

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request 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. 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.

Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager) Located in Atlanta, GA; Proposed Exemption

[Application Nos. D-09969 and D-09970]

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 Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹

Section I. Covered Transaction

If the exemption is granted, the restrictions of section 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)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) by Timberland, a special purpose corporation which holds plan assets from the American Telephone and Telegraph Master Trust (the AT&T Trust) and the BellSouth Master Pension Trust (the BellSouth Trust; collectively, the Trusts), to the Investment Manager of Timberland, a party in interest with respect to the Trusts.

This proposed exemption is conditioned upon the requirements set forth below in Section II.

Section II. General Conditions

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, is approved in writing by a Trust fiduciary who is independent of the Investment Manager and its affiliates (the Independent Fiduciary).

(b) Each Trust participating in Timberland has total assets that are in excess of \$50 million and no Trust has

invested more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, are at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary entered into an agreement with the Investment Manager disclosing all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) With respect to its ongoing participation in Timberland, each Trust receives the following written documentation from the Investment Manager:

(1) Audited financial statements of Timberland prepared by independent, qualified public accountants on an annual basis, which disclose the fees that are paid to the Investment Manager and its affiliates.

(2) Quarterly valuations, transmitted routinely to the Trusts, which indicate the fair market value of Timberland's assets as established by appraisers who are independent of the Investment Manager and its affiliates.

(3) Upon request, valuations performed by independent appraisers at three year intervals which determine the underlying land value of Timberland.

(4) Upon request, a timber inventory valuation of Timberland performed every five years by independent, registered consulting foresters in order to determine timber volume and growth rates.

(f) The total fees paid to the Investment Manager constitute no more than reasonable compensation.

(g) The Incentive Fee is payable to the Investment Manager upon the complete liquidation of the Trusts' account in Timberland (the Timberland Account) and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account,

(1) The Trusts will appoint a successor Investment Manager to effect the liquidation of such account.

(2) The Incentive Fee will not be paid to the former Investment Manager until the complete liquidation of the Timberland Account takes place.

(3) The Incentive Fee will only be paid to the former Investment Manager if it represents the lowest of three fee amounts.

¹ For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(i) The Investment Manager maintains, for a period of six years, the records necessary to enable the persons described in paragraph (i) of this Section 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 the Investment Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Investment Manager 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 (i) below.

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section shall be unconditionally available at their customary location during normal business hours by:

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

(B) Any fiduciary of a plan (the Plan) participating in the Trusts or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan participating in the Trusts or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Plan participating in the Trusts, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)-(D) of this paragraph (i) shall be authorized to examine the trade secrets of the Investment Manager or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this exemption:

(a) An "affiliate" of the Investment Manager includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Manager. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

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

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

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

(c) An "Independent Fiduciary" is a Trust fiduciary which is independent of the Investment Manager and its affiliates.

Summary of Facts and Representations

1. Wachovia Corporation (Wachovia) is a Southeastern interstate bank holding company maintaining dual headquarters in Winston-Salem, North Carolina and Atlanta, Georgia. The Investment Manager is one of Wachovia's principal banking subsidiaries. As of December 31, 1994, the Investment Manager had 493 branches in 206 cities and 3 states.

2. The American Telephone & Telegraph Company (AT&T), a New York corporation, and BellSouth Corporation (BellSouth), a Georgia corporation, provide telecommunication services. AT&T, whose headquarters are in New York, New York, primarily provides long distance telephone communication services. BellSouth, one of the seven regional telephone companies that was divested from AT&T in 1984 as part of the Department of Justice's antitrust settlement with AT&T, is located in Atlanta, Georgia and provides a wide array of telecommunication services, including mobile communications and advertising services.

3. The AT&T Trust covers active management and nonmanagement employees of AT&T as well as retirees throughout the United States. The AT&T Trust is comprised of the AT&T Management Pension Plan (the AT&T Management Plan) and the AT&T Nonmanagement Pension Plan (the AT&T Nonmanagement Plan). As of December 31, 1993, the participant and asset breakdown of these Plans were as follows:

AT&T Trust	Parti- cipants	Net sset value
Manage- ment Plan	180,491	\$20,024,695,000
Nonmanag- ement Plan	262,237	18,210,547,000
Totals	442,728	\$38,235,242,000

The AT&T Trust has six trustees. They are Citibank, N.A.; Chase Manhattan Bank, N.A.; Northern Trust Company; Bankers Trust Company; Mellon Bank, N.A.; and State Street Bank & Trust Company.

