

between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer, Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Reports.

OMB Number: 1220-0043.

Affected Public: State, Local or Tribal Government.

Form No.	Frequency	Number of respondents	Average time per respondent
LAUS 8	Annual	52	1 hour.
LAUS 15	Occasional	52	2 hours.
LAUS 16	Annual	52	1 hour.
LAUS 17	Occasional	52	30 minutes.

Total Burden Hours: 1,040.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: These reports provide essential technical information regarding the quality, accuracy, consistency, and conformance to the Bureau of Labor Statistics standards of the data and procedures used in LAUS estimation.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97-13168 Filed 5-19-97; 8:45 am]

BILLING CODE 4510-24-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-24; Exemption Application No. D-10253, et al.]

Grant of Individual Exemptions; The Retirement Plan for Salaried and Certain Hourly Employees of Keebler Company (the Plan), 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, D.C. 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.

The Retirement Plan for Salaried and Certain Hourly Employees of Keebler Company (the Plan) Located in Elmhurst, Illinois

[Prohibited Transaction Exemption 97-24; Exemption Application No. D-10253]

Exemption

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 (1) the leasing by the Plan of certain improved real property (the Property) to Keebler Company (the Employer), a party in interest with respect to the Plan, (2) the potential future purchase of the Property by the Employer, either pursuant to the Employer's right of first refusal, as stipulated in the lease, or pursuant to an offer by the Employer to purchase the Property, and (3) the "make whole agreement," and any payments thereunder, whereby the Employer will make the Plan whole, in the event that the Plan sells the Property to an unrelated party at a net loss.

This exemption is subject to the following conditions:

- (1) The Plan is represented for all purposes with respect to the lease by a qualified, independent fiduciary;

(2) The terms and conditions of the lease are and continue to be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Plan under the lease is and continues to be no less than the fair market rental value of the Property, as established by a qualified, independent appraiser;

(4) The rent is adjusted, at a minimum, every three years (upwards only), based upon an updated independent appraisal;

(5) The lease is a net lease, under which the Employer as the tenant is obligated for all operating expenses, including maintenance, taxes, insurance, and utilities;

(6) The independent fiduciary for the Plan represents that it has reviewed the terms and conditions of the lease on behalf of the Plan and believes the lease is in the best interests of and appropriate for the Plan;

(7) The independent fiduciary monitors and enforces compliance with the terms and conditions of the lease and of the exemption for the duration of the lease;

(8) The independent fiduciary expressly approves any improvements by the Employer over \$100,000 to the Property and any renewal of the lease beyond the initial term;

(9) In the event that the Employer exercises its right of first refusal under the lease, or makes an offer to purchase the Property which is accepted by the Plan, the Employer purchases the Property from the Plan for an amount which is the greater of: (a) The original acquisition cost of the Property, plus the cost of any improvements, paid by the Plan, or (b) the fair market value of the Property as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary;

(10) In the event that the Plan sells the Property to an unrelated party at a net loss (taking into account the cost of any improvements and all selling expenses paid by the Plan), the Employer makes the Plan whole, within 15 days after the date of such sale, by paying the Plan cash in an amount equal to the difference between: (a) The original acquisition cost of the Property, plus the cost of any improvements and all selling expenses, paid by the Plan, and (b) the amount of the sale proceeds received by the Plan; and

(11) At all times, the fair market value of the Property represents no more than 25 percent of the total assets of the Plan.

EFFECTIVE DATE: This exemption is effective as of April 15, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1996 at 61 FR 68791.

Written Comments

The Department received a number of telephone inquiries and written comments from interested persons with respect to the proposed exemption, as well as one request for a public hearing. All of the comments, except for one comment from the applicant, were from participants and beneficiaries of the Plan. The Department responded directly to most of the commenters' concerns via a telephone hot line. Three commenters raised substantive issues, which are addressed below.

The applicant wished the record to include the following updated information regarding the Employer and the Plan. On June 4, 1996, Keebler Corporation, the parent company of the Employer, acquired Sunshine Biscuits, Inc. Effective as of December 31, 1996, the Sunshine Biscuits, Inc. Pension Plan (the Sunshine Plan) was merged into, and survived by, the Plan. Accordingly, in the first paragraph under the Summary of Facts and Representations in the notice of proposed exemption, the third and fourth sentences should be revised to read:

As of December 31, 1996, the Plan had approximately 14,300 participants and beneficiaries and total assets of \$473,030,442.

