Pension and Welfare Benefits Administration

[Application No. D–10146, et al.

Proposed Exemptions; Bill Ussery Motors, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

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

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, 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.

Bill Ussery Motors, Inc. Fourth Amended and Restated Profit Sharing Plan and Trust (the Plan), Located in Coral Gables, Florida

[Application No. D–10146]

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 section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) by the Plan to Bill Ussery Motors, Inc. (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses from the proposed transaction; and (3) the Plan receives as consideration from the Sale the greater of either (a) the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or (b) an amount equal to the appraised fair market value as determined on December 31, 1994.

Summary of Facts and Representations

1. The Employer, a Florida corporation formed in 1959 and located in Coral Gables, Florida, is in the business of selling new and used Mercedes-Benz vehicles under a dealership franchise issued by Mercedes-Benz. The Employer also services Mercedes-Benz vehicles and sells new replacement or spare parts for the vehicles. The principals of the Employer are Mr. John C. Brockway, who is the sole shareholder of the Employer and its Chief Executive Officer, and his son, Robert W. Brockway, who is the President of the Employer.

2. The Plan is a defined contribution plan that was established by the Employer on December 1, 1969, and was intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The total assets of the Plan were approximately $5,733,666.64, as of December 31, 1995, and the total participants and beneficiaries were approximately 119.

All investment decisions for the Plan are made by Mr. John C. Brockway, as Plan Administrator, upon recommendations of Mr. Fred W. Newcomb, a Plan Trustee, and with the concurrence of Mr. Robert Brockway, a Plan Trustee. Mr. Newcomb was an employee of the Employer from 1972 until December 1994 in the capacity of general manager from 1977 through 1991 and president from 1991 until his resignation in December 1994. Mr. Newcomb is presently employed by the Employer as a consultant as well as serving as a Trustee of the Plan.

3. The Property is 27.66 acres of land located on Lots 10 and 11 Section 14, Township 5 South Rauge 24 East, Clay County, Florida with an address given by the applicant as Southeast corner of S.R. 21 and C.R. 218, Middleburg, Clay County, Florida, and represented by the applicant as unimproved and zoned as Intermediate Business District and Agricultural. The applicant represents that the Property was purchased below the market value at a price considered to be a prudent investment in four transactions that involved no prohibited transactions under the Act. The first transaction occurred on June 17, 1985, in which 6.6 acres was acquired for $241,814, and another purchase of 4 acres, not contiguous to the 6.6 acres, was made on November 12, 1985, for $15,009. On August 24, 1989, another 17.06 acres, contiguous to the other two purchased parcels, was acquired for $100,000; and, at the same time, rights

were purchased to certain proceeds from the sale of the 6.6 acres for $290,000.[1] Thus, the total purchase price to the Plan of the 27.66 acres was $646,823.[2]

The applicant represents that the additional 4 acres and 17 acres were acquired in order to enhance the value of the Property. Because portions of the 4 acres and the 17 acres were designated as wetland areas by governmental authority, the Plan was required to obtain approval to fill a portion of the wetland areas. This approval enabled 8.7 acres of the Property to have frontage on two state highways and become suitable for commercial development.

The applicant represents that the Plan expended $208,337 for improvements to the property during the years from 1990 through 1994,[3] and the property taxes on the Property totalled $71,115 for the years 1985 through 1995. Thus, the applicant represents that the Plan expended a total of $926,275 from 1985 through 1995 in acquiring and holding the Property.

On December 27, 1991, the Property was appraised by Mr. John W. Veasey, MAI, of Weigel-Veasey Appraisers, Inc. located in Middleburg, Florida, who determined that the fair market value of the Property was $1,004,380. On December 31, 1994, in an update to the original appraisal, Mr. Veasey determined that the fair market value of the Property had increased to $1,100,880. The original 1991 appraisal represented, *inter alia,* that a portion of the Property was located within jurisdictional wetlands, and that a portion of the commercial tract of the Property would require a change in its zoning and also would require fill.