4. The BellSouth Trust covers active employees and retirees of BellSouth. The BellSouth Trust is comprised of the BellSouth Personal Retirement Account Pension Plan (the BellSouth PRA Plan), which covers management employees, the BellSouth Corporation Pension Plan (the BellSouth Pension Plan), which covers union employees, and the Retirement Pension Plan of Stephens Graphics, Inc. (the Stephens Plan), which covers management employees. In addition to covering active employees of BellSouth, all three plans include retirees. The retirees reside in all states comprising the United States. The active employees reside in Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, North Carolina and South Carolina.

As of December 31, 1993, the participant and asset breakdown of the BellSouth Trust were as follows:

BellSouth Trust	Parti- cipants	Net asset value
PRA Plan .. Pension Plan	43,669	\$6,064,663,690
Stephens Plan	91,797	7,065,931,097
	248	24,011,213
Totals	135,714	\$13,154,606,000

The Investment Manager serves as the trustee of the BellSouth Trust.

5. On January 1, 1985, AT&T and the First National Bank of Atlanta, predecessor in interest to the Investment Manager, entered into an investment management agreement (the AT&T Agreement) whereby the Investment Manager agreed to serve as investment manager with respect to a portion of the assets held in the AT&T Trust. Similarly, on September 20, 1990, BellSouth Corporation entered into an investment management agreement (the BellSouth Agreement) whereby the Investment Manager agreed to serve as investment manager with respect to a portion of the assets held in the BellSouth Trust. The decision by AT&T and BellSouth to enter into the Agreements with the Investment Manager was made by fiduciaries of the Trusts who are independent of the Investment Manager following written disclosure of all of the relevant facts and information concerning the purpose, structure and operation of Timberland including the proposed fee arrangements described herein and their

probable effect on the management of the assets of the Trusts.²

6. As contemplated by both the AT&T Agreement and the BellSouth Agreement, Timberland is a special purpose corporation with a projected duration of 7 years.³ Timberland was formed in 1990 for the purpose of holding title to timberland investments made on behalf of the AT&T Trust and the BellSouth Trust. The stock of Timberland is owned in equal shares by the Trusts. The assets of the Trusts that are invested in Timberland have been placed in an account which is referred to herein as the "Timberland Account."⁴ As of June 21, 1994, the Timberland Account had total assets of \$100,000,000.

7. Timberland holds title to the underlying land and timber on properties located in the States of Arkansas, Mississippi, Florida, Georgia, North Carolina, South Carolina, Michigan, Alabama and Louisiana. Such forest properties are primarily "mature" in that they predominately consist of sawtimber-sized trees that can be converted into lumber. Timberland also holds a fewer number of acres on which smaller trees are grown. Some of these smaller trees are merchantable as pulpwood while the remainder are

premerchantable in that they have not yet attained sufficient size to have any marketable value.

8. Effective October 15, 1990, Timberland entered into an investment management agreement with the Investment Manager (the Timberland Agreement). The Timberland Agreement was contemplated by both the BellSouth Agreement and the AT&T Agreement and is intended to ensure that the Timberland would bear directly on the investment management fees for the Investment Manager's services to the corporation. The Timberland Agreement is designed to reflect the operative provisions of the BellSouth and AT&T Agreements as they pertain to timberland investments.

9. Pursuant to the Timberland Agreement, the Investment Manager has full discretion and authority to purchase, sell convey or transfer timberland properties. To date, the Investment Manager has not incurred any debt in connection with the timberland properties. According to the applicants, it is not contemplated that such debt will ever be incurred.

The Investment Manager is also empowered to establish an overall plan for the management of timberland properties. In this regard, day-to-day management of the timber is performed by independent consulting foresters or their subcontractors who are retained on a per diem basis by the Investment Manager. Some of the duties performed by the consulting foresters include the construction and maintenance of firelines, timber stand improvement, inspection for and control of forest insects and disease, site preparation and planting, boundary line marking and maintenance and estimation of forest inventory.

10. Prior to the purchase of a property, the Investment Manager has the underlying bare land value and timber value independently appraised, along with an inventory of the volume of timber on the property, including estimates of the growth rates of the various species and timber products present on the property. At the end of each calendar quarter, the Investment Manager determines the closing market valuation of the timberland assets (excluding any then pending trades, accruals and cash) as of the end of that period. The Investment Manager derives the current volume of timber, net of growth and removals (sales and harvests), based on the independently arrived at growth rates. The Investment Manager retains the services of the independent consulting foresters licensed to do business in states in which the timber in question is located

to provide estimates of the per unit value of the various timber species and products on each tract of timberland in which Timberland has an interest.

