan and also provide, directly to plan participants, point-of-service health care in a medical clinic, not just to EBA Health Care participants but to participants in other plans as well.

4. Accordingly, in late 1992, EBA (on behalf of the EBA Health Care Plan) and Century entered into various agreements, including the Lease and a services agreement. The applicant represents that the arrangement for services by Century on behalf of the EBA Health Care Plan are exempt pursuant to the provisions of section 408(b)(2) of the Act and the regulations thereunder.<sup>10</sup> The Lease, which first became effective on April 1, 1993, was for approximately 17,145 square feet of office space in the Property, which consists of an office building located at 620 S.E. Madison, Topeka, Kansas. The Lease was amended effective October 1, 1993, September 1, 1994 and May 1, 1995 for the sole purpose of increasing the space leased to Century and the rent paid to the EBA Health Care Plan, accordingly. The Lease, providing for a three year term with two potential extensions of one year each, will (with the extensions) expire on March 31, 1998. The parties are contemplating entering into the New Lease, with terms that are similar to the terms of the current Lease, to take effect April 1, 1998. The Lease had an initial term of three years and the possibility of two one-year extensions, and the New Lease is expected to have a similar term. The Lease built in increases in rent in each of the first three years and provided for increases based on the Consumer Price Index (CPI) in each of the two one-year extensions. The Plan's independent fiduciary (see rep. 7, below) has recommended a rent schedule for the New Lease that is based in part on CPI increases, as well as increases in operating costs.

5. Except as provided below with respect to storage space, the rent per square foot paid by Century under the Lease was \$12 for the first year, \$13 for

<sup>10</sup>The Department expresses no opinion herein as to the applicability of Act section 408(b)(2) to the provision of such services by Century.

the second year, and \$14 for the third year. The Lease provides for increases, based on the Consumer Price Index, in each of the two one-year extensions. For the first one-year extension, the rate in effect for the last year of the Lease served as the floor rent. For the second one-year extension, the rate in effect for the first one-year extension served as the floor rent. The modifications to the original Lease (the modifications were effective in 1993 and 1994) provided for Century's lease of additional space in the Property at the same rates which applied to the original Lease agreement. The 1995 modification provided for the leasing to Century of 308 square feet of uninhabitable storage space, with the rent for that space set at \$2.50 per square foot.

6. The applicant represents that prior to entering into the Lease with Century, EBA had received inquiries from several potential third party tenants, but none was willing to pay more than \$8 or \$9 per square foot. On August 12, 1996, independent appraisers Kevin Nunnink and Brian Coup of Nunnink Associates, Inc. (Nunnink), Kansas City, Missouri, determined that as of April 1, 1993, a rate of \$12 per square foot for the Property, without any escalation, would have been a fair market rental rate for the Property for a five year lease.

7. Effective May 1, 1997, CARE retained KOLL, The Real Estate Services Company (KOLL), Kansas City, Missouri, to act as the Plan's independent fiduciary with respect to the subject transaction. KOLL is an international real estate company based in Newport Beach, California which has 350 offices in the United States with 2,700 employees. The Kansas City office manages over 1 million square feet of space and provides third party brokerage services for local and national clients. KOLL represents that it is not related to CARE or Century nor to any of their principals, nor does KOLL have any business dealings with them. KOLL further represents that it understands and accepts its position as a qualified independent fiduciary with respect to the Plan, and its duties, responsibilities and liabilities as such under the Act. KOLL reviewed the Lease as of June 10, 1997 and made a detailed report as of that date. KOLL represents that it has made a determination, as of that date, that the Lease and retention of Century as a tenant at a market rental rate for an additional Lease term are in the best interests of the Plan and its participants and beneficiaries. KOLL represents that it has reviewed the terms of the Lease document, considered the Lease with respect to the Plan's diversification of investments and also considered

Century's performance of its obligations under the Lease. KOLL notes that if Century left the Property, roughly 30% of the Property would need to be released, which could take up to 6-12 months to accomplish. KOLL relied in part on the appraisal performed by Nunnink in light of Nunnink's independence and the quality and timing of the appraisal. KOLL represents that it will perform or cause to be performed an updated fair market rental analysis in the 60 day period preceding the date (April 1, 1998) of the New Lease, and further represents that the terms of the New Lease will be no less favorable to the Plan than the fair market rental rates as indicated by that independent fair market rental analysis. KOLL represents that it will continue to monitor the Lease and confirm the collection by the Plan of rents paid by Century, determine whether it is appropriate to renew, continue or extend the Lease to Century, set the terms and conditions of any renewal or extension of the Lease, and take all actions necessary to ensure that the Lease with Century, and the New Lease, remain in the best interests of the Plan.

