

be held from 4:00 p.m. to 6:00 p.m. with a more structured meeting scheduled to begin immediately following the "Open House".

ADDRESSES: The meeting will be held at the Civic Center, 400 West 4th Street, Truth or Consequences, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Clay McDermeit, Reclamation Team Leader for the Elephant Butte and Caballo Reservoir RMP, 505 Marquette N.W., Suite 1313, Albuquerque, New Mexico, 87102; Telephone (505) 248-5391; or Ms. Rosemary Romero, Public Involvement Specialist, Western Network, 811 St. Michael's Drive, Suite 106, Santa Fe, New Mexico 87505; Telephone 1-800-326-9805.

SUPPLEMENTARY INFORMATION: The purpose of the RMP is to produce a written management document, consistent with existing laws, treaties, and compacts, that may be used as guide by Reclamation and other involved agencies in the allocation of resources and appropriate uses of both lands and waters within the reservation boundaries.

The RMP will address: (1) Multiple uses, and (2) other agency management functions as delegated through various agreements with Reclamation. The DEIS will present an analysis of the impacts of alternative management practices associated with the land and water resources at both reservoirs.

Four "open house" meetings were previously held during February 1996 in El Paso, Las Cruces, Truth or Consequences and Albuquerque to solicit input form agencies and the general public on issues that should be addressed during the development of the RMP. As a result of these meetings and further discussions with the planning work group and the general public, it has been determined that a draft environmental impact statement will be prepared in conjunction with the RMP.

Reclamation has previously prepared four NEPA documents that address operation and maintenance activities on the Rio Grande in the vicinity of both reservoirs. The documents are:

* Final Environmental Impact Statement, Operation and Maintenance Program for the Rio Grande-Velarde to Caballo Dam-Rio Grande and Middle Rio Grande Projects (1977);

* Final Environmental Assessment and Finding of No Significant Impact, Rio Grande Conveyance rehabilitation, Operation and Maintenance Program, Elephant Butte Reservoir, New Mexico (1982);

* Final Environmental Assessment and Finding of No Significant Impact,

Rio Grande Channel Restoration, Operation and Maintenance Program, Elephant Butte Dam to Caballo Reservoir, Sierra County, New Mexico, (1985); and

* Final Supplement to the Final Environmental Impact Statement-River Maintenance Program for the Rio Grande-Velarde to Caballo Dam, Rio Grande and Middle Rio Grande Projects, New Mexico.

During the "Open House" and the more structured part of the Scoping Meeting, agencies and the general public are encouraged to submit written comments and may request additional clarification of the RMP and EIS process. Anyone interested in more information concerning the study should contact Mr. Clay McDermeit or Ms. Romero.

The Truth or Consequences Civic Center is accessible to the disabled. However, any individuals requiring special assistance at the meeting should make their needs known in advance to Ms. Romero.

Dated: July 16, 1996.
Garry Mr. Rowe,
Area Manager.
[FR Doc. 96-18469 Filed 7-19-96; 8:45 am]
BILLING CODE 4310-94-M

Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: Title XII of Public Law 103-434 directs the Secretary of the Interior, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River Basin irrigators and other interested parties, to establish the Yakima River Basin Water Conservation Advisory Group within 12 months of enactment. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Meetings will be held:

- July 30 and 31, 1996 at the Arboretum, 1401 Arboretum Drive, Yakima, Washington—9 a.m. to 4 p.m..
- August 22, 1996, at the Yakama Indian Nation, 401 Ft. Rd., Toppenish, Washington—9 a.m. to 4 p.m..
- September 25 and 26, 1996, at the Bureau of Reclamation, 1917 Marsh Road, Yakima, Washington—9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Walt Fite, Program Manager, Yakima River Water Enhancement Project, P.O. Box 1749, Yakima, Washington 98907; (509) 575-5848 ext. 267.

SUPPLEMENTARY INFORMATION: The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: July 9, 1996.
James V. Cole,
Manager, Upper Columbia Area Office.
[FR Doc. 96-18490 Filed 7-19-96; 8:45 am]
BILLING CODE 4310-94-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10173, et al.]

Proposed Exemptions; Mewbourne Oil Company, Inc. Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

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, NW., Washington, DC 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, 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 (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.

Mewbourne Oil Company, Inc., Plan (the Plan) Located in Tyler, Texas
[Application No. D-10173]

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 past contribution by Mewbourne Oil Company (the Employer) to the Plan of a US Treasury Strip Bond (the Bond) and the subsequent exchange by the Employer of the Bond for cash provided that: (a) the contribution was a one-time transaction; (b) the Bond was valued at the fair market value as of the date of the contribution; (c) no commissions were paid in connection with the transaction; (d) the Bond represented less than 25% of the fair market value of the Plan's assets at the time of the contribution; and (e) the Bond was returned to the Employer in exchange for cash in the amount of \$173,759 plus interest.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective February 11, 1994.

Summary of Facts and Representations

1. The Plan, established and maintained by Mewbourne Oil Company, Inc., is a defined benefit plan that currently has 130 plan participants and plan assets of \$4.6 million as of August 25, 1995. Joseph F. Odom, J. Roe Buckley and Curtis Mewbourne serve as the Plan trustees.

2. On February 11, 1994, the Bond was transferred to the Plan from a nonqualified corporate fund (the Transfer) which was established by the Employer for the purpose of holding future contributions to the Plan to satisfy the funding requirements for the year ending 1994. The Bond was U.S. Treasury Zero Strips maturing in August 15, 2010 at \$525,000. At the time of the Transfer, the Plan trustees requested that Merrill Lynch calculate the value of the Bond. Merrill Lynch represented that it determined that the Bond had a value of \$173,759 on February 11, 1994. Merrill Lynch used the February 14, 1994 edition of the Wall Street Journal's published value of \$331.25 per \$1000 bond to calculate the Bond's value and adjusted this quote by \$147 to reflect the odd lot transfer to the Plan resulting in the \$173,759 value.

