

1954 (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code, for a transaction described in an application filed by the Trustee pursuant to section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 [40 FR 18471, April 28, 1975].

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application on file with the Department for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department.

In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to the exemption. No public comments and no requests for a hearing were received by the Department.

The application was filed with both the Department and the Internal Revenue Service. However, 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, this exemption is granted solely by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 408(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to and not in derogation of any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Further, the fact that a transaction is subject to an administrative exemption, statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plans and of their participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plans.

Therefore, the prohibitions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase by the St. Louis Union Trust Company for its own account from the Collective Employees Trust Benefit Fund G of which it served as trustee of Mesker Brothers Industries, Inc. 8% Convertible Subordinated Debenture due June 30, 1994, at the \$125,000 face value.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 3d day of October 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-31156 Filed 10-11-79; 8:45 am]

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[Prohibited Transaction Exemption 79-56; Application Nos. L-1314, L-1330, L-1331, and L-1332]

Employee Benefit Plans; Exemption From the Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: The exemption involves Retail Employees' Union, Local 919, and Subscribing Employers' Health and Welfare Plan, New England Retail Food Clerks' and Employers' Pension Plan, Retail Employees' Union Local 919 Pension Plan, and Retail Clerks Local 919 Health and Welfare Plan (Application Nos. L-1314, L-1330, L-1331, and L-1332, collectively, the Plans). This exemption permits the Plans' trustees (the Trustees) who represent the Retail Employees' Union Local 919 (the Union), to participate in the decision to retain the Union to provide certain goods and services to the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 13, 1979, notice was published in the Federal Register (44 FR 40958) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act). The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No requests for a hearing were received by the Department. However, the Department received one comment from the Trustees' representative. The commentator stated that the Retail Clerks International Union, AFL-CIO, with which the Union is associated, has merged with the Amalgamated Meat Cutters and Butcher Workmen of North

America, AFL-CIO, and is now known as the United Food and Commercial Workers International Union, AFL-CIO. Although no change has yet been adopted, the names of the Plans and the name and local number of the Union may change at some future time due to the merger. The Trustees of the Plans request that the exemption be made applicable both to the current names of the Plans and the Union as well as such names as may be selected for these entities in the future. The Department concurs in this request.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include 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 or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406(b) (1) and (3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(b)(2) of the Act shall not apply, effective January 1, 1975, to the

decision by the Trustees to retain the Union to provide goods and services to the Plans as described in the proposed exemption. This exemption shall also apply to any successors of the Plans and the Union whose present names may be changed as a result of the merger by the Union with another union.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3d day of October 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-31159 Filed 10-11-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1177]

Proposed Exemption for a Certain Transaction Involving the Peninsular Supply Co. Employees' Pension Plan

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of real property by the Peninsular Supply Company Employees' Pension Plan (the Plan) to the ITT Grinnell Corporation (the Corporation), the parent corporation of the Peninsular Supply Company (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, the Corporation and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before November 9, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-1177. The application for exemption

and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Ms. Linda Hamilton, of the Department of Labor, telephone (202) 523-8194. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code.

The proposed exemption was requested in an application filed by the Corporation, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer, a Delaware corporation established in 1971, is in the business of wholesale distribution of plumbing supplies and other products. The Employer is a wholly owned subsidiary of the Corporation.

2. The Plan, established in 1968, has total assets of \$1,031,390, as of October 1978, for the benefit of 115 participants.

3. The Plan trustee, Ms. Maryevelyn Blankenship, is an employee of the Employer and has sole responsibility for making investment decisions. Ms. Blankenship is neither an officer, director, nor shareholder of either the Employer or the Corporation.

4. The Plan owns real property located in Swain County, North Carolina (the Property). It was contributed to the Plan in 1970 and 1971 by the predecessor company of the Employer. At the time of

its contribution, the fair market value of the Property was \$149,000.

5. The Property, a relatively large tract of land, was appraised in 1976 and 1977. Both appraisals valued the Property at \$142,750, based on splitting the Property into two tracts. However, both appraisals indicated that if the entire tract was sold to one buyer, the fair market value of the Property should be discounted. The 1976 appraisal concluded that the appraisal value should be discounted by 7.5% and the 1977 appraisal concluded the discount should be 10%. These discounts were based upon the higher site development and carrying costs for large tracts and the fewer numbers of potential buyers for such tracts.

6. Beginning in 1970, the Plan attempted to develop the Property as a vacation area. This effort proved unsuccessful. By 1974, it became apparent that the costs of subdividing the Property for vacation use was not, from an economic standpoint, a possibility for the Plan. Any business or commercial use of the Property was found to be impractical as well because it is located in a remote, mountainous area of North Carolina.