Mr. John R. Seivert, Broker/Salesperson, with Coldwell Banker, Walter Williams Realty, Inc. located in Jacksonville, Florida (the Realtor), represented in a letter, dated December 1, 1995, that his company began marketing portions of the Property in 1987 and continued offering the additional portions as acquired through 1995. The marketing involved placing from time to time different signs on the Property and advertising continuously in the *Florida Times Union,* a newspaper published in Jacksonville, Florida. In addition, beginning in August 1995, the Realtor began placing additional advertisements in the *Real Estate Buyers Guide,* that was to provide 10 publications per year with a distribution of over 200,000 copies per year at over 150 locations in various stores and restaurants. Also, the Realtor has distributed brochures regarding the Property to other commercial brokers, and since 1987 the Property has been in the Multiple Listing Service of the Jacksonville Association of Realtors.

The Realtor also represented that the Property had some problems with some areas that were low and needed fill, plus having a drainage fault. The Realtor represented that there were also problems requiring zoning changes from residential to business. The road construction and general depressed economic conditions in the area of the Property was represented by the Realtor as having a detrimental effect on marketing the Property.

4. The applicant proposes that the Plan sell the Property to the Employer for the greater of either the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or for an amount equal to the appraised fair market value determined on December 31, 1994. The purpose of the proposed transaction is to enable the Plan to avoid the continuing additional expenses of improving and maintaining the Property. In addition, the Plan will be able to invest in liquid assets that generate yields and incur a minimum of expenses. The applicant represents that the Plan will incur no expenses or losses from the proposed Sale.

The applicant further represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because of (a) the difficulty experienced in attempting to sell the Property, (b) the expenses incurred from maintaining and improving the Property, and (c) only 8.7 acres of the Property is usable for commercial purposes with the remainder acreage either protected wetlands, or portions with no road frontage, and surface contours sloping deeply towards a creek that frequently floods the area.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any expenses from the Sale; (c) the Plan will receive as consideration from the Sale the greater of either the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or an amount equal to the appraised fair market value as determined on December 31, 1994; (d) the Sale will permit the Plan to reinvest illiquid and non-yielding assets into income producing, and liquid assets; and (e) the Plan will avoid the expenses and risks involved in maintaining and developing the Property.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hach Company 401(k) Profit Sharing Plan (the Plan), Located in Loveland, CO

[Application No. D–10203]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of Group Annuity Contract No. 5000008 (the GAC) issued by Anchor National Life Insurance Company (Anchor National), located in Los Angeles, California, to Hach Company (the Employer), a party in interest with respect to the Plan.

This proposed exemption is subject to the following conditions:

(a) The sale is a one-time transaction for cash.

(b) The Plan does not experience any losses or incur any expenses in connection with the transaction.

(c) The Plan receives as consideration an amount that is equal to the fair market value of the GAC as of the date of the sale.

(d) The trustees (the Trustees) of the Plan have determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a deferred compensation feature allowing participants to self-direct investments. As of April 30, 1995, the Plan had 857 participants and net assets of $24,850,046. The Trustees of the Plan are Gary Dreher, Randy Petersen and

[1] The original sales agreement provided that the seller was to receive 49% of the net proceeds in excess of $330,000 upon the sale of the 6.6 acres by the Plan.

[2] In this proposed exemption, the Department expresses no opinion as to whether the acquisition and holding of the Property violated any provision of Part 4 of Title I of the Act.

[3] The improvements were represented by the applicant to involve an environmental assessment, preparation of conceptual land use, continuation and permits, finalization of plans, drainage, and driveways, maintenance land clearing, and additional fill.

Loel Sirovy. The Trustees make investment decisions for the Plan with respect to investment options and contributions.

2. The Employer sponsoring the Plan is a Delaware corporation maintaining its principal place of business at 5600 Lindbergh Drive, Loveland, Colorado. The Employer is engaged in the manufacture of products that are used in the analysis and testing of chemicals.

3. Among the assets of all of the participant accounts in the Plan is the GAC investment. The GAC was issued by Anchor National, an unrelated party, on February 20, 1987. It was purchased by the Plan for $685,832 through Boettcher & Company, also an unrelated party, on the issuance date. The GAC represents approximately 9 percent of the Plan's assets and consists of mutual fund investments that are managed under the Anchor National American Pathway Fund, an open-end investment management company registered under the Investment Company Act of 1940. The mutual fund investments include five variable accounts and one fixed income account.[4] The GAC has no stated maturity date and it can be discontinued unilaterally by either the Plan or Anchor National at any time. Since November 1990 which is the date of the earliest deposit, the interest rates earned by the GAC have ranged from 4.5 percent to 6.0 percent, with the GAC providing for a minimum guaranteed interest rate of 4 percent. These interest earnings have all been attributed to the fixed income account investments. Contrarily, the variable accounts do not earn any interest. Instead, each fund experiences increases or decreases in value.

