

Secretary of Labor or Executive Director of the Secretariat for appointment.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None, except for those uses listed in the General Prefatory Statement to this document.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS OF THE SYSTEM:

STORAGE:

Manual files and computer disk.

RETRIEVABILITY:

By Nominee's name and by selected skills categories.

SAFEGUARDS:

Locked storage equipment and personnel screening.

RETENTION AND DISPOSAL:

- a. Advisory committee members, arbitrators, contractors, consultants, and experts: Permanent transfer to National Archives three (3) years after expiration of term of service.
- b. Nominees not selected: destroy files when five (5) years old.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, U.S. National Administrative Office, U.S. Department of Labor, Bureau of International Labor Affairs, Room C-4327, Washington, D.C. 20210.

NOTIFICATION PROCEDURES:

Individuals wishing to gain access to non-exempt records should contact the system manager at the system location above.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the system manager at the address listed above. Individuals must furnish the following information for their records to be located and identified:

- a. Name;
- b. Approximate date for investigation;
- c. Individuals requesting access must also comply with the Privacy Act regulations regarding verification of the identity to records at 29 CFR 70a.4.

CONTESTING RECORDS PROCEDURES:

A petition for amendments shall be addressed to the System Manager and must meet the requirements of 29 CFR 70a7.

RECORD SOURCE CATEGORIES:

Nominations submitted by individuals within the system, other

individuals and organizations and by government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Not applicable.

II. Publication of an Amendment

DOL/OASAM-31, DOL Flexible Workplace (Flexiplace) Pilot Programs Evaluation and Files, is amended by revising three categories, System Location, Purpose, and System Manager and Address, to read as follows:

DOL/OASAM-31

SYSTEM NAME:

DOL Flexible Workplace (Flexiplace) Pilot Programs Evaluation and Files.

* * * * *

SYSTEM LOCATION:

DOL/OASAM/Office of Human Resources, Office of Human Resource Systems.

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PURPOSE(S):

These records are used for statistical research and to evaluate the DOL Flexiplace Pilot Programs.

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SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Office of Human Resources, Office of Human Resource Systems, Room N-5470, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210.

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

Robert B. Reich,
Secretary of Labor.

[FR Doc. 95-11462 Filed 5-9-95; 8:45 am]

BILLING CODE 4510-23-M

Pension and Welfare Benefits Administration

[Application No. D-09872, et al.]

Proposed Exemptions; T.J. Lambrecht Construction, Inc. et al.

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 restriction 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 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.

T.J. Lambrecht Construction, Inc., Employees' Profit Sharing Plan and Trust (the TJLC Plan); Brown & Lambrecht Earthmovers, Inc. Employees' Profit Sharing Plan and Trust (the B&L Plan; collectively referred to as the Plans)

Located in Joliet, Illinois

[Application Nos. D-09872 and D-09873]

Proposed Exemption

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). If the exemption is granted, the restrictions of sections 406(a), 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 proposed cash sale (the Sale) by each of the Plans of a 12.5% partnership interest in Prime Industries (the Partnership Interest) to Mr. Thomas J. Lambrecht (Mr. Lambrecht), a party in interest with respect to the Plans; provided the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the sale price for each Partnership Interest will be the higher of (a) the fair market value of the Partnership Interest as determined by a qualified independent appraiser at the time of the Sale or, (b) each Plan's total investment in the Partnership Interest (\$300,000); and (3) the Plans do not suffer any loss nor incur any expenses in connection with the transaction.

Summary of Facts and Representations

1. The Plans are defined contribution profit sharing plans. As of December 31, 1994, the TJLC Plan had 48 participants and \$1,472,427.00 in assets. As of September 30, 1994, the B&L Plan had 29 participants and \$6,253,423.00 in assets. T.J. Lambrecht Construction, Inc. and Brown & Lambrecht Earthmovers, Inc. (the Employers) are Illinois subchapter S corporations in the business of earthmoving and road

construction. Mr. Lambrecht is the sole trustee of the TJLC Plan and co-trustee (with Mr. Paul Lambrecht) of the B&L Plan. Mr. Lambrecht is also the sole shareholder and sole director of both Employers.

