

Multi-Employer Citation Policy—1:30 to 2:30 p.m., Wednesday, June 9, in room S-4215C.

Training—1p.m. to 4, Wednesday, June 9, in room N-5437D.

Other workgroups may meet after the adjournment of the ACCSH meeting on June 11, 1999. Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC, this 21st day of May, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99-13511 Filed 5-26-99; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10621, et al.]

Proposed Exemptions; MICO, Inc. (MICO)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests 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.

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.

MICO, Inc. (MICO)

Located in North Mankato, Minnesota
[Exemption Application Number D-10621]

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 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from the MICO, Inc. Profit Sharing Plan (the Plan) to MICO, a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) MICO purchases the Property for \$362,000, which represents the Property's current fair market value as determined by a qualified, independent appraiser;

(c) MICO additionally pays to the Plan a premium of \$36,200, as determined by a qualified, independent appraiser, due to MICO's ownership of improved real property which is located adjacent to the Property;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan pays no fees or commissions in connection with the Sale.

Summary of Facts and Representations

1. MICO is a Minnesota corporation engaged primarily in the design and manufacture of hydraulic brake systems. MICO is also the sponsor of the Plan. The Plan is a defined contribution plan which allows the Plan's participants to direct their individual accounts and the Plan's trustees (the Trustees) to make all other investment decisions with respect to the Plan. The Plan, which was established on December 8, 1959, has 280 participants and approximately \$20,030,206 in total assets as of June 8, 1998.

2. In 1966, the Plan purchased a lot of unimproved land (the Original Parcel), located on Marie Lane in North Mankato, Minnesota for \$46,000 from Fred and Ruth Forsberg, parties unrelated to the Plan. The Property is an irregularly shaped lot comprising approximately 12.74 acres of undeveloped land zoned for I-1 "Planned Industrial" use and is located

adjacent to MICO's production facilities and offices. The applicant represents that the Original Parcel was acquired for investment purposes. The applicant represents that the Plan subsequently leased (the Lease) to MICO a portion of the Original Parcel and, in 1979, sold the Original Parcel portion to MICO (the Portion Sale).¹ The portion of the Original Parcel which was not transferred to MICO (i.e., the Property) continues to be held as an asset of the Plan.

3. The Plan has incurred certain holding costs as a result of its ownership of the Property. In this regard, the Plan has paid approximately \$90,000 in real estate taxes with respect to the Property. Additionally, the Plan has incurred a special assessment (the Assessment) which was imposed on the Property in 1998 for a principal amount of \$29,127.97. The Trustees of the Plan elected to pay the Assessment over a 10 year period at the rate of \$2,913.00 per year at an interest rate of 7.5%.²

4. The Plan has received income from the Property through an at-will oral agreement (the Agreement) with a sharecropper who has been farming the Property since 1984. As a result, the Plan has received approximately \$1,350 each year from the Agreement. The Trustees represent, however, that the sharecropper has recently given notice to the Trustees that he is considering the discontinuation of the Agreement.

5. The applicant represents that during the Plan's ownership of the Property, the Trustees received several offers to purchase a portion of the Property (the Offers). The applicant represents that the Trustees, after receiving each Offer, determined the extent to which a sale involving only a portion of the Property would reduce the value of the remaining Property. The applicant represents that the Trustees, after analyzing both the sale amount of each Offer and the resulting decline in value of the remaining Property, determined that each Offer would provide an unacceptable overall rate of return to the Plan for the Property. As a result, the Trustees determined that each Offer was not in the best interests of the Plan.

The Trustees represent they are currently not advertising the Property

for sale since the Property's limited marketability makes it unlikely that any advertisement of the Property would result in the Property's sale.

6. The Property was appraised on November 26, 1997 (the Appraisal) by Gwen K. Gathercoal (Ms. Gathercoal), a Minnesota-licensed appraiser for the Robinson Appraisal Company, Inc. (the Robinson Co.). The Appraisal was reviewed by another Robinson Co. appraiser, James K. Simonson (Mr. Simonson). Ms. Gathercoal and Mr. Simonson each represent that they are independent of the Plan and MICO and their employment and compensation were not contingent on the appraised value of the Property.

Ms. Gathercoal used the sales comparison approach and examined eight different transactions before determining that, as of November 26, 1997, the Property had a fair market value of \$362,000. In the Appraisal, Ms. Gathercoal concluded that the "highest and best use" for the Property would be a combination of residential, commercial, and industrial use.