7. The Plan has been attempting to sell the entire tract of land to an unrelated party since May 1978. The Property has been listed with the Lance Agency in Bryson City, Swain County, North Carolina. No inquiries regarding the purchase of the Property have been received to date and it remains on the market.

8. The Plan, prior to 1976, covered the salaried and hourly employees of the Employer. On January 1, 1976, the active salaried employees became members of the ITT Retirement Plan for Salaried Employees. All retirees, beneficiaries, and hourly employees remained with the Plan. At this time, it is desirable to transfer the Plan assets attributable to the salaried employees to the ITT Retirement Plan. Sale of the Property and the giving of cash by the Plan to the ITT Retirement Plan, rather than a division of the Property, would facilitate this transfer.

9. The Corporation wishes to purchase the Property from the Plan to alleviate the problems the Plan faces by retaining it. The Corporation represents that it is in a better position to absorb the potential loss on the sale of the Property to an unrelated party. The Corporation proposes to pay \$142,750, an amount equal to the appraised value of the Property without the discount for sale to one party.

10. In summary, the applicant represents that the proposed transaction

meets the statutory criteria of section 408(a) of the Act because:

(1) It would be a one-time transaction for cash;

(2) The Plan would be able to dispose of ostensibly unmarketable real property which is unproductive of income;

(3) The sale would be for an amount which is at least equal to the fair market value of the Property; and

(4) The Plan assets will be sufficiently liquidated to accommodate the required transfer of funds from the Plan without necessitating the sale of other, more productive Plan assets.

Notice to Interested Persons

All Plan participants and beneficiaries will be notified within a period of five days after the notice of pendency is published in the *Federal Register*, by letter, containing a copy of the notice of pendency of the proposed exemption as published in the *Federal Register*, and advising these persons of their rights to comment and/or request a hearing. In addition, copies of this notification will be posted for a period of thirty days in a conspicuous location in all buildings where Plan participants and beneficiaries are currently employed by the Employer.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 or her 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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 ERISA Procedure 75-1. If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of the Property by the Plan to the Corporation for \$142,750 provided that this amount is not less than the fair market value of the Property.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3d day of October 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-31160 Filed 10-11-79; 8:45 am]

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[Prohibited Transaction Exemption 79-55; Exemption Application No. 14-34]

Exemption From the Prohibitions for Certain Transactions Involving the Prudential Insurance Co. of America

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the acts of the Prudential Insurance Company of America (the Fiduciary) in effectuating inter-account transfers of certain publicly-traded common stock between various accounts managed by the Fiduciary on a day selected in advance by the Fiduciary within a ninety (90) day period following the date the Fiduciary receives its last applicable regulatory approval or exemption from various federal and state government agencies.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 10, 1979, notice was published in the *Federal Register* (44 FR 47186) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act), for transactions described in an application filed by the Fiduciary. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include 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 or her 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.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406(b)(1) and (b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75-1 (40 FR 18371, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

The restrictions of section 406(b)(2) of the Act shall not apply to the acts of the Fiduciary in effectuating inter-account transfers of certain common stocks, described in the proposed exemption, on a day selected in advance by the Fiduciary, within a ninety (90) day period following the date the Fiduciary receives its last applicable regulatory approval or exemption from various federal and state government agencies.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms

of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 3d day of October 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-31161 Filed 10-4-79; 3:02 pm]

BILLING CODE 4510-29-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 79-60]

Class Exemption for Certain Transactions Involving Employee Benefit Plans Maintained by Insurance Agents and Brokers

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This exemption permits the effecting of a sale of an insurance or annuity contract to an employee benefit plan and the receipt of a commission with respect to such sale by an agent or broker who is the employer maintaining the plan or a related person. In the absence of this exemption, such transactions might be prohibited by the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The exemption will affect participants and beneficiaries of plans to which such insurance products are furnished, employers maintaining these plans, certain related persons that are covered by the exemption, and other persons participating in the transactions.