4. The GAC may require that the Plan pay a 3 percent surrender fee on money that is withdrawn from the GAC during the five year period following deposit. The surrender fee is ongoing, meaning that the five year period commences with the date of each deposit. The surrender fee is paid to Anchor National only if the Plan withdraws an amount that is in excess of 5 percent of the value of the GAC.[5]

The GAC also provides for annual risk charges of 1.15 percent of the total amount of deposits under the GAC. These risk charges are similar to a management fee. The risk charges are deducted against earnings or interest on the mutual funds and are made automatically.

5. Since it has owned the GAC, it is represented that the Plan has paid no surrender fees. However, the Plan has incurred aggregate risk charges of $48,179 and made withdrawals for disbursement to participants totaling $4,715,313. Including the acquisition price of $685,832, the Plan has also made deposits totaling $4,189,449, received aggregate interest payments of $558,172 and realized appreciation totaling $1,359,752. Thus, the Plan's net investment in the GAC is $1,343,881.[6] As of April 24, 1996, the GAC had a current balance of $2,164,324.

6. The GAC is valued on a daily basis by Anchor National which calculates the fair market values of all securities held in the variable and fixed income accounts. Market values for the variable accounts comprising the GAC are also published periodically in Barron's. As of April 24, 1996, Anchor National placed the aggregate fair market value of the GAC at $2,164,324. This amount was also equivalent to the outstanding balance of the GAC as discussed in Representation 5.

7. To make available cash proceeds to the Plan in order that it may invest in alternative investments which have no continuing surrender fees, the Trustees request an administrative exemption from the Department which would permit the Plan to sell the GAC to the Employer. The sales price for the GAC will be based upon its fair market value as of the date of the sale. Specifically, on the date of the transaction, the Employer will obtain an updated valuation of the GAC from Anchor National. In addition, the Plan will not pay any transaction fees, commissions or other expenses in connection with the proposed sale.

8. The Trustees have reviewed the proposed transaction and represent that it is in the best interests of the Plan and its participants and beneficiaries. The Trustees also represent that the proposed purchase price for the GAC is at least equal to fair market value.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Plan will receive as consideration an amount that is equal to the fair market value of the GAC as of the date of the sale; (b) the transaction will enable the Plan to invest in other investment vehicles which have no surrender fees; (c) the Plan will incur no expenses with respect to the proposed sale; and (d) the Trustees have determined that the sale is in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 10 days of the publication of the notice of proposed exemption in the Federal Register. The notice will include a copy of the proposed exemption as published in the Federal Register as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Notice will be provided to interested persons by posting copies of the proposed exemption and supplemental statement on the Employer's bulletin boards or other employee advisory cites. Any participant who is not employed by the Employer and any participant's beneficiary will receive notice of the proposed exemption by certified mail at such person's last known address. Written comments and hearing requests with respect to the notice of proposed exemption will be due within 40 days of the publication of the proposed exemption in the Federal Register.

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

Hoechst Marion Roussel, Inc. Matching Contribution Plan (the Plan), Located in Kansas City, Missouri

[Application No. D–10242]

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 continuing guarantee by Hoechst Marion Roussel, Inc. (the Corporation) of a loan made to the Marion Merrell Dow Inc. Associate Stock Ownership Plan (the ASOP,

[4] Specifically, the five variable accounts constituting the GAC are the Growth Separate Account, the Growth & Income Separate Account, the Government Securities Account, the Cash Management Separate Account and the Asset Allocation Separate Account. The fixed income account comprising the GAC is the Fixed Annuity General Account.

[5] It is represented that the surrender fee does not apply where a participant takes a withdrawal in the form of an annuity, in the case of death benefits or where less than 5 percent of the value of the GAC is withdrawn in any year.

[6] The Plan's net investment in the GAC has been calculated as follows: $4,189,449 (deposits) + $558,172 (interest) + $1,359,752 (appreciation) = $6,107,373 (gross investment) − $4,715,313 (withdrawals) − $48,179 (risk charges) = $1,343,881.

currently known as the Plan), provided the following conditions are satisfied: a) the transaction is a continuation of a guarantee that was statutorily exempt at the time it was entered into; and b) the transaction requires an exemption because of an independent transaction involving the Plan's sponsor as a corporate entity.