3. The applicant represents that the contribution in kind of the Bond was made in error. Ms. Mitzi Perry of Werntz & Associates, an actuarial consultant for employee benefit plans, represented that

in late 1993, Mr. Curtis Mewbourne, President of the Mewbourne Oil Company, Inc., contacted Ms. Perry regarding whether 1994 contributions could be made from the nonqualified fund. Ms. Perry informed Mr. Mewbourne that this could be done. Mr. Mewbourne assumed from his conversation with Ms. Perry that he could transfer the Bond from the nonqualified account to the Plan. As a result of his misunderstanding, Mr. Mewbourne instructed Merrill Lynch to transfer the Bond to the Plan on February 15, 1994.

4. At the end of the Plan year 1994, Ms. Perry reviewed the financial information in preparation of the actuarial valuation and discovered that the contributions for the year were made partially in the cash amount of \$126,000 and the Bond. Ms. Perry represents that she immediately informed Mr. Mewbourne that the contribution of the Bond was a prohibited transaction. Mr. Mewbourne took immediate steps to correct the mistake under Ms. Perry's advisement. On January 30, 1995, a cash contribution of \$173,759 was made to the Plan in exchange for the Bond. An additional \$7,853 was paid to the Plan on January 31, 1995 reflecting interest earned based on the average investment earnings rate for the Plan during the period from February 11, 1994 to January 31, 1995 during which the Plan held the Bond. The applicant represents that no loss resulted to the Plan as a result of the transactions. In this regard, the applicant represents that the Plan received more than the fair market value of the Bond when the Employer exchanged the Bond in the above described transaction. According to the applicant, Merrill Lynch's valuation of the Bond as of January 31, 1995 equaled \$157,988 reflecting the price that the Plan would have received had it sold the Bond on January 31, 1995.

5. In summary, the applicant represents that the subject transaction satisfies the criteria contained in section 408(a) of the Act because: (a) the contribution was a one-time transaction; (b) the transaction occurred as a result of a misunderstanding between the Plan trustees and the pension consultant; (c) when the mistake was discovered, the Bond was removed from the Plan and replaced with cash in the amount of the value of the Bond at the time of the Transfer plus interest.

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

Dillard's Marine & Sports Center, Inc., Profit Sharing Plan (the Plan) Located in Anderson, South Carolina

[Application No. D-10214]

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, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan of \$47,962.50 (the Loan) by the Plan from the individual account of William M. Dillard Jr., to Dillard's Marine & Sports Center, Inc., the sponsoring employer of the Plan (the Employer) and a party in interest with respect to the Plan; provided that (1) the terms and conditions of the proposed Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third-party at the time the proposed Loan is consummated; (2) the Loan will at all times be secured by collateral having a value that exceeds 150 percent of its outstanding principal; (3) the Loan will be at all times less than 25 percent of the balance in the individual account maintained in the Plan for William M. Dillard, Jr.; and (4) an independent fiduciary will approve and monitor the transaction and take whatever actions are necessary to protect the interests of the Plan.

Summary of Facts and Representations

1. The Employer, a South Carolina corporation, is a manufacturer and wholesaler of sporting goods in several states in the eastern part of the United States and also in Germany. There are three shareholders who own the Employer. William M. Dillard, Jr., (Mr. Dillard) holds 63.3 percent of the issued and outstanding shares, his son, William N. Dillard, III holds 3.8 percent, and Patrick H. Hickok holds 32.9 percent. The Employer currently employs 45 individuals.

2. The Plan is a defined contribution plan with individual accounts for 33 participants and total assets of \$450,682, as of March 31, 1996. The applicant represented that the individual account in the Plan for Mr. Dillard had assets of \$297,450, as of March 31, 1996. The Plan trustee is Mr. Dillard.

Richard L. King (Mr. King), a principal of Southeastern Trust Company (Southeastern Trust), a chartered trust company under the banking laws of South Carolina, serves as investment manager for the Plan and for Mr. Dillard's personal assets. Southeastern Trust also serves the Plan as custodian of its assets. The applicant represents that Mr. Dillard's individual account in the Plan and his personal assets when combined are less than 1/2 of 1 percent of the total assets Southeastern Trust currently administers.

3. The applicant represents that the Loan will be made only from Mr. Dillard's individual account in the Plan, at his sole direction, and represents that the Loan will be used by the Employer to pay-off and partially pay-off loans currently outstanding with commercial lenders. The Loan will be collateralized by a first mortgage executed by Mr. Dillard on real property leased to and used by the Employer, and located at 113 Shockley Ferry Road, Anderson County, South Carolina.

The real property pledged as collateral for the Loan has been appraised, as of January 4, 1996, by H. Clinton Taylor (Mr. Taylor), State Certified General Real Estate Appraiser, South Carolina, Certificate Number CG 189, located in Anderson County, South Carolina. Mr. Taylor determined that the real property had a fair market value of \$180,000 of which \$94,000 is attributable to land. The applicant represents that at all times the collateral for the Loan will exceed 150 percent of its outstanding principal.

4. The Loan provides for the payment of interest at 9.75 percent per annum over a period of 5 years with repayments by the Employer made in quarterly installments of principal and interest in the amount of \$3,058.72. The terms of the Loan also provide that if the quarterly installments are 15 days late the Employer will pay a penalty of 5 percent of the amount due and owing.

Also, repayment of the Loan may be accelerated by the Employer without incurring a penalty.

Mr. Robert L. Tennyson, Commercial Real Estate, of the Wachovia Bank of South Carolina, N.A., located in Greenville, South Carolina, in a letter to Mr. King, dated December 21, 1995, represented that the interest rate Wachovia would charge on a 5 year period loan, to be repaid in quarterly installments, and secured by a first priority mortgage equal to approximately 150 percent of the loan, would be approximately 7.75 percent.

The applicant and Mr. King, as independent fiduciary, represent that

the Loan is in the interest of the Plan because the Loan will pay a higher rate of interest than the current rate of return from the other investments of the Plan. Also, the applicant and Mr. King represent that the terms and conditions of the Loan provide more than adequate protection for the rights of the participant and his beneficiaries because of the excessive fair market value of the collateral for the Loan. Mr. King further represents that as independent fiduciary he will act in the best interests of the Plan and will protect the interests of the Plan by foreclosing, if necessary, under the terms of the note and mortgage executed by Mr. Dillard.