EFFECTIVE DATE: January 1, 1975

FOR FURTHER INFORMATION CONTACT: Ivan Strasfeld, U.S. Department of Labor, Pension and Welfare Benefit Programs, Office of Fiduciary Standards, Room C-4526, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-7352. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On January 19, 1979, notice was published in the *Federal Register* (44 FR 4027) of the pendency before the Department of Labor (the Department) of a proposed class exemption from the restrictions of sections 406(a) and 406(b) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) of the Code. The proposed class exemption was requested in two applications, one filed jointly by the National Association of Life Underwriters (NALU) and the Association for Advanced Life

Underwriting (AALU)¹ and the other filed by Connecticut General Life Insurance Company.² The notice set forth a summary of facts and representations contained in the applications, and referred interested persons to the 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.³

The proposed class exemption permitted the effecting of a transaction for the purchase, with employee benefit plan assets, of an insurance or annuity contract by an insurance agent or broker who is the employer maintaining the plan, or a person related to the employer, and the receipt of a sales commission by the agent or broker in connection with such purchase. The proposed class exemption contained specific conditions to protect the interests of plan participants and beneficiaries, including requirements that the agent or broker effecting the sale have a specified relationship to the plan; that the plan pay no more than adequate consideration for the insurance or annuity contracts; and that the total commissions received by the agent or broker in each taxable year derived from sales made pursuant to the exemption not exceed five percent of the total commissions received in that taxable year by such agent or broker.

The Department proposed the class exemption based on representations that it is common practice for insurance agents and brokers to establish employee benefit plans for themselves and their employees and to fund these plans with insurance or annuity contracts. Under these circumstances, it would be contrary to normal business practice to require a plan, which can secure funding and other insurance contracts through its employer or a person who has an interest in the success of the plan, to purchase such products through an unrelated person.

The Department also noted that Prohibited Transaction Exemption 77-9 (PTE 77-9), as amended (44 FR 1479, January 5, 1979), generally would be unavailable to exempt those transactions engaged in by agents and brokers which were the subject of the proposed exemption. However, in publishing the proposed class

exemption, the Department did not intend to provide relief to all categories of persons excluded from using PTE 77-9. Rather, the Department proposed to provide exemptive relief only to those agents or brokers who sponsor plans and persons substantially related to the plan sponsor.

The applications were filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is 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.

The notice invited interested persons to submit written comments or requests for a hearing on the proposed exemption to the Department. Pursuant to the notice, over 45 comments have been submitted to the Department. No requests for a hearing were received. The Department has determined to adopt the proposed class exemption with certain modifications. The significant public comments received are discussed below.

I. Discussion of Comments Received

A. Percentage Limitation: Several commentators questioned the need for the five percent, or any mechanical, limitation on commissions received from sales of insurance effected pursuant to the exemption. It was contended that the five percent limitation fails to consider that the first year commissions on sales of insurance are much greater than the renewal commissions received by the agent or broker in later years. The Department is not persuaded that this argument has merit. Both with respect to initial sales and renewals thereof, the Department believes that commissions earned under this exemption should represent but an incidental portion of total sales commission revenues received by the agent or broker. Accordingly, as a safeguard against the potential for self-dealing abuse, the condition provides no additional allowance for initial sales; and therefore receipts derived from initial sales effected by such agent or broker and those derived from renewals are, in the aggregate, subject to the five percent test.

The Department also believes that the five percent of commissions test will ensure that exemptive relief is unavailable to an insurance agency established primarily for the purpose of providing insurance to an In-House Plan. The presence of independent customer

business will help safeguard the plan against less than arm's-length transactions.

B. Scope of Exemption: Included within the scope of the proposed exemption are those agents or brokers who are parties in interest or disqualified persons with respect to a plan by reason of a relationship to the employer maintaining the plan that is described in section 3(14)(H) of the Act and section 4975(e)(2)(H) of the Code. A number of commentators argued that the types of relationships thus covered by the proposed exemption were too broad and urged deletion of those persons described in section 3(14)(H) of the Act and section 4975(e)(2)(H) of the Code. The commentators contended that many such persons do not have a substantial economic interest in the corporation or entity maintaining the plan and are not personally interested in the success of the plan so as to mitigate the effects of conflicts-of-interest which may exist. The Department believes that these arguments have merit and is amending the exemption to provide relief only to those persons described in section 3(14)(H) of the Act and section 4975(e)(2)(H) of the Code who are employees, officers, directors, or 10 percent or more shareholders, of an employer any of whose employees are covered by the plan. The Department believes that, with respect to those persons excluded under section 3(14)(H) of the Act and section 4975(e)(2)(H) of the Code, it is feasible to require prior approval of the sales transactions by an independent fiduciary on behalf of the plan. Those persons excluded may, depending on the particular facts and circumstances, qualify for exemptive relief under PTE 77-9 if the conditions of that exemption are satisfied.⁴

Some commentators pointed out that, despite the clear purpose of the exemption to provide relief solely for certain transactions involving plans maintained by insurance agents and brokers, the proposed exemption could be interpreted to cover transactions with other plans. A minor language change has been made to the exemption to make clear that the relief only is available for transactions with plans which are maintained by insurance agents and brokers.

