

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 requests 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. __, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffitt.betty@dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 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, 5 U.S.C. App. 1 (1996), 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.

Kinder Morgan, Inc., Located in Houston, Texas

[Exemption Application Number D-11079]

Proposed Exemption

The Department is considering the grant of the following 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).

Section I—Transactions Involving Contributions In-Kind

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to: (1) The acquisition of publicly traded Employer Stock by the Trusts through the voluntary in-kind contribution (the Contribution) of such Stock by the Employer for the purpose of pre-funding welfare benefits provided by the Plans; and (2) the holding by the Trusts of Employer Stock acquired pursuant to a Contribution, provided that:

(a) Each Contribution is authorized pursuant to, and made in conformity with, all relevant provisions of each affected Plan;

(b) The Plans and/or Trusts do not pay any amount or type of consideration whether in cash or other property (including the diminution of any Employer obligation to fund a Plan) for Employer Stock contributed in-kind by the Employer;

(c) Each Contribution is voluntary and unrelated to any Employer obligation to fund a Plan;

(d) The Plans do not cede any right to receive a cash contribution from the Employer as a result of any Contribution made to any Plan;

(e) The Plans and/or Trusts do not pay any fees or commissions in connection with any Contribution; and

(f) Each condition set forth below in Section II is satisfied.

Section II—Conditions

The exemption is conditioned upon the adherence by the Employer to the material facts and representations described in this notice of proposed exemption and upon the satisfaction of the following requirements:

(a) Only Employer Stock that constitutes "qualifying employer securities" (QES), as such term is set forth in section 407(d)(5) of the Act, will be transferred by the Employer to a Trust pursuant to a Contribution;¹

(b) Employer Stock transferred by the Employer on behalf of a Plan will thereafter be held by the Trust (or Trusts) for the purpose of funding welfare benefits for the participants and beneficiaries of such Plan;

(c) Employer Stock contributed to, or otherwise acquired by, a Trust will be held in a separate account (an Account) under such Trust;

(d) The appropriate fair market value of any Employer Stock contributed by the Employer to a Trust will be established by an Independent Fiduciary, as such term is defined in section III(c) of this proposed exemption;

(e) The Independent Fiduciary will represent the interests of the Plans for all purposes related to each Contribution for the duration of the Trust's holding of such Employer Stock, and will authorize the trustee of each Trust to accept Employer Stock pursuant to a Contribution only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans;

¹ Section 407(d)(5) of the Act provides that the term "qualifying employer security" means an employer security that is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan other than an individual account plan, stock is considered a "qualifying employer security" only if such stock satisfies the requirements of subsection 407(f)(1) of the Act. Section 407(f)(1) of the Act provides that stock satisfies such requirement if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.