2. The Plans purchased the Partnership Interests in Prime Industries from Lennon Wallpaper Company in 1991. The total purchase price of each Partnership Interest was \$258,750.00. The applicant represents that both Lennon Wallpaper Company and Prime Industries are unrelated to the Employers. Prime Industries' only asset is a 300,000 square foot steel building on 15.6 acres located in Shorewood, Illinois (the Partnership Property). From 1991 through September 30, 1994, each Plan advanced additional funds in the amount of \$125,000.00 for improvements to the Partnership Property. The applicant represents that, during this same time period, the Partnership Property generated income for each Plan in the amount of \$83,750.00. The applicant also represents that the Partnership Property continues to generate income for the Plans in the form of rental payments from tenants who are not related to the Plans or the Employers. In addition, it is represented that the Partnership Interest currently represents 25.47% of the TJLC Plan's assets and 6% of the B&L Plan's assets.¹

3. The applicant represents that, because the Partnership Interests are minority interests and because the interests are not publicly traded, there is not an established market for the Partnership Interests. Furthermore, it is represented that the Partnership Property is the only asset owned by the partnership. The applicant represents that, for the foregoing reasons, the interests are valued according to the proportionate value of the underlying property. In this regard, the applicant submitted a letter prepared by Charles Sharp, a general partner of the partnership, in which Mr. Sharp explained that the sole value of the Partnership Interests is the value of the Partnership Property itself and that the Partnership Interests have no value in and of themselves.

4. The applicant represents that Brown & Lambrecht Earthmovers, Inc. was merged into T.J. Lambrecht Construction, Inc. on January 1, 1995.

¹ The Department notes that the decisions to acquire and hold the Interests are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Interests by the Plans.

As a result, the B&L Plan is in the process of being terminated. In addition, the TJLC Plan is being terminated and T.J. Lambrecht Construction, Inc. is in the process of establishing a new profit sharing plan which will allow for participant-directed investments. The applicant requests an exemption to permit the Sale by the Plans of the Partnership Interests to Mr. Lambrecht. Each Plan will receive the greater of (1) the fair market value of the Partnership Interest as determined by an independent appraiser at the time of the Sale, or (2) the Plan's total investment in the Partnership Interest. The applicant represents that this Sale is in the best interests of Plan participants and beneficiaries because it will allow the Plans to convert the Partnership Interests into cash, creating the liquidity needed for distributions to participants who, at their election, have the right to roll over their Plan benefits into the new profit sharing plan. It is also represented that the Sale will facilitate implementation of participant-directed investment of accounts in the new profit sharing plan.

5. The Property was appraised by Mr. Joseph Batis, MAI, a State of Illinois Certified General Real Estate Appraiser who is independent of the Plans, the Employers, and Mr. Lambrecht. In analyzing the value of the Partnership Property, Mr. Batis stated that he relied mainly on the direct sales comparison approach but also considered the cost approach and the income approach to estimate the value of the property. The appraised value of the Partnership Property as of September 30, 1994 was \$4,000,000.00. The ratable value of each Plan's 12.5% interest in the Partnership Property as of that date was \$500,000.00.²

6. The applicant represents that the Plans would incur no expenses or commissions with respect to the Sale. The applicant also represents that the proposed transaction is administratively feasible and protective of the Plans' participants and beneficiaries. Finally, the applicant represents that the proposed transaction will provide the Plans with the liquidity needed to fund participant-directed investments and cash distributions to Plan participants.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) The Sale will be a one-time transaction for cash; (2) no

² The applicant represents that the fair market value of the Partnership Interests will not be discounted for lack of marketability, or for any other reason.

commissions or fees will be paid by the Plans as a result of the Sale; (3) the Sale will enable the Plans to liquidate their assets and will facilitate implementation of participant-directed investments; and (4) the Sale price will be the higher of: (a) The fair market value of the Partnership Interest on the date of the Sale, or (b) the Plan's total investment in the Partnership Interest.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Pediatric Dentistry Ltd. Profit Sharing Trust (the Plan),

Located in Fargo, North Dakota
[Exemption Application No. D-09903]

Proposed Exemption

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). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(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 Code³ shall not apply to the proposed cash sale of a parcel of improved real property (the Property) by the Plan to William Hunter, M.D. (Dr. Hunter), a party in interest with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive in cash the greater of \$79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (3) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by Pediatric Dentistry Ltd. (the Employer). As of November 29, 1994, there were seven (7) participants. As of November 17, 1994, the assets of the Plan totaled approximately \$1,295,866. Approximately seven percent (7%) of

the Plan's assets are invested in the Property. Northern Capital Trust Company is the trustee (the Trustee) of the Plan. Dr. Hunter is the administrator of the Plan.