Participants and beneficiaries of the former Sunshine Plan were included by the Employer among the class of "interested persons" who were provided with notice of the proposed exemption.

In addition, the applicant requested that the exemption as proposed should be modified to permit the potential future purchase of the Property by the Employer, *either* pursuant to the Employer's right of first refusal, as stipulated in the lease, *or pursuant to an offer by the Employer to purchase the Property.* The applicant argues, and the Department concurs, that it would be in the best interests of the Plan to be able to entertain an offer by the Employer to purchase the Property, under the terms and conditions of the exemption, in circumstances where the Plan did not have a ready offer to purchase the Property from an unrelated party. The operative language, including Condition 9, in this notice of exemption has been modified accordingly.

Another commenter raised a question concerning the procedures used in the selection of the independent appraiser

who valued the Property. Chicago Trust, the Plan's independent fiduciary, which selected the appraiser, states that it did so in a prudent manner consistent with standard industry practices and that Messrs. Hall and Klein, M.A.I., of Binswanger Real Estate Appraisal, were chosen on the basis of their ability to render a fair and accurate valuation. The commenter also inquired into the reason for a retroactive effective date for the exemption. Chicago Trust states that the requested effective date of April 15, 1996 coincides with the date of the sale of the California Property, which is the date on which the Plan's leasing of the Property to the Employer became a prohibited transaction under the Act.

A third commenter objected to the Department's condition that the fair market value of the Property represent no more than 25% of the total assets of the Plan, on the grounds that a permitted level of 25% was excessive. Chicago Trust states that the 25% limitation is a standard established by the Department and refers to a *maximum* percentage that is in no way indicative of any requirement or intent on the part of the Employer to increase the Plan's real estate investments to 25% of Plan assets. As of December 31, 1996, the Property, which is the Plan's sole real estate investment, represented 66% of the Plan's assets.

Both the second and third commenters raised concerns regarding the future financial integrity of the Employer. Chicago Trust states that, as it has represented in the exemption application, it has examined the financial viability of the Employer and determined that the Employer has the ability to meet its contractual obligations under the lease. Moreover, Chicago Trust, states that, as consistent with its duties as a subtrustee of the Plan, it will continue to monitor these matters and will take any action necessary to enforce the Plan's rights under the lease and the exemption, including those provisions that pertain to the potential sale of the Property to the Employer and to the "make whole agreement."

After a careful consideration of the entire record, including the written comments and the applicant's responses thereto, the Department has determined that a public hearing in this instance is unwarranted and that the exemption should be granted, as modified.

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

Hughes Non-Bargaining Retirement Plan, Hughes Bargaining Retirement Plan, Hughes Subsidiary Retirement Plan (collectively, the Plans)

[Prohibited Transaction Exemption 97-25; Exemption Applications No. D-10295, D-10296 and D-10297]

Exemption

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 leasing by the Plans of 10,106 square feet of office space (Suite 300) in a commercial office building which is owned by the Plans (the Building) to Sarofim Realty Advisors (SRA), a party in interest with respect to the Plans, for a period ending February 28, 2000 pursuant to the terms of a lease amendment (the Lease) provided the following conditions are satisfied: (1) An independent third party determined that the terms of the Lease represented not less than fair rental value as of the date of the Lease; (2) the terms of the Lease were reviewed and approved by a qualified independent fiduciary of the Plans who determined that the terms of the transaction were at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties and that SRA's improvements to Suite 300 were acceptable; (3) the qualified independent fiduciary concluded that the transaction was in the best interests of the Plans and the Plans' participants and beneficiaries; (4) on behalf of the Plans, the qualified independent fiduciary continues to monitor SRA's performance under the Lease; and (5) within sixty (60) days of [insert the date of publication in the **Federal Register** of the notice granting this exemption], SRA will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning March 1, 1995 and ending on the effective date of this exemption.

EFFECTIVE DATE: The effective date of this exemption is October 6, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 14, 1997 at 62 FR 1921.