8. Under Section 44 of the Lease, Century has a right of first refusal to purchase the Property from the EBA (now CARE) Health Care Plan in the event the Plan receives a bona fide offer from a third party to purchase the Property and Century is not in default of any of its obligations under the Lease. Century's right (and obligation should it choose to exercise its right) is to purchase the Property under the terms and conditions that are contained in the third party's offer. Century also has a right of first refusal over expansion space in the Property. This proposed exemption would extend to the purchase of the Property by Century pursuant to this right of first refusal. KOLL has agreed, as part of its independent fiduciary's responsibilities, to act on behalf of the Plan to ensure that this Section 44 of the Lease is properly effected (or that modifications to the Lease are made if KOLL considers such modifications necessary or advisable). Thus, KOLL will ensure that any offer made to the Plan for the purchase of the Property is, in fact, a bona fide third party purchase offer and that a sale of the Property to Century, upon the exercise of Century's right of first refusal, would be consistent with the rights and obligations of the parties under the Lease.

9. The applicant represents that CB Commercial Real Estate Group, Inc. (CB), has purchased KOLL. CB represents that it agrees to assume, and shall assume, as the successor to KOLL,

the duties and responsibilities of the independent fiduciary with respect to the subject transactions. CB endorses, ratifies and affirms all representations made by KOLL with respect to the subject transactions.

10. The applicant represents that not later than 30 days after the grant of the exemption proposed herein is published in the **Federal Register**, notice of the exemption will be sent to the appropriate Regional Office of the Department's Pension and Welfare Benefits Administration. The appropriate parties in interest agree to pay any civil penalty that may be due and owing by them under section 502(i) of the Act with respect to the leasing of the Property by the Plan to Century for the period before the exemption becomes effective.

11. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) The Lease represents approximately 6% of the Plan's total assets; (b) the rental for the Property has been demonstrated to be in excess of fair market rental terms as established by a qualified, independent appraiser, and future terms for the New Lease will be not less favorable to the Plan than those established by a qualified, independent appraiser; (c) the Plan's independent fiduciary, KOLL, has determined that the Lease is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (d) KOLL and its successor independent fiduciary, CB, will continue to monitor the Lease and take whatever action is necessary to protect the Plan's rights under the Lease; (e) before entering into the New Lease, CB will determine that the New Lease is appropriate for the Plan, in the best interests of its participants and beneficiaries and protective of their rights; and (f) CB, as the Plan's independent fiduciary, will ensure that any future sale of the Property by the Plan to Century is properly effected under the terms of the Lease, pursuant to Century's right of first refusal in the event the Plan receives a bona fide third party purchase offer.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Thornton, Hegg, Reif, Johnston & Dolan Profit Sharing Plan and Trust (the Plan) Located in Alexandria, Minnesota**

[Application No. D-10563]

#### **Proposed Exemption**

The Department of Labor is considering granting an exemption

under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of certain real property (the Property) to Robert M. Hegg (Mr. Hegg), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale; and

(D) The Plan receives as consideration from the Sale the greater of either the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or an amount equal to the funds expended in acquiring and maintaining the Property, less any income produced by the Property.

#### Summary of Facts and Representations

1. Thornton, Hegg, Reif, Johnston & Dolan, P. A., a Minnesota professional association, is the sponsoring employer of the Plan (the Employer). The Employer is in the general practice of law in Alexandria, Minnesota, which includes advising clients in various legal matters involving real estate matters.

2. The Plan is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The applicant represents that as of December 31, 1997, the Plan had \$1,668,933.96 and 12 participants. The fiduciaries of the Plan, who have investment discretion over all the assets of the Plan, include Mr. Hegg and Messrs. Thomas J. Reif, Scott T. Johnston, and Michael J. Dolan. All the fiduciaries are shareholders and officers of the Employer.

3. The Property is agricultural land, located at 452 County Road 5, Alexandria, Minnesota, approximately 10 miles from Alexandria, Minnesota, and consists of 70 acres of unimproved land with approximately 54 acres in tillable land and the remaining acreage in woodland and pasture. The Property consists of four separate parcels that

were acquired over three years beginning in 1981 from an unrelated party for the total sum of \$45,000, and the applicant represents that no expenses were incurred by the Plan when purchasing the Property. The applicant represents that the Property has been leased to Daryl R. Krohfeldt, an unrelated person, for farming purposes since 1981 through 1997 for the total sum of \$ 23,210. The only expenses the Plan has incurred from owning the Property is \$5,602 for real estate taxes for the years from 1981 through December 31, 1997, and \$50.00 for fence posts.