2. The Employer which sponsors the Plan is a professional service corporation providing dental services. The Employer's business office is located in a residential area immediately adjacent to the Property. Dr. Hunter is the sole shareholder of the Employer.

3. In 1989, the Property was purchased at a price of \$67,500 from third parties unrelated to Dr. Hunter or to any other beneficiary of the Plan. It is represented that one of the factors contributing to the purchase was the view that eventually the Property would be needed for the Employer's business and would at that time satisfy the definition of "qualifying employer real property," as set forth in section 407(d)(4) of the Act.⁴

However, it is represented that since the acquisition by the Plan, the Property has been rented to various parties unrelated to Dr. Hunter or to any other beneficiary of the Plan. It is represented that the annual average return on the investment to the Plan since the Property was acquired in 1989, has been 4.31%.

4. The Property is described as a one-story detached single family residence on a corner lot in a newer diversified neighborhood in Fargo, North Dakota. The Property consists of an 8,447 square foot level site improved by a structure that contains a 1,253 square foot finished living area above grade and a basement of the same size below grade. The Property is located at 1206 15 Avenue South and is situated on the lot adjacent to the Employer's business office.

5. This exemption is requested to permit the Plan to sell the Property to Dr. Hunter for the greater of \$79,000 or the appraised fair market value of the Property on the date of sale. Dr. Hunter represents that beginning in April, 1992, the Property was listed with a local realtor as part of the multiple listing service. The Property was initially listed at a price of \$71,950 which it is represented reflected the fair market value of the Property at that time based

⁴The Department notes that the decisions of the fiduciary, acting on behalf of the Plan, in connection with the acquisition and holding of the Property are governed by the fiduciary responsibility requirements of part 4, subpart B, of Title I. The Department expresses no opinion herein, as to whether any of the relevant provisions of part 4, subpart B, of title I have been violated regarding the Plan's investment in and subsequent holding of the Property, and no exemption from such provisions is proposed herein.

on an appraisal. Subsequently, the price of the Property was reduced to \$68,950. Though the Property was shown to prospective buyers by several realtors who participate in the multiple listing service, it is represented that the Plan did not receive any offers from those buyers to purchase the Property.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the proposed transaction is in the interest of the Plan in that the price offered by Dr. Hunter could not be obtained otherwise. In addition, the Plan will be able to sell the Property without incurring any further expense of searching for a buyer and without paying brokerage commissions, fees, or other expenses as a result of the transfer. The Trustee is desirous of selling the Property, which is illiquid, in order to facilitate the establishment of participant directed individual accounts in the Plan. It is anticipated that once the Property is sold the cash proceeds would be invested in marketable securities.

In the opinion of the Trustee, the proposed transaction is protective of the participants and beneficiaries of the Plan in that the sales price would be based on the fair market value of the Property as determined by an independent, qualified appraiser, as of the date of the sale. Further, the Trustee will review the transaction and make the final determination regarding the sale of the Property to Dr. Hunter. In this regard, the Trustee represents that in its fiduciary capacity with respect to the Plan, it will review the contemplated transaction so as to insure that the interests of the participants of the Plan are protected.

6. An appraisal of the Property was prepared by Jerry Link (Mr. Link), of Appraisal Services, Inc., in Fargo, North Dakota. It is represented that Mr. Link is qualified in that he is licensed by the State of North Dakota as an appraiser. It is further represented that he is independent in that he has no present or prospective interest in the Property and has no personal interest or bias with respect to the participants in the proposed transaction. Mr. Link represents that neither his employment nor his compensation was conditioned upon the appraised value of the Property, nor was he required to report a predetermined value or base the appraisal on a requested minimum value for the Property. After physically inspecting the Property, and reconciling values for the Property established by the cost approach, income approach, and sales comparison approach, Mr. Link determined that the fair market

³For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

value of the Property was \$79,000, as of January 13, 1994.