5. In summary, the applicant represents that the proposed transaction will satisfy the provisions of section 408(a) of the Act because (a) the Loan will be adequately secured at all times; (b) the Loan at all times will be less than 25 percent of the balance in the individual account maintained for Mr. Dillard; (c) the terms and conditions of the Loan will be as favorable to the Plan as obtainable from an unrelated party; and (d) Mr. Dillard, the only participant in the Plan whose account is affected by this proposed transaction, has determined that the proposed transaction would be in the interest of his account in the Plan, and he desires that the proposed transaction be undertaken.

Notice to Interested Persons: Since Mr. Dillard is the only person in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

For Further Information Contact: Mr. C.E. Beaver of the department, telephone (202) 219-8881. (This is not a toll-free number.)

Normike Industries, Inc., Profit Sharing Plan (the Plan), Located in Plainville, Connecticut

[Application No. D-10239]

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 sale by the Plan of certain improved real property located in Plainville, Connecticut (the Property) to Norman and Diane Stoll, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan incurs no costs or expenses related to the transaction;

(C) The Plan receives a cash purchase price for the Property in the amount of no less than the greater of (1) the Property's fair market value as of the date of the sale, or (2) \$57,500;

(D) Before the transaction is consummated, the Plan has received rental payments of no less than the Property's fair market rental value for each month of the Plan's ownership of the Property in which the Property was occupied by Normike Industries, Inc. (the Employer), the sponsor of the Plan; and

(E) Within 60 days of the publication in the Federal Register of a notice granting the exemption proposed herein, if granted, the Employer makes final payment to the Internal Revenue Service of any remaining unpaid excise taxes which are applicable under section 4975(a) of the Code by reason of the Employer's lease of the Property from the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan with three participants and total assets of \$133,603 as of June 30, 1995. The Plan is sponsored by the Employer, Normike Industries, Inc., a closely-held Connecticut corporation engaged in the precision jig grinding of parts for tool and die manufacturing. The trustees of the Plan are Norman Stoll and his spouse, Diane Stoll (the Stolls), each of whom is also a participant in the Plan. Mr. Stoll is also president of the Employer.

2. Among the assets in the Plan is the Property, an industrial condominium unit located at 1 Town Line Road, Town Line Tradesman Center in Plainville, Connecticut. The Plan purchased the Property from an unrelated party on December 11, 1993 for a purchase price of \$57,500.¹ The Stolls represent that

they caused the Plan to purchase the Property with the intention of leasing it to the Employer, and they represent that they were not aware that such an arrangement might be in violation of the prohibited transactions provisions of the Act. In January and February of 1994 the Employer undertook to improve and refurbish the Property to enable the Employer to move its operations into the Property. A lease effective March 1, 1994 (the Lease) was executed between the Plan and the Employer under which the Employer agreed to lease the Property from the Plan for an initial term commencing March 1, 1994 and ending April 30, 1997, with an option to renew for an additional five years. The Lease provides for fixed rent of \$9,000 per annum, payable monthly, for the first two years and \$12,000 per annum, payable monthly, for the remainder of the Lease's initial term. During any renewal term, the rent would increase pursuant to a "cost of living" factor utilizing the consumer price index. The Stolls represent that they determined the rental amounts on the basis of a survey of the rental market at the time of the Lease execution. The Lease also required the Employer to pay all real estate taxes and utility charges. The Stolls represent that other Lease terms are standard provisions in commercial real property leases. The Stolls represent that the total rental payments received by the Plan pursuant to the Lease have resulted in an annual rate of return of seventeen percent on the Plan's investment in the Property.

3. The Stolls represent that after they were advised by the Employer's accountant that the Lease may constitute a prohibited transaction under the Act, they met with legal counsel in December 1995 to discuss the alternatives available to address the issue. The Stolls determined that the Lease should be terminated and that the Plan should liquidate the Property. The Stolls are proposing to purchase the Property from the Plan and are requesting an exemption for the purchase transaction under the terms and conditions described herein.

4. The Stolls propose to purchase the Property from the Plan for the greater of (a) the Property's fair market value as of the sale date, or (b) the purchase price originally paid by the Plan. The Property was appraised for its fair market value by C. Kevin Bokoske, a professional real estate appraiser who determined that the Property had a fair

market value of \$55,000 as of January 26, 1996. Accordingly, the Stolls propose a purchase price of \$57,500, which is the amount the Plan paid for the Property in 1993. The Employer will pay all expenses related to the transaction and the purchase price will be paid in cash. The Stolls represent that the sale transaction will be consummated as soon as possible after the publication in the Federal Register of a notice granting the exemption proposed herein, if granted. The Stolls represent that the commercial and industrial real estate market in which the Property is situated is very inactive and is described as a "buyer's market" in which purchasers are able to aggressively negotiate the price of the property. In the context of the depressed market, the Stolls represent that their willingness to pay a purchase price equal to the Plan's original investment, in excess of the fair market value, renders the proposed transaction more favorable to the Plan than the terms which the Plan could obtain from unrelated buyers.

5. The Stolls have agreed that if it is determined that the total of rental payments paid to the Plan under the Lease are less than the fair market rental value of the Property for the period of the Employer's occupancy, commensurate with the sale transaction the Stolls will remit to the Plan the difference between the fair market rent and the rent actually paid. An assessment of the Property's fair rental value has been conducted by the real estate appraisal firm of Aldieri Associates, Inc. (AAI), of Bristol, Connecticut. In a report dated June 25, 1996, AAI states that the Property had a fair market rental value of \$10,000 per annum for 1994, 1995 and 1996. As a condition of the exemption proposed herein, the Stolls are required to pay the Plan the difference between the total rent actually paid through the sale date and the total rents due at the rate of \$10,000 per annum.