The value of the Property was reevaluated (the Reevaluation) by Mr. Simonson on November 23, 1998. The purpose of the Reevaluation was to establish whether the Property had appreciated in value since the Appraisal and to determine the extent to which a premium on the Property was necessary in the event that the Property was sold to MICO.³ In the Reevaluation, Mr. Simonson represented that the Property's fair market value of \$362,000 had not increased since the Appraisal. As a result, Mr. Simonson estimated that the Property had a fair market value of \$362,000, as of November 23, 1998. Mr. Simonson represented further that, in the event the Property was sold to MICO, an adjacent landowner, a premium valued at \$36,200, or 10% above the Property's fair market value, should be paid by MICO to the Plan. As a result, Mr. Simonson estimated that any sale of the Property by the Plan to MICO should occur at a price equal to the sum of the Property's fair market value of \$362,000 and the Property's assemblage value of \$36,200.

7. MICO proposes to purchase the Property for \$398,200 (the Purchase Price). The Purchase Price represents

the sum of the Property's current fair market value of \$362,000, as determined by a qualified, independent appraiser, and the Property's assemblage value of \$36,200 with respect to the Sale, as determined by a qualified, independent appraiser. The Sale will be a one-time transaction for cash in which the Plan pays no fees or commissions. The Trustees represent that the Sale is in the best interests of the Plan's participants and beneficiaries since the Property's rate of appreciation has decreased in recent years despite an increase in the Property's real estate taxes. The Trustees represent further that the Assessment, when added to the increased real estate taxes incurred by the Plan, creates an inappropriate Plan expense with respect to the Property.

8. In summary, the Applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) MICO purchases the Property for \$362,000, which represents the Property's current fair market value as determined by a qualified, independent appraiser;

(c) MICO additionally pays to the Plan a premium of \$36,200, as determined by a qualified, independent appraiser, due to MICO's ownership of improved real property located adjacent to the Property;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan pays no fees or commissions connected to the Sale.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta at the United States Department of Labor, telephone (202) 219-8883 (this is not a toll free number).

Western Petroleum Company Profit Sharing Plan (the Plan)

Located in Eden Prairie, Minnesota
[Application No. D-10743]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the individual account (the Account) of

¹ The Applicants represent that the Lease and the Portion Sale were made pursuant to ERISA section 414 (c)(2) and (c)(3). In this regard, the Department expresses no opinion herein as to whether the Lease and Portion Sale were made in accordance with the requirements of the Act.

² The applicant represents that in the event that the proposed transaction is granted by the Department, the Plan will be responsible for paying the outstanding balance of the Assessment on the closing date of the Sale.

³ In the Reevaluation, Mr. Simonson stated that he customarily adjusts upward the appraised value of real property in instances where, as here, the purchaser of the real property owns real property located adjacent to the real property the purchaser seeks to buy. Mr. Simonson represents that this upward adjustment, commonly referred to as an "assemblage", reflects the willingness of such purchasers to pay a premium above market value so as to avoid moving or to avoid business disruptions.

James W. Emison in the Plan of certain closely-held stock (the Stock) to Mr. Emison, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Account pays no commissions nor other expenses relating to the sale; and (c) the Account receives an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan established by Western Petroleum Company (the Employer). The Employer is a Minnesota corporation and a petroleum wholesaler, located in Eden Prairie, Minnesota. As of February 8, 1999, the Plan had approximately 40 participants and beneficiaries. As of December 31, 1997, the Plan had total assets of approximately \$4,012,415, and the Account had total assets of approximately \$1,483,000. The trustees of the Plan are Mr. Emison and Mr. Lee Granlund. Mr. Emison (hereafter also referred to as "the Applicant") is also the President and a 100% shareholder of the Employer.

2. Among the assets of the Account is the Stock, which consists of 12,838 shares of Community Bank Group, Inc. (CBG), a closely-held bank holding company with four subsidiary banks: Community Bank Jordan, Community Bank Winsted, Community Bank New Ulm, and Community Bank St. Peter. The Applicant represents that the Account acquired 51 shares of the Stock in 1995 from Mr. Roy Terwilliger, an individual unrelated to the Plan and the Employer, for \$82,875.00. In 1997, the Stock underwent a 100 for 1 stock split so that the Account held an additional 5,049 shares of the Stock. In 1997, the Account acquired 7,738 shares of the Stock from CBG for \$154,763.00. Thus, the Account's basis in the Stock is \$237,638.00. Mr. Emison has been a director of CBG since 1984. In addition, Mr. Emison owns 70,480 shares of the Stock as trustee of the James Wade Emison Trust, which shares represent approximately 24.82% of the outstanding shares of the Stock as of December 31, 1998.⁴

⁴The Department expresses no opinion herein as to whether the Account's acquisition and holding of the Stock violated any of the general fiduciary responsibility provisions of Part 4 of Title I of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of the plan.