EFFECTIVE DATES: If the proposed exemption is granted, the exemption will be effective from July 18, 1995 to August 2, 2005.

Summary of Facts and Representations

1. Effective July 31, 1990, the Corporation [then known as Marion Merrell Dow, Inc. (MMD)] established the Plan (then known as the ASOP), a plan designed to qualify under sections 401(a) and 4975(e)(7) of the Code as a leveraged employee stock ownership plan. The Corporation is engaged in the development, manufacture and sale of pharmaceutical and other products for hospital use. As of December 31, 1995, the Plan had approximately $69 million credited to a suspense account and approximately $40 million allocated to participants' accounts. For the Plan year ending on December 31, 1995, the Plan covered 5,447 participants and beneficiaries.

2. On or about July 31, 1990, the Plan borrowed approximately $104 million from a consortium of lenders (the Loan), the proceeds of which were used by the Plan to purchase Series A ASOP Convertible Preferred Stock (ASOP Shares) from MMD. MMD guaranteed the Loan and became obligated to make contributions to the Plan which, in conjunction with the use of cash dividends paid on the ASOP Shares (Dividends), would be sufficient for the Plan to make payments on the Loan. In 1991, the Loan was refinanced through an offering of public debt by the Plan (the Refinanced Loan). The Refinanced Loan is also guaranteed by the Corporation and requires the Corporation to make contributions to the Plan which, in conjunction with the use of Dividends, would be sufficient for the Plan to make payments on the Refinanced Loan. The Refinanced Loan was not collateralized by the unallocated ASOP shares and is not prepayable absent the consent of all bondholders.[7]

3. At all times prior to July 18, 1995, the Plan was operated as an employee stock ownership plan, and the applicant represents that the Corporation's guarantee of the Loan and the Refinanced Loan met all the requirements of the exemption set forth in section 408(b)(3) of the Act and section 4975(d)(3) of the Code.[8] On July 18, 1995, H Pharma Acquisition Corp., a wholly owned subsidiary of Hoechst Corporation, was merged with and into the Corporation (the Merger). Hoechst Corporation is a wholly owned subsidiary of Hoechst AG, a German corporation (the Parent). The Corporation thereby became an indirect wholly owned subsidiary of the Parent. As required by the applicable certificate of designation[9] pertaining to the ASOP Shares, upon the Merger the ASOP Shares were redeemed for the cash sum of $37.41 per ASOP Share, plus accrued dividends. As a result of such redemption, the Plan received approximately $80 million in cash with respect to unallocated ASOP Shares (the Proceeds) and approximately $25 million with respect to allocated ASOP Shares. Upon such redemption, the Plan ceased to hold any ''employer securities'' as defined in section 407(d)(1) of the Act and section 409(l) of the Code.

4. As of the date of the Merger, the principal amount of the Refinanced Loan was approximately $90 million. Since that time, the principal amount has been reduced to approximately $83 million through additional contributions by the Corporation to the Plan. The Plan remains the primary obligor on the Refinanced Loan, and the Refinanced Loan is still guaranteed by the Corporation. The remaining term of the Refinanced Loan extends through August 1, 2005.

5. The Parent is a German corporation whose shares are publicly traded on the Frankfurt exchange. However, no shares of Parent stock or American Depository Receipts (ADRs), and no stock or ADRs of any of the Parent's subsidiaries or affiliates, are traded on any United States securities exchange, or on the market established by the National Association of Securities Dealers. The applicant represents that although it is technically possible for the Plan to acquire shares of stock of the Parent on the Frankfurt exchange and to hold such shares overseas in a manner consistent with 29 CFR section 2550.404b-1 of the regulations, there are a number of legal, business and administrative obstacles to doing so:

(a) German companies do not maintain stock plans since, under German law, companies are not legally permitted to purchase their own stock. The Parent does not wish to permit equity ownership for its United States employees where such ownership is not permitted for its German employees.

(b) It is the view of the Parent and the Corporation that it would be inappropriate (and would not achieve the employee incentives underlying ESOPs generally) to make Parent stock available to the Plan—the linkage between the performance of the Corporation and the performance of Parent stock would be attenuated at best.