6. The Department is not proposing exemptive relief for the Employer's lease of the Property from the Plan pursuant to the Lease. The Employer recognizes that the Employer's lease of the Property effective March 1, 1994 through the sale date constitutes a prohibited transaction under the Act and Code for which no exemptive relief is proposed herein. The Stolls represent that in January 1996 the Employer paid to the Internal Revenue Service (the Service) the excise taxes arising under section 4975(a) of the Code by reason of the Lease for the plan years ending June 30, 1994 and June 30, 1995. The Stolls have agreed that within 60 days of the

¹ The Department notes that the decisions to acquire and hold the Property 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 of the Act which may have arisen as a result of the acquisition and holding of the Property.

publication in the Federal Register of a notice granting the exemption proposed herein, the Employer will make final payment to the Service of any remaining unpaid excise taxes applicable under section 4975(a) of the Code by reason of Lease through the date of the sale.

7. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The transaction will enable the termination of an ongoing prohibited transaction, the Lease; (b) the Plan will receive cash for the Property in the amount of no less than its original purchase price and no less than its fair market value as of the sale date; (c) the sale will be a one-time cash transaction and the Plan will incur no expenses related to the sale; (d) as part of the transaction, the Plan will receive the difference between the rents actually paid under the Lease and the rents due in accordance with the AAI appraisal; and (e) the Employer will be required to pay all excise taxes applicable under section 4975(a) of the Code with respect to the Lease which remain unpaid at the time of the sale transaction.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Pacific Mutual Life Insurance Company (PM), Located in Newport Beach, California

[Application No. D-10258]

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 section 406(a) 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 (D) of the Code, shall not apply to the sale to employee benefit plans (the Plans) of a synthetic guaranteed investment contract (the Buy/Hold Synthetic GIC) offered by PM, which is a party in interest with respect to the Plans, provided the following conditions are satisfied: (a) Prior to the execution of such Buy/Hold Synthetic GIC, an independent fiduciary of such Plan receives a full and detailed written disclosure of all material features of the Buy/Hold Synthetic GIC, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves

in writing the execution of the Buy/Hold Synthetic GIC on behalf of the Plan; (c) all fees and charges imposed under such Buy/Hold Synthetic GIC are reasonable; (d) each Buy/Hold Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Buy/Hold Synthetic GIC; (e) each Buy/Hold Synthetic GIC will specifically provide for an objective means for determining the interest rates to be credited periodically under the contract; (f) PM will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by and responsible solely to the Plan; and (g) the Buy/Hold Synthetic GICs will only be marketed to Plans or collective investment funds which have at least \$50 million in assets.

Effective Date: If the proposed exemption is granted, the exemption will be effective September 2, 1993.

Summary of Facts and Representations

1. PM is a mutual life insurance company incorporated under the laws of the State of California. PM is also a Registered Investment Adviser under the Investment Adviser's Act of 1940. PM is currently rated as follows: A.M. Best—A+; Standard & Poor's—AA+; Duff & Phelps—AA+; and Moody's—Aa3. As of December 31, 1995, PM had assets of approximately \$18 billion and net policy reserves of approximately \$10.8 billion. A significant portion of PM's business consists of writing insurance and annuity contracts, guaranteed investment contracts, and other types of funding agreements for numerous pension plans subject to the Act.

2. PM has requested the exemption proposed herein with respect to a "Buy/Hold" Synthetic GIC, which is a variation on traditional guaranteed investment contracts (GICs). PM's Buy/Hold Synthetic GIC will be marketed to Plans (including, without limitation, defined contribution plans). PM will negotiate the terms of the Buy/Hold Synthetic GIC with the appropriate fiduciary of such a Plan, which is generally expected to be the Plan's named fiduciary and not an independent investment professional.²

²The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. The Department notes that in order to act prudently in making investment decisions, plan fiduciaries must

PM represents that the Buy/Hold Synthetic GIC provides purchasers with the advantages of a traditional GIC, while providing purchasers with greater security with respect to their investment than a traditional GIC. Under PM's Buy/Hold Synthetic GIC, each Plan retains legal title to all of its investments and has the benefit of a contract which guarantees that all employee initiated benefit payments and transfers will be paid at the Contract Value Record (see rep. 4, below).

3. Like traditional GICs, PM's duties and obligations with respect to the Buy/Hold Synthetic GIC are governed by the terms of an insurance contract (the Contract) between the Plan and PM. The Contract is issued pursuant to applicable state insurance law and is subject to the jurisdiction of the appropriate state Department of Insurance. While certain terms and conditions of each Contract will be negotiable by the Plan and PM, once the Contract has been executed PM will have no discretion over any of the terms. The Buy/Hold Synthetic GIC is issued by PM in the ordinary course of its business. PM represents that it will only market the Buy/Hold Synthetic GIC to Plans (or to collective investment funds established for the investment of assets of more than one Plan) which have at least \$50 million in assets. The Buy/Hold Synthetic GIC is described in greater detail below.

4. Each Buy/Hold Synthetic GIC will consist of two components. One component is the underlying security or portfolio of investment assets (the Investment Assets), title to which will remain with the Plan. The underlying Investment Assets will primarily be high grade, fixed income securities, which will be selected and managed by a Plan fiduciary independent of PM. The value of the investment assets will be determined by objective standards. While the Investment Assets do not come under PM's administration or control, they affect the second component of each Contract, as will be discussed more fully below. The second component under each Buy/Hold Synthetic GIC will be an accounting record (the Contract Value Record or Book Value Record) established by PM to record the Plan's interest under the Synthetic GIC. This is the amount available to Plan participants in the event they elect to withdraw funds pursuant to provisions of the Plan. The Contract Value Record will initially be equal to the value of the Investment

consider, among other factors, the availability, risks and potential return of alternative investments for the plan.

Assets at the inception of the Contract. Thereafter, the Contract Value Record will be credited with a rate of interest (the Credited Rate) that will be reset periodically (monthly, quarterly, semi-annually or annually) in accordance with an objective formula established under the Contract (see rep. 7, below). No element of the Credited Rate formula is within PM's discretion.