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

ADP Fluor Daniel, Incorporated Retirement Savings Plan (the Plan) Located in Tucson, Arizona

[Prohibited Transaction Exemption 97-26; Exemption Application No. D-10307]

Exemption

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 Code, shall not apply to the sale by the Plan of two limited partnership interests (the Units) to ADP Fluor Daniel, Incorporated, a party in interest with respect to the Plan, providing the following conditions are satisfied:

- (1) The sale is a one-time transaction for cash;
- (2) The Plan pays no commissions or other expenses relating to the sale; and
- (3) The purchase price is the greater of: (a) The fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition and holding costs of the Units, plus attributable opportunity costs.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on March 5, 1997 at 62 FR 10074.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Thompson, Siegel and Walmsley, Inc. (TS&W) Located in Richmond, Virginia

[Prohibited Transaction Exemption 97-27; Application No. D-10369]

Exemption

Section I—Transactions

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)(1)(A) through (F) of the Code, shall not apply to the following transactions which occurred between April 16, 1996 and August 26, 1996, provided that the conditions set forth in Section II below are met:

- (a) The acquisition by the Lewis-Gale Clinic, Inc. Profit Sharing Plan (the Plan) on April 16, 1996, of shares of the TS&W Equity Portfolio and Fixed Income Portfolio (the TS&W Portfolios), each a series of the UAM Funds, Inc. (the UAM Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), with respect to which

TS&W serves as the investment adviser, through the in-kind transfer of assets of a separate account known as "Fund E" managed by TS&W as a fiduciary for the Plan;

(b) The subsequent sale of shares of the TS&W Portfolios by Fund E of the Plan on a cash basis;

(c) The acquisition and sale of shares of the DSI Money Market Portfolio (the DSI Portfolio), another series of the UAM Funds whose investment adviser—Dewey Square Investors Corporation (DSI)—is an affiliate of TS&W, by Fund E of the Plan on a cash basis;

(d) The receipt of fees from the TS&W Portfolios and the DSI Portfolio (collectively, the Portfolios) by TS&W and DSI, respectively, for acting as an investment adviser for the Portfolios; and

(e) The receipt of fees from the Portfolios by UAM Fund Services, Inc. (UAM Fund Services), an affiliate of TS&W and DSI, for performing secondary services for the Portfolios (e.g. administrative, fund accounting, dividend disbursing and transfer agent services).

Section II—Conditions

(a) The Plan's in-kind acquisition of shares of the TS&W Portfolios were one-time transactions; the initial cash acquisition of shares of the DSI Portfolio was a one-time transaction; and all subsequent cash acquisitions and sales of the Portfolios were the result of routine contributions and withdrawals by Plan participants and beneficiaries which were not subject to the control or influence of TS&W and the routine reallocation of assets of Fund E by TS&W pursuant to its responsibility to allocate assets of Fund E between the TS&W Portfolios, the TS&W International Portfolio and the DSI Portfolio.

(b) No sales commissions or other fees were paid by the Plan in connection with the acquisition of shares of the Portfolios and no redemption fees were paid by the Plan in connection with the sale by the Plan of such shares.

(c) A fiduciary of the Plan who was independent of and unrelated to TS&W (the Second Fiduciary) received advance notice of the transactions and full disclosure of information concerning the Portfolios which included, but was not limited to, the following:

- (1) A current prospectus for each Portfolio;
- (2) The fees for investment advisory and other services charged to and paid by the Plan (and by the Portfolios) to TS&W, DSI, UAM Fund Services or an

affiliate, including the nature and extent of any differential between the rates of the fees; and

(3) The reasons why TS&W considered investments in the Portfolios to be appropriate for the Plan.

(d) On the basis of the information described in paragraph (c) above, the Second Fiduciary approved the transactions, including the initial in-kind transfer of Fund E's assets to the TS&W Portfolios in exchange for shares of such Portfolios, prior to the transactions.

(e) The Second Fiduciary acknowledged in a writing dated August 26, 1996, that it received the information described in paragraph (c) above prior to the transactions and that it approved all of the subject transactions involving the Portfolios in advance. In addition, the Second Fiduciary adopted resolutions approving, ratifying and affirming the in-kind transfer of assets of Fund E to the TS&W Equity and Fixed Income Portfolios (in exchange for shares of such Portfolios) and the cash purchases of the shares of the DSI Portfolio as of April 15, 1996.

(f) With respect to the in-kind transfer of securities from Fund E to the TS&W Portfolios, the Plan received shares of each of the Portfolios which had a total net asset value equal to the value of all of the Plan's assets transferred in-kind to such Portfolio on the date of the transfer (i.e. April 16, 1996).

