

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

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

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

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

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

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

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

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

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

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

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

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 15th day of May, 1997.

**Ivan Strasfeld,**

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

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

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

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

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

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

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

#### Written Comments and Hearing Requests

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

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

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

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, N.W., Washington, D.C. 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.

#### McLane Company, Inc. Profit Sharing Plan and Trust (the Plan) Located in Temple, Texas

[Application No. D-10340]

#### Proposed Exemption

The Department of Labor (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).<sup>1</sup> 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(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of two parcels of unimproved real property located in Temple, Texas and Goodyear, Arizona (the Properties) to McLane Company, Inc. (McLane), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The Sale was a one time transaction for a lump sum cash payment; (b) the purchase prices were the fair market values of the Properties as of the date of the Sale; (c) the Properties have been appraised by qualified, independent real estate appraisers; (d) a qualified, independent fiduciary determined that the Sale was in the best interests of the Plan; and (e) the Plan paid no commissions or other expenses relating to the Sale.

**EFFECTIVE DATE OF EXEMPTION:** The effective date of this exemption is April 21, 1993.

#### Summary of Facts and Representations

1. The Applicant is Sarofim Realty Advisors (SRA). SRA was formally known as F.S. Realty Partners (FSRP) when it acted as an Investment Manager for the Plan during the subject transaction. SRA is headquartered in Dallas, Texas. As of December 31, 1995, SRA employed 18 full-time employees and had approximately \$772 million in aggregate market value of employee benefit plan assets under management. SRA oversees the acquisition, development, leasing, management, financing and sale of select property types in select regions and major cities throughout the country for several pension plans and endowment funds.

The Applicant states that under the terms of the April 12, 1993 Investment Management Agreement (the IMA) between McLane, Mr. Lucian L. Morrison and FSRP, FSRP served as investment manager with exclusive investment discretion over the Properties. As the investment manager, FSRP was a fiduciary of the Plan. The Applicant represents that FSRP was not related to or otherwise affiliated with McLane.

2. The Applicant states that the Plan is a defined contribution plan whose total participants numbered 6,967 at the end of the 1993 Plan year. Additionally, the Applicant understands that at the time of consummation of the Sale, the approximate fair market value of the total assets of the Plan was \$44,710,368 and that approximately 5.5% of the total

assets for the 1993 Plan year were involved in the subject transaction.

At the time of the Sale, the company treasurer of McLane, Mr. Webster F. Stickney, Jr. (Mr. Stickney), was a Plan trustee. McLane, located in Temple, Texas, was the Plan sponsor and a party in interest with respect to the Plan. McLane is a wholesale grocery distribution company. Wal-Mart, Inc. owned one hundred percent of the issued and outstanding common stock of McLane at the time of the Sale.

3. The Properties were owned by the Plan at the time of the Sale. The Temple, Texas property consists of 86.245 acres of unimproved land bisected by McLane Parkway and located in the City of Temple, Bell County, Texas. Directly adjacent to the west and southwest are properties owned by McLane including the McLane corporate headquarters. Directly adjacent to the east are 212 acres purchased by McLane/Lone Star, Inc. for a 750,000 square foot warehouse used as a major distribution center. The Goodyear, Arizona property consists of 32.605 acres of unimproved land located on the south side of McDowell Road, 2,164 feet west of Litchfield Road in Goodyear, Arizona. McLane has a 125,828 square foot industrial distribution center adjacent to the east side of the Goodyear, Arizona property. This facility is the trucking hub that distributes grocery products to convenience stores and food establishments.

The Temple, Texas property was acquired by the Plan in two segments. The first piece constituted 84.711 acres and was purchased on December 29, 1986 from Mr. and Mrs. Calvin Emery for a total price of \$621,400. The second segment, comprising 1.534 acres, was acquired from Mr. and Mrs. Ray Looney on November 30, 1987, for \$22,652. Mr. Stokes represents that Mr. and Mrs. Emery and Mr. and Mrs. Looney were not parties in interest with respect to the Plan.