In addition, solely with respect to certain Contracts issued before August 11, 1995, PM has established a deposit account (the Deposit Account), consisting of certain cash contributions made to PM by the Plan under the terms of the Contract. The applicant represents that, under California law as in effect prior to August 11, 1995, a Deposit Account may have been required to have the Contract qualify as an insurance contract under the law of that State. The applicant further represents that after such date, a Deposit Account is no longer required under California law.

5. Under the Buy/Hold Synthetic GIC the Investment Assets will be a single security or a fixed portfolio of securities which will be established at the inception of the Contract and held until maturity.

6. The Buy/Hold Synthetic GIC will be supported by one or more specific fixed income securities that are bought in the primary or secondary market and held until the Contract matures. High quality mortgage-backed securities will be the primary security utilized, although other high quality securities may be used to support a Buy/Hold Synthetic GIC. Regardless of whether a mortgage-backed or other type of security is utilized, all Investment Assets will have predictable yield and cash flow characteristics. As principal and interest payments are made on the Investment Assets, such amounts will be made available to the Plans for reinvestment outside of the Buy/Hold Synthetic GIC at the direction of a fiduciary independent of PM.

Investment Assets will be sold or otherwise distributed to the Plan only upon termination of the Contract or, under circumstances set forth in the Contract, to provide amounts for benefit payments due to Plan participants or for participant-directed transfers to other investments under the Plan.

7. PM represents that the attractive feature of the Buy/ Hold Synthetic GIC to a Plan is that PM assumes certain obligations with respect to the availability of funds for benefit withdrawals and transfers and the return realized from the Investment Assets. Mechanically, this is

accomplished through the establishment of a Contract Value Record.

The Contract Value Record reflects a guarantee of principal and the Credited Rate, pursuant to the formula established in the Contract. The Credited Rate is equal to the projected internal rate of return³ of the underlying Investment Assets and is guaranteed never to be below 0%. The Credited Rate of interest is reset periodically, so that it will at all times reflect the projected rate of return for the Investment Assets (determined without regard to any return from the reinvestment of dividends and other proceeds on such Investment Assets, which will be so reinvested outside the Buy/Hold Synthetic GIC). Each component of this formula will be set forth in the Contract and be explained to the independent fiduciary who decides whether to purchase the Buy/Hold Synthetic GIC on behalf of any Plan. PM will have no discretion in setting this Credited Rate.

All participant initiated benefit payments and transfers are guaranteed to be paid at the Contract Value Record. The Contract Value Record will be reduced each month dollar for dollar for the benefit and transfer payments made to the Plan and for the amount of principal payments and coupon interest received by the Plan from the underlying Investment Assets. The Contract matures when the Contract Value Record is equal to 5% of its original balance. PM guarantees that the Plan will receive the greater of the Investment Assets or the Contract Value Record on the maturity date (see rep. 9, below). Since the Contract Value Record's Credited Rate will be equal to the underlying Investment Assets' projected internal rate of return, any difference between the value of the Investment Assets and the Contract Value Record should be insignificant on the maturity date. Thus, any payment PM will have to make to support the Contract Value Record should be negligible.

8. A Plan's fiduciary may also elect to terminate the Buy/Hold Synthetic GIC at any time. If the Plan's fiduciary terminates the Contract, the Plan will have complete control over the Investment Assets (i.e., they may be invested without any contractual constraints) and PM will have no further obligations with respect to the Contract Value Payment (see rep. 10, below). In

³The term "internal rate of return" means the rate of return on the Investment Assets determined without regard to any return from the reinvestment of dividends and other proceeds on such Investment Assets, which will be so reinvested outside the Buy/Hold Synthetic GIC.

the ordinary course, if the Contract is terminated within three years of its effective date, an early termination charge, intended to enable PM to recoup its costs and determined under a fixed objective formula to be set forth in the Contract, may apply.

9. Under the Buy/Hold Synthetic GIC, PM guarantees the availability of funds for participant initiated withdrawals up to the amount of the Contract Value Record balance as of any date. Neither PM, the Plan nor the Plan's fiduciaries will have any discretion over when a withdrawal may be made from the Contract. The Contract will not be accessed for withdrawals until other specified sources of funds (e.g., contributions to the Plan's fixed income fund under which the Buy/Hold Synthetic GIC is held, current investment income, maturing proceeds, and cash equivalents) have been depleted. If the Plan does make withdrawals from the Contract, they will be made from the following sources in the order listed until exhausted:

(a) Available cash attributable to the underlying Investment Assets including all cash flow available from the Investment Assets; and

(b) Cash realized from the sale of the Investment Assets. The percentage of the securities sold will be equal to the percentage the Contract Value Record is decreased to recognize the benefit payment. This means that if 10% of the Contract Value Record is to be accessed to meet a withdrawal, 10% of the Investment Assets will be sold.

A fiduciary of the Plan independent of PM will generally determine which of the Investment Assets will be sold, except that PM may require that the Plan sell the asset in the size category required to effect the withdrawal that has the highest ratio of market value to book value. If any Investment Assets have to be sold to effect any withdrawal, the Contract will specify that the value of the Investment Assets will be determined based upon the highest of three competitive bids for such Investment Assets received from parties independent of PM and the Plan. If the proceeds realized by the sale of the underlying securities are less than the portion of the Contract Value Record decreased to recognize the benefit payment, PM will make up the difference. If the proceeds to be realized by the sale of the underlying securities are greater than the portion of the Contract Value Record expected to be decreased to recognize the benefit payment, it is expected that the Plan's fiduciary would exercise its right to terminate the Contract and take full control over the Investment Assets. This

is because, as the Buy/Hold Synthetic GIC is designed, the value of the Contract Value Record and the Investment Assets are supposed to be equal at maturity. If at any given point in time the value of the Investment Assets exceeds the value of the Contract Value Record, it would generally reflect an unanticipated increase in the market value of the underlying Investment Assets, the benefit of which could likely be lost if the Investment Assets were held to maturity. If the fiduciary does not terminate the Contract when the proceeds realized by the sale of the underlying securities are greater than the portion of the Contract Value Record decreased to recognize the benefit payment, the Plan will have to pay PM an additional fee equal to such difference. This additional fee is intended to protect PM from the additional risks associated with the sale of assets with superior performance, while underperforming assets are left subject to PM's obligation to make a Contract Value Payment (see rep. 10, below).