(g) The assets of the Plan transferred to the TS&W Portfolios were publicly-traded securities that were valued at their closing prices on the day they were accepted by the Portfolios (i.e. April 16, 1996), as determined by independent market sources in accordance with Rule 17a-7(b), issued by the Securities and Exchange Commission (SEC) under the '40 Act, by a party unrelated to TS&W and its affiliates.

(h) The terms of the transactions were no less favorable to the Plan than those which were obtainable in an arm's-length transaction with an unrelated party at the time of such transactions.

(i) TS&W sent by regular mail to the Second Fiduciary, not more than seven (7) days after the completion of the in-kind transfers to the TS&W Portfolios, a written confirmation which contained the following information: (1) Date of the transfers, (2) the number of shares of each Portfolio acquired by the Plan, (3) the price paid per share in each Portfolio, and (4) the total dollar amount involved in each transfer.

(j) Cash acquisitions and sales of shares of the Portfolios were reported to the Second Fiduciary in the normal

course by means of regular transaction statements issued by the UAM Funds.

(k) The combined total of all fees received by TS&W and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Portfolios in which the Plan invested, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(l) The Plan did not pay any plan-level investment management fees, investment advisory fees, or similar fees to TS&W or an affiliate with respect to any of the assets of such Plan which were invested in shares of any of the Portfolios. This condition does not preclude the payment of investment advisory fees or similar fees by the Portfolios to TS&W or an affiliate under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act.

(m) Within 10 days of the date that this exemption is granted, TS&W pays the Plan an amount equal to the additional net fees attributable to Fund E which TS&W and its affiliates received during the period covered by this exemption (i.e., April 17, 1996 until August 26, 1996) as a result of the investment of Fund E's assets in the Portfolios, plus a reasonable rate of interest on such amount which is at least equal to the rate of return such assets would have earned as assets held in Fund E during this period.

(n) Neither TS&W, DSI nor any affiliate thereof received fees payable pursuant to Rule 12b-1 under the '40 Act in connection with the transactions involving the Portfolios.

(o) All dealings between the Plan and the Portfolios were on a basis no less favorable to the Plan than dealings with other shareholders of the Portfolios.

(p) TS&W provides the Second Fiduciary of the Plan with the following:

(1) A copy of the proposed exemption and the final exemption when such documents become available;

(2) A copy of an updated prospectus of each Portfolio at least annually; and

(3) A report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other written statement) which contains a description of all fees paid by the Portfolios to TS&W, DSI or any affiliate thereof, upon the request of the Second Fiduciary.

(q) All acquisitions and sales of shares of the Portfolios on and after August 26, 1996 are made in compliance with the terms and conditions of Prohibited

Transaction Exemption (PTE) 77-4 (42 FR 18732, April 8, 1977).¹

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

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

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan who has authority to acquire or dispose of shares of the Portfolios owned by the Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (s)(1) (ii) and (iii) shall be authorized to examine trade secrets of TS&W or its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term "TS&W" means Thompson, Siegel and Walmsley, Inc. and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An "affiliate" of a person includes:

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

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

¹ PTE 77-4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that certain conditions are met.

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

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

(d) The term "Portfolios" means the TS&W Equity and Fixed Income Portfolios and the DSI Money Market Portfolio, each a series of the UAM Funds, Inc., an open-end series investment company registered under the '40 Act, with respect to which TS&W and DSI, respectively serve as the investment adviser and for which UAM Fund Services provides certain "secondary services" as defined below in paragraph (h).

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

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

(g) The term "Second Fiduciary" means a fiduciary acting for the Plan who is independent of and unrelated to TS&W and its affiliates.² For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to TS&W if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with TS&W or an affiliate;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of TS&W or an affiliate (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

(h) The term "Secondary Service" means a service other than an investment management, investment advisory, or similar service, which was

provided by TS&W's affiliate, UAM Fund Services, to the Portfolios.

EFFECTIVE DATE: This exemption is effective for the subject transactions, which occurred during the period from April 16, 1996 until August 26, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 31, 1997, at 62 FR 4803.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219-8194. (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 or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is 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 15th day of May, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-13180 Filed 5-19-97; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10340, et al.]

Proposed Exemptions; McLane Company, Inc. Profit Sharing Plan and Trust (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 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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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

² The Second Fiduciary which acted for the Plan was the Lewis-Gale Clinic, Inc. (the Plan Sponsor) and the individuals who acted for the Plan Sponsor in carrying out its responsibilities as the named fiduciary for the Plan.