The Goodyear, Arizona property was also acquired at two different times. The Plan originally acquired a 51 percent interest in the property from Mr. Thomas Yamashita on June 20, 1984, for \$793,800. It is represented that Mr. Yamashita was unrelated to the Plan. On May 16, 1988, McLane contributed to the Plan the remaining 49 percent interest in the property. It is represented that the property had been appraised by an independent appraiser on February 22, 1988 at \$2,270,000. Also, it is represented that McLane's contribution of its interest in the property in 1988 was a purely discretionary contribution to the Plan and that McLane was under

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to section 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

no obligation to make any contribution to the Plan. The Properties have been held by the Plan since their respective purchase dates and have not been used by or leased to any person since their acquisition by the Plan.<sup>2</sup>

4. The Applicant represents that the motivation for the Plan's 1993 Sale of the Properties to McLane was solely to benefit Plan participants and beneficiaries and that Plan participants were unhappy both about the lack of income from the subject Properties and a concern about declining property values.

5. In order to fulfill what McLane believed to be the requirements of Prohibited Transaction Exemption 84-14 (49 FR 9494 March 13, 1984) (PTE 84-14)<sup>3</sup> with respect to the Sale, on or about February 15, 1993, McLane hired Lucian L. Morrison (Mr. Morrison) as an independent fiduciary for the purpose of appointing a qualified professional asset manager (QPAM) to sell the Properties owned by the Plan. On February 15, 1993, legal counsel to McLane informed the McLane treasurer that Mr. Morrison was willing to act on behalf of McLane in appointing a QPAM to have investment discretion with respect to the potential sale of the Properties to McLane. Legal counsel advised McLane that in order to comply with PTE 84-14, the Sale would proceed as follows: (1) Mr. Morrison would appoint a QPAM to represent the Plan with respect to the potential sale of the property to McLane; (2) the QPAM would hire its own appraiser and attorney to represent it in the transaction and, if appropriate, to negotiate the terms of the sale between the Plan and McLane; and (3) after the final terms of any transaction are negotiated, the sale would close in the same manner that any real estate sale would close, complete with deeds, title policies, etc.

On February 17, 1993, Mr. Morrison was formally hired as an independent fiduciary of the Plan to select and hire a QPAM to evaluate the proposed transactions and to negotiate the terms thereof and direct the trustees to enter into the Sale to McLane. Legal counsel

<sup>2</sup>The Department expresses no opinion herein on whether the acquisition and holding of the Temple, Texas property or the Goodyear, Arizona property by the Plan violated any of the provisions of Part 4 of Title I of the Act. The Department is providing no retroactive exemptive relief herein with respect to the acquisition and holding of the Temple, Texas property or the Goodyear, Arizona property by the Plan.

<sup>3</sup>PTE 84-14 provides relief from the restrictions of section 406(a) of ERISA for transactions between parties in interest and plans where a QPAM (as defined in the class exemption) is the decision maker and certain other conditions are met.

to McLane gave Mr. Morrison the names of two prospective QPAMs from whom to solicit bids and told Mr. Morrison that McLane understood, under the PTE 84-14 requirements, that McLane could not dictate to Mr. Morrison or "taint the selection process", but McLane believed "it appropriate" to give Mr. Morrison the names of two firms McLane believed to be qualified to serve as a QPAM.

6. On February 26, 1993, the Limited Purpose Independent Fiduciary Agreement (Limited Agreement) was formally entered into between McLane and Mr. Morrison. The Limited Agreement provided that the purpose of the agreement was to facilitate the purchase of the Plan's Properties and that this purchase would be a prohibited transaction unless an exemption from the prohibited transaction rules of ERISA was utilized. The Limited Agreement further specified that the QPAM exemption was available for this purchase.<sup>4</sup>

<sup>4</sup>In this regard, section I(a) of PTE 84-14 provides that:

(a) At the time of the transaction (as defined in section V(i)) the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one year has not exercised the authority to—

(1) Appoint or terminate the QPAM as a manager of any of the plan's assets, or

(2) Negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan; \* \* \*

Section I(c) of PTE 84-14 provides that:

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general directions of the QPAM, and either the QPAM or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest; \* \* \*

Section V(c)(3) of PTE 84-14 provides, in relevant part, that a named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such an employer \* \* \* has the authority \* \* \* to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

Section 402(a) of ERISA provides that every employee benefit plan shall be established and maintained pursuant to a written instrument. This instrument must provide for one or more named fiduciaries who have the authority to control and manage the operation and administration of the plan. Under sections 402(c)(3) and 403(a) of ERISA, only a named fiduciary has the authority to appoint an investment manager, and such an appointment may be made only as specifically provided in the plan instrument.