10. Upon maturation of the Contract, the value of the Investment Assets will be determined by taking the highest of at least three competitive bids from unrelated third parties. If the Contract Value Record exceeds the value of the Investment Assets at the time the Contract matures, PM will make a one-time payment to the Plan equal to such excess (the Contract Value Payment). Any Contract Value Payment will be paid from PM's General Account. If the value of the Investment Assets equals or exceeds the Contract Value Record, no Contract Value Payment will be made, and such excess belongs exclusively to the Plan.

As and when such Investment Assets mature, the Plan's fiduciaries will reinvest the proceeds of the Investment Assets as they see fit (outside the Buy/Hold Synthetic GIC Contract). Accordingly, the value of the Investment Assets will decline over time as dividends, interest and other proceeds are paid out on the Investment Assets. The Contract Value Record will be correspondingly reduced as amounts are distributed from the arrangement. By reason of these distributions, it is expected that the Contract Value Record will decrease significantly from its initial value by the time the Contract matures. Given this reduction in the Contract Value Record and the fact that the Contract Value Record's Credited Rate is calculated based upon the expected return of the Investment Assets, any Contract Value Payment at maturity should be de minimis.

11. PM represents that it believes that the Synthetic GIC is superior to traditional GICs in that each Buy/Hold Synthetic GIC serves the dual functions of: (a) affording a Plan substantially greater protection against the risk that it will lose its investment; and (b) providing the Plan with an opportunity for a greater rate of return than a traditional GIC. PM represents that it guarantees that all participant initiated benefit payments and transfers will be paid at the Contract Value Record. This means that, despite fluctuations in the market value of the Investment Assets, each participant in the Plan is protected against any loss of principal by PM's contractual commitment.

The Investment Assets to be held under the Contract will be determined at the inception of the Contract. These Investment Assets will be disposed of only upon termination of the Contract or upon the occurrence of certain events specified in the Contract (see rep. 9, above). The Plan holds legal title to the Investment Assets. Subject to the Plan's obligations to pay PM's fees, any appreciation in value of the Investment Assets, as well as current interest and principal payments, belong to the Plan. The only risk to the Investment Assets posed by the financial condition of PM relates to the amount representing the excess, if any, of the balance on the Contract Value Record over the actual value of the Investment Assets. PM represents that the Buy/Hold Synthetic GIC provides greater security than a traditional GIC wherein a plan places a substantial amount of its assets at risk based on the credit worthiness of the issuer of the GIC.

12. PM will maintain full and complete records and books reflecting the various accounts maintained in accordance with the Buy/Hold Synthetic GICs. Upon written request from a Plan, PM will also make its records pertaining to the Synthetic GICs available during normal business hours for audit by independent certified public accountants hired by the Plan's fiduciary.

13. The applicant makes the following representations with respect to the valuation of assets under the Synthetic GICs. Under the Buy/Hold Synthetic GIC, the time at which the value of the Investment Assets is relevant to PM's obligations is at the time of any withdrawal, including upon termination of the entire arrangement. At such time, the value of the Investment Assets will be determined based upon the highest of three competitive bids for such Investment Assets received from an independent party (see rep. 10, above).

14. PM and the Plan's fiduciary will agree to an expense charge (determined at the inception of the Contract) payable to PM with respect to the Buy/Hold Synthetic GIC that will be stated as a fixed percentage of the average value of the Contract Value Record during the preceding calendar quarter. This charge covers four elements: (a) A benefit risk charge, (b) a maturity risk charge, (c) an expense charge and (d) a profit charge. The benefit risk charge is a fee for assuming the risk of loss associated with benefit responsive withdrawals. It will be developed on a Plan specific basis after a review of the Plan's benefit payment cash flow history and the structure of the Plan itself (i.e., the frequency at which withdrawals and investment transfers are permitted, and the structure of alternate investment opportunities). This charge may be supplemented under certain circumstances if the effect of certain withdrawals increases PM's potential exposure (see rep. 9, above). The maturity risk charge will be based on a review of the volatility of, and the guidelines for the investment of, the Investment Assets. The expense and profit charges will be assessed based on the expected expenses related to the arrangement and the payment to PM of a reasonable profit. The expense charge will be based on an annual rate to be determined by negotiations between PM and the Plan's fiduciary at the inception of the Contract, stated as a fixed percentage and multiplied by an average balance of the value of the Investment Assets determined pursuant to a fixed formula under the Contract. Such negotiated charge would remain in effect for the initial period until the maturity date agreed to by the Plan and PM, subject to PM's right to make changes to such charge upon 30 days' advance notice if and solely to the extent that there has been a material change to the provisions or administration of the Plan which adversely affects deposits or withdrawals, or another action by the Plan's sponsor which results in significant withdrawals (such as, but not limited to, plant closings, divestitures, a partial termination of the Plan, the implementation of an early retirement incentive program and the Plan sponsor's bankruptcy) from the Contract.

Based on its review of competitive practices, PM represents that the aggregate charges with respect to each of the Synthetic GICs are, and are expected to continue to be, comparable to the charges made by other Buy/Hold Synthetic GIC providers.

15. PM represents that to date, the Buy/Hold Synthetic GIC has been purchased by a number of Plans, with the first such purchase occurring as of September 2, 1993. PM has accordingly requested that the exemption proposed herein be made retroactive to that date. PM represents that it entered into the Buy/Hold Synthetic GICs with the good faith belief that the transactions involved therein were, to the extent they constituted prohibited transactions, exempted by Prohibited Transaction Exemption 84-24 (PTE 84-24, 49 FR 13208, April 3, 1984).⁴ However, because PM is unable to conclude affirmatively that at all times from and after September 2, 1993, the Buy/Hold Synthetic GICs constituted insurance contracts within the meaning of PTE 84-24, PM has requested the exemption proposed herein.

16. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The decision to enter into a Buy/Hold Synthetic GIC will be made on behalf of a Plan by a fiduciary of the Plan who is independent of PM, after receipt of full and detailed disclosure of all material features of the Contract, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves in writing the execution of the Buy/Hold Synthetic GIC on behalf of the Plan; (c) all fees and charges under the Buy/Hold Synthetic GICs are reasonable; (d) each Buy/Hold Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Buy/Hold Synthetic GIC; (e) PM will maintain books and records of all transactions which will be subject to annual audit by certified public accountants selected by and responsible solely to the Plan; and (f) the Buy/Hold Synthetic GICs will only be marketed to Plans or collective investment funds which have at least \$50 million in assets.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Mei Technology Corporation 401(k) Plan (the Plan), Located in Lexington, MA

[Application No. D-10281]

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) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of Guaranteed Annuity Contract No. GA-7192, Certificate Nos. 0001-0004 (collectively, the GAC), issued by Mutual Benefit Life Insurance Company (Mutual Benefit) located in Newark, New Jersey, by the Plan to Mei Technology Corporation (the Employer), the sponsor of the Plan and party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale an amount, as expressed below in paragraph No. 5, that is equal to the total amount expended by the Plan when acquiring the GAC, less withdrawals and/or proceeds paid from the GAC, plus interest as described in paragraph 5 of this Notice of Proposed Exemption.

Summary of Facts and Representations

1. Mei Technology Corporation is a Massachusetts corporation having its principal offices in Lexington, Massachusetts. The Plan is a defined contribution profit sharing plan with individual accounts for the participants, which is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. The Employer may make discretionary matching contributions and/or profit sharing contributions to the Plan. As of March 31, 1996, the estimated number of Plan participants and beneficiaries was 252. Forty-five participants may be effected by the requested exemption. As of January 4, 1996, total assets of the Plan equaled \$3,751,431.97, with approximately 10% of total Plan assets as of that date invested in the Guaranteed Certificate Account (Guaranteed Account) under the GAC. The remaining 90% of Plan assets (\$3,362,314.95) were invested in

designated mutual funds offered under the Plan and in participant loans.

The Trustee of the Plan for all assets other than the GAC and participant loans is Scudder Trust Company of Boston Massachusetts. Those assets are invested in mutual funds available under the Plan at the participant's direction. Elaine B. Mei and Peng-Siu Mei, Office Manager and President of the Employer, are Trustees for the Nondesignated Investments Trust, which holds the GAC and participant loans.

2. The Nondesignated Investments Trust holds the GAC which was issued on or about April 12, 1987. The effective date of the GAC is October 1, 1987. For the period October 1987 through July 1991, participants could direct their 401(k) contributions into any of six investment accounts offered under the GAC. The Guaranteed Account is the subject of this exemption; all other amounts under the GAC have been withdrawn.

Amounts deposited to the Guaranteed Account were accumulated in an individual certificate; the certificate identified the portion of the Account covered by a particular Certificate Rider and interest rate. Contributions were made to Certificate No. 0001 of the Guaranteed Account from October 1, 1987 to September 30, 1988. In accordance with the terms of Certificate No. 0001, interest was to be credited at the rate of 7.05% per annum until its maturity on September 30, 1991, at which time assets were to be paid out to the Plan and made available for reinvestment in accordance with participants' instructions. For the period October, 1988 through 1991, deposits were made to Certificate Nos. 0002-0004 with the following terms: No. 002, deposit dates of October 1, 1988 through September 30, 1989, interest rate of 8.15% and maturity date of September 30, 1992; No. 003, deposit dates of October 1, 1989 through September 30, 1990, interest rate of 7.90% and maturity date of September 30, 1993; No. 004, deposit dates of October 1, 1990 through September 30, 1991 (actual deposits terminated by the Employer in July, 1991, see below), interest rate of 7.70% and maturity date of September 30, 1994.

3. On July 16, 1991, the Commissioner of Insurance for the State of New Jersey placed Mutual Benefit in conservatorship and rehabilitation, causing Mutual Benefit to suspend all payments on Mutual Benefit accounts,

⁴In this proposed exemption, the Department expresses no opinion as to whether the subject transactions would be exempt under PTE 84-24.

including the GAC.⁵ As a result of the proceedings, the assets of the Plan invested in the Guaranteed Account of the GAC were frozen. A Third Amended Plan of Rehabilitation (the Approved Rehabilitation Plan) was filed and approved by the Superior Court of New Jersey on January 28, 1994. Under the Approved Rehabilitation Plan, group annuity contracts were divided into various groups, those covered by a state guaranty association, those not covered by a state guaranty association, those covered by the New York State guaranty association and partially covered contracts.

In March 1994, the Employer was notified that the Plan's GAC was deemed to be not covered by a state guaranty association (Wrapped Contracts, see below). Wrapped Contracts are backed by a consortium of insurance companies, see below. In March 1994, the Nondesignated Investment Trustees were given the choice to "opt in" or "opt out" of the Approved Rehabilitation Plan. "Opting in" resulted in accepting a restructured contract subject to certain terms including: (a) distributions of the remaining Guaranteed Account from a Wrapped Contract are very restricted; ordinary distributions will be made in five annual installments beginning in the year 2000. However, the industry group which supports the Wrapped Contracts has the right to delay any of these installment payments for a period of seven years if there are liquidity problems; and (b) investment return provisions were modified so that the Wrapped Contracts will be credited with the contract rate of interest through 1991; 4% in 1992, 3.5% in 1993-94 and 3.55% in 1995. After 1994 no minimum rate of interest is guaranteed; interest is determined by formula each year based on the investment performance of the MBL Life Assurance Corporation (MBLLAC).⁶ MBLLAC has determined that the 1996 rate will be 5.25%.

"Opting out" would have resulted in a payment of 55% of the GAC's value based on its original terms, with a payment to be made over a period of up to 27 months. After evaluating the two options the Trustees chose the "opt in" election on behalf of the Plan.