Because the Property is located on the lot adjacent to the Employer's business office, Mr. Link was asked to determine whether there would be any premium value associated with the Property. In this regard, Mr. Link indicated that the Property is a single family dwelling located in an R-1, One/Two Family Dwelling District. It is represented that this zoning category does not allow commercial development without a special use permit. According to Mr. Link the highest and best use of the Property is single family. Based on this highest and best use, it is the opinion of Mr. Link that the Property's location next to the Employer's business office does not result in a premium associated with the value of the Property to Dr. Hunter.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the sale of the Property will be a one-time transaction for cash; (b) as a result of the sale, the Plan will receive in cash the greater of \$79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (c) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; (d) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties; (e) the Plan will be able to invest the proceeds from the sale of the Property in marketable securities; (f) the Plan will be able to dispose of the Property which is illiquid; and (g) the sale of the Property will facilitate the establishment of participant directed individual accounts in the Plan.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Bob Murphy, Inc. Profit Sharing Plan (the Plan)

Located in Boynton Beach, Florida
[Exemption Application No. D-09949]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 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 proposed sale (the Sale) of certain works of art (the Art Work) by the Plan to Robert J. Murphy, Jr., a disqualified person with respect to the Plan.⁵

This proposed exemption is conditioned upon the following requirements: (1) all terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the fair market value of the Art Work on the date of the Sale as determined by an independent, qualified appraiser.

Summary of Facts and Representations

1. The Plan is a profit sharing Plan whose only participants are Mr. Murphy and his wife, Gail F. Murphy. As of June 30, 1994, the Plan had total assets of \$572,050. Mr. and Mrs. Murphy serve as the trustees of the Plan (the Trustees) and have sole investment discretion with respect to its assets.

2. The Plan has approximately 17 percent of its assets in the Art Work, which consists of ten Leroy Nieman serigraphs. The Plan received the Art Work as a rollover from the Bob Murphy, Inc. Defined Benefit Pension Plan (the DB Plan), which the trustees terminated on November 15, 1987. The DB Plan purchased the Art Work between 1980 and 1987 from two dealers—Hammers Gallery in New York and Hanson Gallery in New Orleans. Mr. Murphy represents that he is independent of, and unrelated to, both Hammers Gallery and Hanson Gallery.

3. Following its acquisition, the Art Work has been in the possession of Mr. Murphy at his residence at Delray Beach, Florida and his office at the Delray Dunes Country Club in Boynton Beach, Florida. In an examination report dated January 6, 1993, the Internal Revenue Service (the Service) determined that Mr. and Mrs. Murphy had engaged in prohibited transactions by reason of their use of the Art Work for the years 1989, 1990 and 1991. Mr. Murphy represents that on August 22, 1994 he filed Forms 5330 with the Service and paid the applicable excise

⁵ Since Robert J. Murphy, Jr. and his wife, Gail F. Murphy, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

taxes associated with the past prohibited transaction in the amount of \$9,195.

4. Because the Art Work is not an income producing asset for the Plan and certain pieces of the Art Work have declined in value, Mr. Murphy proposes to purchase the Art Work from the Plan for a cash amount equal to its fair market value on the date of the Sale. Accordingly, Mr. Murphy requests an administrative exemption from the Department to permit his purchase of the Art Work from the Plan under the terms and conditions described herein.

5. Celeste B. Stover, the Assistant Director for Hanson Gallery in New Orleans, Louisiana, valued the Art Work as of August 10, 1994. In her capacity as Assistant Director, Ms. Stover has actively represented the work of Leroy Nieman since 1983. Ms. Stover represents that while Mr. Murphy has been a client of the Hanson Gallery since 1984, both she and Hanson Gallery are unrelated to, and independent of, Mr. and Mrs. Murphy. Ms. Stover states that she derives less than 1 percent of her annual income from Mr. Murphy.