(c) Use of Parent stock would add significant complexity to the Plan's administration, particularly with respect to communications with Plan participants.

(d) Rules regarding ESOPs require that participants be given the option to receive their distributions in kind. If Parent stock were to be acquired for the Plan, and if participants elected to receive their distributions in Parent stock, such distributions would be effected in the United States, thus subjecting the Parent to reporting and registration requirements under United States securities laws.

Accordingly, ''employer securities'' as defined in the Act and the Code are not effectively available for purchase by the Plan with the Proceeds. As a result, the applicant represents that there is substantial uncertainty as to whether the Plan's trustee can cause the Plan to use the Proceeds to repay the Refinanced Loan (even if the bondholders consent to prepayment) or to defease the Refinanced Loan.[10]

6. Accordingly, the Corporation is proposing that the Plan be operated in the following manner:

(a) Proceeds (including earnings thereon) would continue to be held in a suspense account maintained under the Plan. Such Proceeds would be invested in a diversified investment portfolio and would be allocated to participants' accounts as described in c), below;

(b) The Corporation would continue to make contributions to the Plan (which has been converted to a profit

[7] The Refinanced Loan, however, can be defeased by the Plan by transferring the Proceeds (as defined below) to a separate irrevocable trust earmarked for the future repayment of the Refinanced Loan. Upon the establishment of such trust, the Plan's obligations under the Refinanced Loan would be discharged.

[8] In this proposed exemption, the Department expresses no opinion as to whether the Corporation's guarantee of the Loan and the Refinanced Loan met the conditions of Act section 408(b)(3) and Code section 4975(d)(3).

[9] The certificate of designation is a document filed in Delaware which sets forth the powers, rights and preferences with respect to the ASOP Shares.

[10] The applicant notes that the Department took the position in Advisory Opinion 93–35A that where stock does not serve as collateral for an employee stock ownership plan loan, it may be a violation of the Act to apply the proceeds of the sale of the stock to repay the loan.

sharing plan), and, to the extent directed by the Plan Administrator,[11] such contributions would be used by the Plan to make principal and interest payments on the Refinanced Loan;[12]

(c) To the extent the Plan applies employer contributions toward the repayment of the Refinanced Loan, a portion of the Proceeds would be allocated from the suspense account to participants' accounts in an amount equal to the amount of employer contributions so used. Any amounts contributed to the Plan in excess of the amounts used by the Plan to make principal and interest payments on the Refinanced Loan would be allocated directly to participants' accounts; and

(d) The Corporation would continue to guarantee the Refinanced Loan as it did prior to the Merger.

7. As the Plan no longer holds any ''employer security'' as that term is defined in section 407(d)(1) of the Act and section 409(l) of the Code (see Reps. 3 and 5, above), the applicant has requested the exemption proposed herein to permit the continuing guarantee by the Corporation of the Refinanced Loan. The applicant represents that the Corporation has received assurance from the Internal Revenue Service that the operation of the Plan in the manner described in Rep. 6, above, will not adversely affect its qualified status.

8. In summary, the applicant represents that the subject transaction satisfies the criteria contained in section 408(a) of the Act for the following reasons: (a) The transaction is a continuation of a guarantee that was statutorily exempt at the time it was entered into; and (b) the transaction requires an exemption because of a corporate transaction, the Merger, which upon consummation caused ''employer securities'' to become unavailable to the Plan while the obligations of the Corporation with respect to the Refinanced Loan remain unaffected.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[11] If the administrator of the Plan does not direct that the contributions be used to make principal and interest payments on the Refinanced Loan, such contributions would be allocated directly to participant's accounts in accordance with provisions of the Plan. Such contributions would not be subject to the rules regarding ''release'' from the ASOP suspense account.

[12] The amortization schedule accompanying the trust indenture requires that payments on the Refinanced Loan be made in accordance with the amounts set forth therein. It is also possible that, in some circumstances, the Corporation may make certain payments on the Refinanced Loan directly (i.e., outside of the Plan) pursuant to its guarantee.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of June, 1996.

Ivan Strasfeld,

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

[FR Doc. 96–15875 Filed 6–20–96; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–46; Exemption Application No. D–09844, et al.]

Grant of Individual Exemptions; Jacor Communications Inc.

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.