As an additional method of valuation, the Investment Manager utilizes the services of Timber Mart South, a price reporting service which regularly quotes per unit market prices for timber products in conjunction with the information provided by the consulting foresters to establish a range of unit values of those areas. The Investment Manager may also use its own judgment to determine the appropriate unit values applicable to current volumes, employing the independently established ranges of values and thus arriving at closing market values for each timberland property in which Timberland has an interest.

In addition to quarterly valuations, the Investment Manager will have the underlying land value (bare land value) reappraised every three years by independent, state-certified appraisers. The purpose of these appraisals is to assist the Investment Manager in deciding whether to liquidate a tract of timberland. Further, the Investment Manager will have the timber inventory of Timberland appraised every five years by independent, registered consulting foresters to determine timber volume and growth rates.

The Investment Manager will select the independent, registered foresters referred to above based upon their prior satisfactory performance or their professional reputations as ascertained from knowledgeable sources within the industry. The consultants on timber value will be chosen on the basis of their reputations for reliability within the timber industry.

11. As compensation for its services under the Timberland Agreement, the Investment Manager is entitled to receive an investment management fee (the Management Fee). Initially, the Management Fee was paid quarterly in arrears at the annual rate of \$600,000. The first payment was made at the conclusion of the calendar quarter which included October 2, 1990. Over the next 11 quarters, Management Fee payments continued to be calculated at this rate until September 30, 1993 when a final payment was made to the Investment Manager.

Commencing in December 1993, the twelfth full quarter, the Management Fee is being paid quarterly in arrears in accordance with the following Annual Fee Schedule:

Annual fee schedule	
First \$100 Million	0.60%

² With respect to the proposed Incentive Fee, section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide adequate oversight of the investment manager during the course of the arrangement.

³ Although Timberland is currently structured as a corporation, the parties may, for tax reasons, decide to change that form to, or make additional timberland investments through, a partnership. The ownership interest in the partnership would be unchanged, i.e., BellSouth and AT&T would each retain a 50 percent ownership interest in the new entity. Furthermore, any change in the form of ownership would only occur if agreed to by BellSouth, AT&T and the Investment Manager.

⁴ The applicants are assuming, for purposes of this exemption, that the assets of the Trusts that have been invested in Timberland are "plan assets" within the meaning of 29 CFR 2510.3-101. Although the applicants represent that they have considered whether Timberland qualifies as a "real estate operating company" within the meaning of 29 CFR 2510.3-101(e), they are unable to conclude that Timberland can qualify primarily due to the absence of direct authority on whether the activities associated with timberland management are real estate management activities as contemplated by the regulatory definition of "real estate operating company."

Annual fee schedule	
Next \$200 Million	0.50%
Next \$300 Million	0.40%
Balance	0.30%

Such fee is being computed on the basis of the closing market value of timberland assets as of the end of each calendar quarter based on independent appraisals of timber volume and bare land.⁵

12. In addition to the Management Fee, the Investment Manager is entitled to receive an Incentive Fee upon the complete liquidation of the Trusts' Timberland Account provided the Trusts recover distributions equal to their initial investments. Liquidation of the Trusts' Timberland Account is to be completed by October 2, 1997. This is also the "termination date" for Timberland.⁶

The intent of the Incentive Fee is to induce the Investment Manager to liquidate the assets of the Timberland Account in a manner that maximizes the return to the Trusts. However, market conditions at the time of the liquidation will dictate the pattern governing the sale of assets in the Timberland Account as well as the sales price of such assets. To the extent that the Investment Manager can exercise discretion regarding the timing or the amount of the Incentive Fee, the applicants recognize that a violation of the prohibited transaction rules may occur. Accordingly, the applicants request an administrative exemption from the Department.

The Incentive Fee is a one-time fee that will be based on the annual, real internal rate of return (the IRR) achieved on the assets of Timberland. The IRR is the periodic rate at which an investment of a given size grows to a terminal value of a given size. The IRR is determined by the interaction of three variables—(a) the percentage gain in net asset value of the Timberland Account, (b) the time

⁵ The applicants represent that the Management Fee is statutorily exempt under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such fee is statutorily exempt under section 408(b)(2) of the Act.