In determining the fair market value of the Art Work, Ms. Stover represents that she looked to the recommended retail values of Leroy Nieman serigraphs provided yearly to Hanson Gallery by Knoedler and Co., the publishers of Leroy Nieman's prints. The recommended values are based upon current demand for the specific image as well as availability of the image and previous bids within the last year. Ms. Stover's valuations of the Art Work are as follows:

Work	Fair Market Value
Rush Street Bar	\$6,500
Elephant Nocturne	10,000
New York Stock Exchange	15,000
P.J. Clarkes	15,000
Buena Vista Bar	8,000
Harry's Wall Street Bar	7,000
Bistro Gardens	6,800
Polo Lounge	11,000
Bar at 21	7,000
Fix McRory's Whiskey Bar	12,000

6. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) All terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (b) the Sale will be a one-time cash transaction; (c) the Plan will not be required to pay any commissions, costs

or other expenses in connection with the Sale; (d) the Plan will receive a sales price equal to the fair market value of the Art Work based on a determination by an independent, qualified appraiser.

Notice to Interested Persons

Since Mr. and Mrs. Murphy are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments are due within thirty days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Kathryn Parr of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

The Brown Group, Inc., 401(k) Savings Plan (the Plan),

Located in St. Louis, Missouri
[Application No. D-09951]

Proposed Exemption

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 C.F.R. Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed guarantee (the Guarantee) by The Brown Group, Inc. (the Employer), the sponsor of the Plan, of amounts due the Plan with respect to a guaranteed investment contract issued by Confederation Life (Confederation Life), including the Employer's potential cash advances to the Plan (the Advances) pursuant to the Guarantee and the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Advances are made in lieu of amounts due the Plan under the terms of the GIC;

(C) The Repayments are restricted to cash proceeds actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or from the sale or transfer of the GIC to unrelated third parties (the GIC Proceeds), and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Advances exceed the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which includes a cash or deferred arrangement under section 401(k) of the Code, and which provides for employer matching contributions and additional employer discretionary contributions. As of December 31, 1994 the Plan had approximately 2,500 participants and total assets of approximately \$44,937,281. The trustee of the Plan is Boatmen's Trust Company (the Trustee), located in St. Louis, Missouri. The Employer, a New York publicly-traded corporation, is engaged in the manufacture, import and retail sales of shoes, with its corporate headquarters in St. Louis, Missouri.

2. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of each Account. Plan participants direct investment of their Accounts among four investment options (the Funds), and may reallocate their Account balances among the Funds on a periodic basis. The Funds include a guaranteed interest fund (the G.I. Fund), which invests in guaranteed investment contracts issued by insurance companies.

3. Among the assets of the G.I. Fund is the GIC, a guaranteed investment contract issued to the Plan in 1992 by Confederation Life Insurance Company (Confederation Life), a Canadian insurance company doing business in the United States. The GIC is a single-deposit, benefit-responsive contract, principal amount \$1,000,000, earning interest at a guaranteed annual rate of 7.15% (the Contract Rate). The GIC's terms enable the G.I. Fund to make monthly withdrawals (the Withdrawals) to effect, in accordance with the terms of the Plan, benefit distributions, in-service withdrawals, participant Advances, and participant-directed transfers of Account balances to other Funds offered by the Plan (the Withdrawal Events). Interest at the Contract Rate is credited daily, calculated on the balance remaining deposited under the GIC. If interest earned under the GIC exceeds the amount withdrawn, the difference is paid annually (the Interest Payments) on December 31. All Interest Payments were made when due through December 31, 1993. The terms of the GIC also require Confederation Life to make a final payment to the Plan on December 12, 1996 (the Maturity Payment) in the amount of the GIC's total principal deposits plus interest earnings at the

Contract Rate less previous withdrawals (Accumulated Book Value) as of such date. As of July 31, 1994, the GIC had an Accumulated Book Value of \$1,034,447.59.