The Property was appraised by Virginia M. Swartz, of the Swartz Appraisal Service, located in Alexandria, Minnesota, who determined that the Property had a fair market value of \$30,500, as of June 8, 1996. The Property was listed for sale, commencing April 23, 1997, through April 1, 1998, with Jerry-Ginny Swartz Realty, Inc., located in Alexandria, Minnesota. The realtor represents in a letter dated December 31, 1997, that the Property has been advertised by various methods, including signs posted on the site and advertisements in local newspapers. Also, the realtor represents that no serious inquiries have been received regarding the Property, and that at this time the demand is limited for agricultural property in the area.

4. Mr. Hegg proposes to purchase the Property for cash in a one-time transaction with no expenses incurred by the Plan. The applicant represents that the Plan will receive as consideration from the Sale the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or an amount equal to the funds expended by the Plan in acquiring and maintaining the Property, less any income produced by the Property.

Mr. Hegg is prompted to take this action because of the decreasing value of the Property since its acquisition by the Plan, and because of the low yields to the Plan from its investment. Also, at this time, Mr. Hegg desires to purchase the Property because of its illiquidity as an investment as demonstrated by the inability of the Plan's realtor to generate interest in the Property from prospective purchasers or to sell the Property in the open market for its fair market value. The applicant represents that the Plan desires to convert the funds from the Sale into more liquid assets with greater yields, and assets requiring less expenses in administration for the Plan.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of

the Act because (a) the Sale is a one-time transaction for cash; (b) the Plan will not incur any expenses from the transaction; (c) the Plan will be able to convert the funds from the Sale into more liquid and higher yielding assets which will be less expensive to manage and administer for the fiduciaries of the Plan; and (d) the Plan will receive the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or an amount equal to the funds expended by the Plan in acquiring and maintaining the Property, less any income produced by the Property.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express



condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of February, 1998.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 98-4840 Filed 2-25-98; 8:45 am]

BILLING CODE 4510-29-P

## MISSISSIPPI RIVER COMMISSION

### Sunshine Act Meeting

#### AGENCY HOLDING THE MEETINGS:

Mississippi River Commission.

**TIME AND DATE:** 8:30 a.m., March 30, 1998.

**PLACE:** On board MISSISSIPPI V at City Front, Cairo, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project in Memphis District.

**TIME AND DATE:** 8:30 a.m., March 31, 1998.

**PLACE:** On board MISSISSIPPI V at City Front, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project.

**TIME AND DATE:** 8:30 a.m., April 1, 1998.

**PLACE:** On board MISSISSIPPI V at City Front, Greenville, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters

pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project in Vicksburg District.

**TIME AND DATE:** 8:30 a.m., April 3, 1998.

**PLACE:** On board MISSISSIPPI V at New Orleans District Office, New Orleans, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project in New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Noel D. Caldwell, telephone 601-634-5766.

**Noel D. Caldwell,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 98-5124 Filed 2-24-98; 2:37 pm]

BILLING CODE 3710-PU-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98-025)]

### NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAD); Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

**DATES:** Thursday, March 5, 1998, 8:30 a.m. to 5:00 p.m. and Friday, March 6, 1998, 8:00 a.m. to 12:30 p.m.

**ADDRESSES:** Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, Texas Building 17, Room 2037.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358-4700).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Report from liaison members with other advisory committees on activities relatives related to technology
- Review of NASA space commercialization activities
- Discussion of charter for review of the Human Exploration and Development Enterprise technology program.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 19, 1998.

**Matthew M. Crouch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 98-4852 Filed 2-25-98; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98-024)]

### Notice of Prospective Patent License

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

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that TekQuest, Inc., of Hendersonville, North Carolina, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,333,931, entitled "Portable Seat Lift," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Marshall Space Flight Center.

**DATES:** Responses to this notice must be received by April 27, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Mr. James J. McGroary, Patent Attorney, Marshall Space Flight Center, Mail Code CC01, Huntsville, Alabama 35812, telephone number (205) 544-0013.

Dated: February 17, 1998.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 98-4851 Filed 2-25-98; 8:45 am]

BILLING CODE 7510-01-M