⁶ Initially, October 2, 1997 was the expected "termination date" for Timberland, subject to an extension for two additional years. However, no reinvestments in Timberland are currently being made and proceeds from the disposition of properties are being distributed to the Trusts as the proceeds are collected. It is not anticipated that further reinvestments will occur. Thus, absent agreement by the parties that changes in the investment climate warrant further investment, Timberland will cease to operate when its present holdings have been disposed of. Although the rate of disposition of these holdings will depend on prevailing market conditions, the current expectation is that liquidation will be completed by October 2, 1997.

over which the gain is achieved, and (c) the rate of inflation.⁷

13. The proposed Incentive Fee payment would be based upon the IRR achieved on Timberland's assets consisting of a capital commitment (the Capital Commitment) of \$100 million or other amount as mutually agreed to by the Trusts and the Investment Manager. Such amount will be net of all fees, expenses, income taxes and debt and calculated in accordance with the Timberland Account Incentive Fee Payment Schedule which sets forth various IRRs (which begin at 1 percent and have no limit) and Incentive Fee payments (which are capped at \$10.5 million) applicable to the IRRs.

Basically, the Incentive Fee Payment Schedule provides that for each 0.1 percent increase in the IRR, the Incentive Fee is increased by the dollar amount of the prior increment plus \$500. For example, to determine the Incentive Fee earned with respect to an IRR of 3 percent, the incremental difference between the Incentive Fee earned with respect to an IRR of 2.8 and 2.9 percent must be determined initially. This difference, as reflected in the Incentive Fee Payment Schedule, is \$11,750 (\$137,750 minus \$126,000). Thus, the Incentive Fee for achieving an IRR of 3 percent would be \$150,000 according to the Incentive Fee Payment Schedule (\$137,750 plus \$11,750 plus \$500).

According to the applicant, the parties agreed to this formula for determining the Incentive Fee after considerable negotiation based on the understanding that each 0.1 percent increase in the IRR would be more difficult to achieve. In other words, increasing the IRR from 2.8 percent to 2.9 percent is more difficult than increasing it from 1.8 percent to 1.9 percent. Therefore, the Incentive Fee is designed to encourage this extra effort.

14. For purposes of computing the Incentive Fee, when calculating the IRR, any distributions made from the Timberland Account by the Investment Manager prior to October 2, 1994 and not recalled to fund additional timberland investments, will be subtracted from the cash flow used to determine the IRR. Also, any portion of the Capital Commitment not called prior to October 1, 1994 will cause the Incentive Fee payment amounts to be reduced by the same proportion as the ratio of uncalled capital to the Capital Commitment. All capital distributed to the Trusts from which said capital is

⁷ For purposes of calculating the IRR, the rate of inflation used will be defined as the "Consumer Price Index-U, United States, all items (1982-84 = 100)" (the CPI) currently prepared and published by the Department's Bureau of Labor Statistics.

contributed must be recalled prior to any additional portion of the Capital Commitment being called.⁸

15. The Incentive Fee is payable to the Investment Manager upon the termination of Timberland (i.e., October 2, 1997). However, if the Investment Manager resigns or is removed for any reason prior to October 2, 1997 by either AT&T, BellSouth or by both Trusts, the Trusts may appoint a successor Investment Manager to complete the liquidation of the Timberland Account. In this event, the Incentive Fee will be calculated, but it will not be paid to the former Investment Manager until the Timberland Account is completely liquidated (i.e., by October 2, 1997). The actual fee that is paid to the former Investment Manager will be the lesser of:

(a) An amount based on the IRR achieved from the inception of the Timberland Account to completion of the liquidation of such account;

(b) An amount based on the IRR achieved from the inception of the Timberland Account to the effective date of the former Investment Manager's removal or resignation, which shall be determined based upon the assumption that the liquidation proceeds are distributed to the Trusts on the termination date of the former Investment Manager in an amount equal to the independently appraised value of the property of Timberland as of such termination date (net of all fees, expenses and taxes); or

(c) An amount based upon the Alternative Fee described in the preceding footnote. Under such circumstances, the Alternative Fee will be computed through the date of the Investment Manager's resignation or removal.