⁵The Department notes that the decision by the named fiduciaries to offer the GAC as an investment vehicle is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. The Department is not proposing relief herein for any violations of Part 4 of the Act which may have arisen as a result of the acquisition and holding by the Plan of the GAC issued by Mutual Benefit.

⁶MBLLAC was incorporated as part of the Rehabilitation Plan; subsequently substantially all of Mutual Benefit Life Insurance Company's asset base was transferred to MBLLAC.

4. The value of the GAC as of March 31, 1996 was \$396,803.62, as determined by MBLLAC. This amount represents the principal amounts deposited pursuant to Certificates 0001-0004, less withdrawals and/or proceeds paid from the account, plus (i) the interest that accrued under the Certificates to December 31, 1991, and (ii) the interest that had accrued until March 31, 1996 at the Approved Rehabilitation Plan rates stated above.

The applicant represents that it desires to enter into the proposed transaction in order to protect the participants in the Plan from the risks of investment loss associated with the GAC. Further, the applicant represents that the Plan needs to sell its interest in the GAC in order to give participants more investment flexibility to direct the investments of the respective account balances to other investments. In addition, the applicant represents that the sale will allow participants to be able to exercise all of their rights under the Plan to request distributions, loans, withdrawals and investment transfers, with respect to amounts currently invested in the GAC which are not liquid.

5. In order to eliminate the risk associated with the continued investment in the GAC and to allow the Plan to distribute or otherwise invest assets currently invested in the GAC, the Employer proposes to purchase the GAC from the Plan for cash in an amount equal to its book value on the date of the Sale, as specified in the Rehabilitation Plan (i.e., the principal amounts deposited pursuant to Certificates 0001-0004, less withdrawals and/or proceeds paid from the account, plus: (i) the interest that accrued under the Certificates to December 31, 1991, and (ii) the interest that has accrued until the date of the Sale at the Approved Rehabilitation Plan rates stated in paragraph 3 above). The applicant represents that the elimination of the risks inherent in the GAC investment would be in the best interest of the Plan and its participants and would serve to protect their rights under the Plan. The Plan will incur no expense nor loss from the proposed transaction.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the Plan will receive cash in a one-time transaction for the Mutual Benefit GAC, in an amount equal to the book value, as specified in paragraph 5; (b) the proposed Sale will enable the Plan and its participants and beneficiaries to

avoid any risk that would be associated with the continued holding of the GAC, and will permit the directing of assets to safer investments; (c) the Plan will not incur any expenses with respect to the proposed transaction; and (d) the Nondesignated Investments Trustees have determined that the proposed transaction is in the best interest of the Plan and its participants and would serve to protect their rights under the Plan.

For Further Information Contact: Ms. Marianne H. Cole 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 17 day of July, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-18540 Filed 7-19-96; 8:45 am]

BILLING CODE 4510-29-P

**[Prohibited Transaction Exemption 96-54;
Exemption Application No. D-09334, et al.]**

Grant of Individual Exemptions; Wells Fargo Bank, N.A. (the Bank), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Wells Fargo Bank, N.A. (the Bank) Located in San Francisco, CA [Prohibited Transaction Exemption 96-54; Exemption Application No. D-09334]

Exemption

Section I. Exemption for the In-Kind Transfer of Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, effective July 2, 1993 until October 1, 1993, to the in-kind transfer of all or a *pro rata* portion of the assets of employee benefit plans (the Plans) that are held in certain collective investment funds (the CIF or CIFs), for which the Bank or any of its affiliates (collectively, Wells Fargo) serves as fiduciary, to the Stagecoach Funds, Inc. (the Fund or Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which Wells Fargo acts as investment adviser and may provide other services, in exchange for shares of the Funds (the CIF Exchanges), in connection with the partial termination of the CIFs.

This exemption is subject to the following conditions and the general conditions of Section II:

- (a) The CIF Exchange is a one-time transaction between the Plan and the respective Fund.
- (b) No sales commissions or other fees are paid by the Plans in connection with the CIF Exchanges and no redemption fees are paid by the Plan in connection with the sale by the Plan of shares acquired in a CIF Exchange.
- (c) A fiduciary of each Plan who is independent of and unrelated to Wells Fargo (the Second Fiduciary) receives advance written notice of the CIF

Exchange and full written disclosure of information concerning the Funds which includes, but is not limited to the following:

- (1) A current prospectus for each Fund in which the Plan is considering investing;
- (2) A statement describing the fees for investment advisory or similar services, any secondary services (the Secondary Services) as referred to in paragraph (h) of Section III, and all other fees to be charged to, or paid by, the Plan (and by such Fund) to Wells Fargo, including the nature and extent of any differential between the rates of the fees;
- (3) The reasons why Wells Fargo considers an investment in the Fund to be appropriate for the Plan; and
- (4) A statement describing whether there are any limitations applicable to Wells Fargo with respect to which assets of a Plan may be invested in a Fund, and, if so, the nature of such limitations.
- (d) On the basis of the foregoing information, the Second Fiduciary approves, in writing, the CIF Exchange.
- (e) Each Plan receives shares of the Funds which have a total net asset value equal to the value of all or the Plan's *pro rata* share of the Plan's assets invested in the CIF on the date of the transfer, based on the current market value of the CIF's assets, as objectively determined in a single valuation, performed in the same manner at the close of the same business day by a principal pricing service (the Principal Pricing Service), disclosed previously by Wells Fargo to the Second Fiduciary, and/or as applicable, by the amortized cost method.
- (f) The terms of the transaction are no less favorable to each Plan than those obtainable in an arm's length transaction with an unrelated party.
- (g) Wells Fargo sends by regular mail to each affected Plan a written confirmation, not more than 7 days after the completion of the transaction, containing the date of the transaction, the number of shares acquired by the Plan in each of the Funds, the price paid per share for the shares in each of the Funds and the total dollar amount involved in the transaction with each Fund.
- (h) As to each Plan, the combined total of all fees received by Wells Fargo for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.
- (i) Wells Fargo does not receive any fees payable pursuant to Rule 12b-1 of