4. Commencing August 1, 1994 (the Receivership Date), insurance regulatory authorities in Canada and the state of Michigan instituted proceedings to place Confederation Life in receivership (the Receivership).⁶ Consequently, Confederation Life's assets and operations are frozen, and payments on all its guaranteed investment contracts, including the GIC held by the Plan, were suspended effective as of the Receivership Date. Since the commencement of the Receivership, the Plan has been unable to make withdrawals from the GIC to fund Withdrawal Events with respect to Account balances invested in the GIC, and the Employer represents that it is uncertain whether, or to what extent, the Plan will receive any GIC payments or withdrawals to enable funding of future Withdrawal Events. Additionally, the Employer represents that it is uncertain whether and to what extent the Maturity Payment under the GIC will be paid. The Employer desires to alleviate the G.I. Fund of risks associated with investments in the GIC, and to enable the G.I. Fund to fully fund the Withdrawal Events with respect to Account balances invested in the G.I. Fund. Accordingly, the Employer proposes to guarantee (the Guarantee) that the Plan will recover all amounts due under the GIC, and in its discretion to make advances to the Plan (the Advances) pursuant to the Guarantee. The Employer requests an exemption for the Guarantee and the Advances, as well as the potential repayment of the Advances (the Repayments), under the terms and conditions described herein.

5. The Employer and the Trustee will execute a written agreement embodying all the terms and conditions of the Guarantee, the Advances and the Repayments (the Agreement).

The Guarantee: The Guarantee is the Employer's undertaking to insure that in the eventual resolution of the Receivership, the Plan recovers a total amount with respect to the GIC which is no less than its investment in the GIC as of the Receivership Date, plus interest thereafter at the Contract Rate. Accordingly, the amount which the Employer guarantees under the

⁶The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

Agreement (the Guaranteed Amount) is the Receivership Date Accumulated Book Value of the GIC, which is \$1,034,447.59, less the sum of GIC Proceeds (cash proceeds actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or from the sale or transfer of the GIC to unrelated third parties) and Advances under the Agreement as described below, plus interest on the net of the foregoing amount after the Receivership date at the Contract Rate of 7.15 percent.

The Advances: On the monthly occasions when the Employer, as Plan administrator, would otherwise request a withdrawal from the GIC to fund Withdrawal Events with respect to Account balances invested in the GIC, the Employer will instead notify the Trustee of the requested withdrawal amount. The Trustee will then determine whether it can satisfy the withdrawal request by using the assets in the G.I. Fund other than the GIC. If the Trustee determines that the funds available from the G.I. Fund are insufficient to honor the withdrawal request, the Trustee will determine the amount of additional funds necessary to honor the withdrawal request, and the Employer will make an Advance in that amount to the Plan. Valuation of the Account balances invested in the GIC for purposes of the Advances will be based on the Guaranteed Amount as described above.

Final Advance: The Agreement provides for a final Advance after the completion of the Receivership. After the Trustee has determined that the Plan will not receive any further proceeds from Confederation Life or its successors with respect to the GIC, the Employer shall make a final Advance to the Plan in the amount necessary to enable the Plan's recovery of the Guaranteed Amount. In the event the Receivership extends beyond the year 2000, the Employer will make the final Advance on the first business day in the year 2001 in the amount required on such date to enable the Plan to recover the Guaranteed Amount.

The Repayments: The Agreement provides that the Repayments of the Advances are restricted to the principal amounts of the Advances, and the Plan will pay no interest and will incur no expenses with respect to the Advances. The Repayments may be made only from the GIC Proceeds received by the Plan. No other Plan assets will be available for the Repayments. If the GIC Proceeds are not sufficient to repay fully the Advances, the Agreement provides that the Employer will have no recourse

against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives GIC Proceeds in excess of the total amount of the Advances, such additional amounts will be retained by the Plan and allocated among the Accounts invested in the G.I. Fund.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Advances enable the Plan to resume the full funding of the Withdrawal Events; (2) The Advances will protect the Plan's investment in the GIC and will ensure that the Plan will recover all amounts due under the terms of the GIC; (3) The Plan will pay no interest or incur any expenses with respect to the Advances; (4) Repayment of the Advances will be made only from GIC Proceeds and no other Plan assets will be involved in the transactions; (5) Repayment of the Advances will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Advances; and (6) In the event the Plan receives GIC Proceeds in excess of the Guaranteed Amount, such amounts will be retained by the Plan and allocated among the Accounts.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (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.

Ivan Strasfel,

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

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UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 17, 1995, through April 28, 1995. The last biweekly notice was published on April 26, 1995.