For purposes of calculating the Incentive Fee, if the Investment Manager is removed or resigns prior to the complete liquidation of the Timberland Account, any required appraisal will be performed by an independent appraiser approved by both the Trusts and the Investment Manager. The independent appraiser will determine the fair market value of

⁸ If the requested exemption is not granted, the Timberland Agreement provides for the payment, to the Investment Manager, of an alternative fee (the Alternative Fee) (in addition to the Management Fee) upon the termination of Timberland. The Alternative Fee is based upon the value of the assets that are under the control of the Investment Manager. The Alternative Fee consists of (a) the payment of \$100,000 for each of the first twelve quarters of the Timberland investment and (b) for the remaining period prior to complete liquidation of Timberland removal, an amount equal to a fixed percentage of the closing market value of timberland assets as of the end of each calendar quarter. The applicants represent that the Alternative Fee would be covered by section 408(b)(2) of the Act and the regulations promulgated thereunder (see 29 CFR 2550.408b-2). However, the Department expresses no opinion herein on whether the payment of such fee would satisfy the conditions of section 408(b)(2) of the Act.

the properties in the Timberland Account by assuming the orderly liquidation of said properties, normal expenses of liquidation and income tax liabilities based on an estimate prepared by an independent certified public accounting firm approved by both the Trusts and the Investment Manager.

16. The following examples illustrate the manner in which the Incentive Fee would be calculated in four hypothetical situations:

• *Example 1.*

Assume that Timberland has a life of 7 years and that the Trusts invest a total of \$100 million in Timberland. At the end of year 7, the sales price of timber plus land, net of all expenses, is \$207,620,000. Assume also that the rate of inflation is 0%. The IRR for this investment can be calculated directly because there is a single cash outflow of \$100,000,000 and a single cash inflow of \$207,620,000. The calculation is as follows: $[(\$207,620,000 / \$100,000,000)^{1/7} - 1] \times 100 = 11\%$

Once the IRR is calculated, the Incentive Fee that will be paid by the Trusts can be determined from the Incentive Fee Payment Schedule which has been reproduced, in part, as follows:

Annual real IRR (> or =)	Incentive fee payment
10.8%	\$2,646,000
10.9%	2,697,750
11.0%	2,750,000

Thus, the total Incentive Fee that will be paid by the Trusts to the Investment Manager based upon an IRR of 11% is \$2,750,000.

The above IRR is both a *nominal* and a *real* rate because inflation was assumed to be 0%. If inflation is positive, however, the nominal IRR will be greater than the real IRR. With positive inflation as measured by the CPI, the nominal IRR must be adjusted for inflation and the Incentive Fee calculated on the basis of the adjusted or real IRR. This is done in Example 2.

• *Example 2.*

Same as Example 1, except now assume inflation occurred at a 4% annual rate over the life of the Trusts' investment in Timberland.

To determine the real IRR, the 11% nominal IRR must be adjusted for 4% inflation. This figure is calculated by dividing the nominal IRR by the CPI: $1.11 / 1.04 = 1.0673 = 6.73\%$.

Once the real IRR is computed, the Incentive Fee that will be paid by Trusts can be determined by referring to the Incentive Fee Payment Schedule which has been reproduced, in part, as follows:

Annual real IRR (> or =)	Incentive fee payment
6.6%	\$924,000
6.7%	954,750
6.8%	986,000

Thus, the total Incentive Fee that will be paid by the Trusts to the Investment Manager based upon a real IRR of 6.73% is \$954,750.

• *Example 3.*

Assume the Trusts give the Investment Manager \$100 million to invest in Timberland and that the Investment Manager increases the investment amount to \$170 million (which is the fair market value determined by independent appraisals), net of expenses, by the end of 4 years. Assume also that the Investment Manager resigns and is replaced by a new Investment Manager. Assume further that the rate of inflation over the 4 year period is 4% annually.

The nominal IRR can be computed directly because there is one cash inflow and one cash outflow: $[(\$170,000,000 / \$100,000,000)^{1/4} - 1] \times 100 = 14.19\%$. To determine the real IRR, the 14.19% nominal IRR must be adjusted for 4% inflation. This figure is calculated by dividing the nominal IRR by the CPI: $1.1419 / 1.04 = 1.0979 = 9.79\%$.

From the Incentive Fee Payment Schedule, the Trusts would pay the former Investment Manager an Incentive Fee of \$2,109,750 based upon a real IRR of 9.79%.

Annual real IRR (> or =)	Incentive fee payment
9.6%	\$2,064,000
9.7%	2,109,750
9.8%	2,156,000

However, the actual fee paid to the former Investment Manager would be the lowest of (a) \$2,109,750, (b) the Alternative Fee or (c) an Incentive Fee determined by reference to the IRR achieved through the complete liquidation of Timberland (including investment results achieved by the successor Investment Manager).