C. General Agents. In light of comments received, the Department is modifying the exemption so as to permit

⁴ PTE 77-9 would be available, for example, if the agent or broker is not the trustee of the plan purchasing the contracts, the plan administrator, a fiduciary expressly authorized to manage plan assets on a discretionary basis, or an "affiliate" of such persons, as the term is defined in Section VI of that Exemption.

¹ NALU and AALU filed Exemption Application No. D-985.

² Exemption Application No. D-040.

³ Numerous applications were also received for individual exemptions concerning transactions of the type described in the proposed class exemption. All such transactions will be exempted if they satisfy the terms and conditions of the class exemption.

those general agents who have the requisite relationship to the plan purchasing the contracts to receive override commissions on sales effected by another agent or broker pursuant to the exemption.

General Information

It should be noted that under section 408(d) of the Act, no exemption may be granted under section 408(a) for transactions of the type described herein between a plan and certain persons such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder-employer as defined in section 1379 of the Code. The proposed exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

It should be also be noted that the term "insurance or annuity contract", as used in the exemption, is intended to cover contracts issued by insurance companies including those which provide only for the provision of administrative services.

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person/party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and 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/her duties respecting the plan solely in the interest of the plan's participants and beneficiaries 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 a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory 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.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Proposed Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record including the written comments submitted in response to the notice of January 19, 1979, the Department makes the following determinations:

- (a) The class exemption set forth herein is administratively feasible;
- (b) It is in the interest of plans and of their participants and beneficiaries; and
- (c) It is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted 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 ERISA Procedure 75-1.

Effective January 1, 1975, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to sales of insurance or annuity contracts effected for an employee benefit plan maintained by an insurance agent or broker and to the receipt of sales commissions in connection with such sales by an agent or broker if the following conditions are met:

- (a) The insurance agent or broker effecting the sale and/or receiving commissions:
 - (1) Is an employer any of whose employees are covered by the plan;
 - (2) Is a 10 percent or more partner in capital or profits of an employer described in subparagraph (1);
 - (3) Is an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder of an employer described in subparagraph (1); or
 - (4) Is a disqualified person or party in interest with respect to the plan by reason of an affiliation with the employer establishing or maintaining the plan that is described in section 3(14) (E) or (G) of the Act and section 4975(e)(2) (E) or (G) of the Code. For purposes of the condition set forth in paragraph (a)(1), an "employer" includes a sole proprietor maintaining a plan in which he or she is the only participant.
- (b) The plan says no more than adequate consideration for the insurance contracts or annuities.

(c) Effective for taxable years of the insurance agent or broker beginning after October 4, 1980, the total commissions received in each taxable year of the agent or broker as a result of effecting transactions under this exemption do not exceed five percent of

total insurance commission income received in that taxable year by such agent or broker.

Signed at Washington, D.C. this 9th day of October, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[79-85]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

The Informal Ad Hoc Advisory Subcommittee on Operating Systems and Safety of the NAC AAC will meet November 5-6, 1979, in Building E-104 (Management Education Center), NASA Wallops Flight Center, Wallops Island, Virginia. The meeting will be open to the public but is limited to seating space available (approximately 60 persons including subcommittee members and participants).

The Subcommittee was established to assist the NASA in identifying specific needs and objectives for improving the operational effectiveness and safety of transport aircraft, which are dependent upon further research and technology investigations of related technical disciplines, and to advise the NASA on the appropriateness and adequacy of its current and planned programs in this area. The Chairperson is Mr. J. D. Smith and there are 17 members of the Subcommittee.

Agenda

November 5, 1979

8:30 a.m.—Introductory Remarks

9:00 a.m.—NASA Update Landing Loads Track

10:15 a.m.—FAA Airport Pavement Research Needs

10:45 a.m.—NASA Energy Efficient Profile Descent

11:15 a.m.—NASA Automatic Piloted Advisory System

1:00 p.m.—NASA Demonstration of Wallops Flight Center Automatic Pilot Advisory System

2:00 p.m.—Systems Technology Inc. Summary of Current Avionics and Controls Plan

2:30 p.m.—Discussion of Plan and Task Priorities

November 6, 1979

8:30 a.m.—NASA Review of Aircraft to Satellite Data Relay

9:00 a.m.—NASA Review of Severe Storms Research Programs