3. The Applicant requests an exemption to purchase all 12,838 shares of the Stock from the Account. Due to business and income tax considerations, CBG seeks to elect Subchapter S status under the Code.⁵ However, section 1361 of the Code permits only "eligible shareholders" to hold stock in a Subchapter S corporation. Because the Account is not an eligible shareholder for purposes of the Code, the Applicant wishes to purchase the Stock from the Account in order to remove the impediment to CBG's Subchapter S election.

4. The Stock was independently appraised by Paul W. Olander, AM, and William D. Thumstedter, of Olander Advisory Services, A Division of United Bankers' Bank, located in Bloomington, Minnesota. Messrs. Olander and Thumstedter both specialize in the banking industry.

The appraisal states that, as of December 31, 1998, there were 283,990 shares of CBG issued and outstanding held by 14 shareholders, and the Stock had an estimated fair market value of \$34.55 per share. In addition, it was determined that the adjusted fair market value of a non-marketable, minority interest in the Stock, including the effect of the outstanding management stock options, was approximately \$34.45 per share, based upon 4,800 options outstanding with an exercise price of \$29.00 per share.

The appraisal states further that the valuation of the Stock is predicated upon the financial statements of CBG and its subsidiary banks for the five years ending December 31, 1998. Messrs. Olander and Thumstedter also interviewed key management personnel of CBG and Winsted Bank, analyzed industry data, and considered the future earnings potential of CBG. Finally, they gave consideration to the eight factors in the valuation of the stock of closely-held businesses that are set forth in the Internal Revenue Service's Revenue Ruling 59-60,⁶ to the extent relevant.

In addition, the Department does not propose exemptive relief herein for any prohibited transaction that may have occurred with respect to the Account's acquisition and holding of the Stock. The Department notes that such acquisition and holding of the Stock by the Account raises issues under sections 406(a)(1)(D) and 406 (b)(1) and (b)(2) of the Act because Mr. Emison, as a director and shareholder of CBG, has an interest in the issuer of the Stock that may have affected his best judgment as a fiduciary for the Account. See Advisory Opinion 90-20A (June 15, 1990) for a similar analysis under section 4975(c)(1)(D) and (E) of the Code with respect to a self-directed individual retirement account (IRA).

⁵Section 1362 of the Code contains provisions which allow a small business corporation to elect and terminate Subchapter S corporate status.

⁶See Rev. Rul. 59-60, 1959-1 C.B. 237, as modified by Rev. Rul. 65-193, 1965-2 C.B. 370, and

The appraisal states that the net asset value method was the most appropriate to use in valuing the Stock, since CBG receives virtually all its income from its subsidiary banks.

5. The Applicant proposes to purchase the 12,838 shares of the Stock from the Account for the fair market value of the Stock as of the date of the sale, based upon an updated independent appraisal. Based upon an appraised value for the Stock, as of December 31, 1998, of \$34.55 per share, the Stock has a total value of \$443,552.90, which represents approximately 30% of the assets of the Account. Thus, the Account would realize a gain of approximately \$205,914.90 as a result of the sale.

The Applicant states that the sale will be a one-time transaction for cash, and the Account will pay no commissions nor other expenses relating to the sale. The Applicant represents that the proposed transaction is in the best interests of the Account because the sale of the Stock will enhance the liquidity and diversification of the assets of the Account.

6. In summary, the Applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the Account will pay no commissions nor other expenses relating to the sale; (c) the Account will receive an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser; (d) the sale will enhance the liquidity and diversification of the assets of the Account; and (e) Mr. Emison will be the only participant of the Plan to be affected by the proposed transaction.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account, and Mr. Emison is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

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

as modified and extended by Rev. Rul. 68-609, 1968-2 C.B. 327, and Rev. Rul. 77-287, 1977-2 C.B. 319.

General Information

The attention of interested persons is directed to the following:

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

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 24th day of May, 1999.

Ivan Straszfeld,

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

[FR Doc. 99-13497 Filed 5-26-99; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-20; Exemption Application No. D-10622, et al.]

Grant of Individual Exemptions; VECO Corporation (VECO), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

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

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

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

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

VECO Corporation (VECO)

Located in Anchorage, Alaska
[Prohibited Transaction Exemption 99-20
Exemption Application Number D-10622]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from the VECO Corporation Profit Sharing Plan and Trust (the Plan) to Norcon, Inc. (Norcon), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) Norcon will pay the greater of \$2,940,000 or the fair market value of the Property on the date of the Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan's participants and beneficiaries.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 8, 1999 at 64 FR 11052.

Written Comments: The Department received three letters signed by 49 current or former participants in the Plan endorsing the transaction as proposed in the Notice.