Example 4 demonstrates how poor performance by a successor Investment Manager can reduce the actual payment made to the former Investment Manager.

• *Example 4.*

Same as Example 3, assuming further that the successor Investment Manager continues for a year and that all of Timberland's assets are liquidated in one transaction at the end of that period. During the extra year, the fair market value of Timberland remains at \$170 million and the rate of inflation remains at 4 percent.

The nominal IRR can be computed as follows: $[(\$170,000,000 / \$100,000,000)^{1/5} - 1] \times 100 = 11.20\%$.

To determine the real IRR, the 11.20% nominal IRR must be adjusted for 4% inflation. This figure is calculated by dividing the nominal IRR by the CPI: $1.112 / 1.04 = 6.92\%$.

From the Incentive Fee Payment Schedule, shown in part below, the former Investment Manager would be entitled to an Incentive Fee of \$1,017,750 based on a real IRR of 6.92 percent.

Annual real IRR (> or =)	Incentive fee payment
6.8%	\$986,000
6.9%	1,017,750
7.0%	1,050,000

Since this Incentive Fee is lower than the Incentive Fee based on independent appraisals (see Example 3), the Trusts would pay the former Investment Manager the lower of this fee or the Alternative Fee.

17. The Investment Manager will provide the Trusts with quarterly unaudited financial statements prepared by Price Waterhouse & Company (Price Waterhouse). In addition, the Investment Manager will provide the Trusts with annual audited financial statements, also prepared by Price Waterhouse. These documents will generally be issued within thirty days following their preparation.

18. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, has been approved in writing by a fiduciary who is independent of the Investment Manager and its affiliates.

(b) Each Trust participating in Timberland has total assets that are in excess of \$50 million and no Trust may invest more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, will remain at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary received offering materials which disclose all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) The Investment Manager will make periodic written disclosures to the Trusts with respect to the financial condition of Timberland and the fees paid to the Investment Manager.

(f) The total fees paid to the Investment Manager will constitute no more than reasonable compensation.

(g) The Incentive Fee will be payable to the Investment Manager upon the complete liquidation of the Timberland Account and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account, the Trusts will appoint a successor Investment Manager to effect the liquidation of such account. Under such circumstances, the Incentive Fee will not be paid to the former Investment Manager until the Timberland Account is fully liquidated and if paid, such Incentive Fee must be

represent the lowest of three fee amounts.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 30 days of the publication of the notice of pendency in the Federal Register. The notice will include a copy of the notice of proposed exemption as published in the Federal Register and a statement informing interested persons of their right to comment on and/or to request a hearing with respect thereto. The notice will be provided to all active employees of AT&T and BellSouth by posting. Mailed notice will be given to AT&T and BellSouth union representatives, plan administrators and representatives of retirees. Comments to the Department are due within 60 days of the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 5th day of December, 1995.

Ivan Strasfeld,

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

[FR Doc. 95-29984 Filed 12-07-95; 8:45 am]
BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95-111]

Notice of Prospective Patent License

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that MicroMed Systems Ltd., Co., Houston, TX 77019, has requested an exclusive license to practice the inventions protected by U.S. Patent Application Numbers 08/153,595 entitled "ROTARY BLOOD PUMP" and U.S. Patent Application No. 08/451,709 entitled "ROTARY BLOOD PUMP," which were respectively filed November 10, 1993 and May 26, 1995, by 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 Mr. Hardie R. Barr, Patent Attorney, NASA Johnson Space Center.

DATES: Responses to this Notice must be received by February 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Hardie R. Barr, NASA Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone number (713) 483-1003.

Dated: December 1, 1995.

Edward A. Frankle,
General Counsel.

[FR Doc. 95-29939 Filed 12-7-95; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289]

GPU Nuclear Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by GPU Nuclear Corporation (the licensee) to withdraw its May 20, 1994, application for an amendment to Facility Operating License No. DPR-50, issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit No. 2, located in Dauphin County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the Federal Register on June 14, 1994 (59 FR 30621).

The purpose of the licensee's amendment request was to revise the Technical Specifications to raise the limit on maximum control rod drop time and was requested only for the duration of operating cycle 10, which was concluded on September 8, 1995.

Subsequently the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 20, 1994, and (2) the staff's letter dated November 14, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 30th day of November 1995.

For the Nuclear Regulatory Commission,

Ronald W. Hernan,

*Project Manager, Project Directorate I-3,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 95-29938 Filed 12-7-95; 8:45 am]
BILLING CODE 7590-01-P