The preamble to the proposed class exemption, 47 FR 56945 at 56947 (December 21, 1982), explains that the Department is prepared to grant broad exemptive relief only where an independent asset manager has, and in fact exercises, discretionary authority to cause an investment fund to enter into

Mr. Morrison accepted his appointment as a limited purpose independent fiduciary and agreed to act as provided for in the Limited Agreement, the Plan Document, and ERISA. Mr. Morrison solicited bids from the U.S. Trust of California and from FSRP, asking for their fee for serving as the QPAM to transact the purchase by McLane of the Plan's Properties.

7. On April 12, 1993, Mr. Morrison, McLane and FSRP entered into an "Investment Management Agreement". As independent fiduciary, Mr. Morrison appointed FSRP as an Investment Manager (IM) of the Plan. In Section 2 of the IMA, FSRP acknowledged that in acting as an IM under the IMA, it would be acting as a fiduciary to the Plan as defined in ERISA. Section 4 of the IMA provides that the IM shall: (1) Evaluate the proposed transaction and, if appropriate; (2) negotiate the terms of the Sale; and (3) direct the Plan to sell the Properties to McLane if, in FSRP's sole discretion, the sales price negotiated by FSRP and agreed to by McLane represents the fair market value of each parcel of real estate as determined by FSRP considering one or more appraisals obtained from qualified, independent appraisers. Section 6 of the IMA provides that the agreement shall terminate on the closing date of the proposed sales in the event that FSRP directs the Plan to enter into the sales of the Properties to McLane.

8. Plan records show that a full appraisal of the Temple, Texas property was completed for McLane on December 30, 1991 by Elbert Aldrich, Inc. (Aldrich), a real estate appraiser. Aldrich specified that only the Sales Comparison Approach was used in the valuation process of the appraisal due to the absence of any improvements on the subject property. Aldrich noted that the property was "essential for the continued development of the McLane Company, Inc. as the property is the nucleus of other properties held by McLane" and concluded the estimated fair market value of the property to be \$763,000. An updated appraisal by

a transaction which is otherwise prohibited. Party in interest transactions that are negotiated by, e.g., an employer which sponsors a plan, and are then presented to a QPAM for approval would not qualify for the class exemption as proposed.

It is the view of the Department that the retention of a QPAM solely to approve a specific transaction presented for its consideration by a plan sponsor at the time of its engagement is inconsistent with the underlying intent of the exemption, i.e., the transfer of plan assets to an independent, discretionary manager free from the undue influence of the sponsor. Such a transaction also raises issues under section I(c) of the exemption which requires that the transaction not be a part of an agreement, arrangement or understanding designed to benefit a party in interest.

Aldrich, dated January 29, 1993, indicated that the Temple, Texas real estate maintained the same estimated fair market value of \$763,000.

FSRP, as the IM, requested an additional appraisal of the Temple, Texas property from Crosson Dannis, Inc. (Crosson), an independent real estate appraiser. In an April 7, 1993 report to FSRP (the Crosson Report), Crosson used the Sales Comparison Approach and estimated the market value of the Temple, Texas property to be \$300,000 as of March 29, 1993. The Crosson Report noted that the estimate was to assist FSRP in its asset management program and noted that the property "is not currently offered for sale nor are there any pending contracts of sale affecting it." The Crosson Report stated that the only construction activity in the area consisted of the Lone Star distribution center for McLane and that other than the demand by McLane for its distribution facility, there was no apparent demand by owner/users for land in this neighborhood. Further, that an analysis of comparable properties required that Crosson apply a negative conditions of sale adjustment to the surrounding McLane properties to account for the "buyer's motivation" since a premium was paid for these sites. The Crosson report noted that "[r]eal estate professionals in Temple indicate that \* \* \* McLane \* \* \* owns substantial acreage in this neighborhood, [and] as an investor, has, in the past, been willing to pay prices above market levels to acquire tracts in the neighborhood."

The Goodyear, Arizona property was evaluated for McLane by Appraisal Technology, Inc., a real estate appraiser, as of February 9, 1993. Appraisal Technology, Inc. noted that the Goodyear, Arizona property was adjacent to a McLane distribution facility. The appraisal adopted the Sales Comparison Approach to obtain a final estimated fair market value of \$1,305,000 for the vacant property. FSRP requested a second appraisal of the Arizona property from Burke Hansen, Inc. (Burke), an independent real estate appraiser. The Burke appraisal specified that it was to be used by FSRP for portfolio management decisions. Using the Sales Comparison Approach, Burke estimated the market value of the Goodyear, Arizona property to be \$390,000 as of March 30, 1993. However, the appraisal also provided an estimated use value of \$1,300,000. The use value represents the value the property has for a specific use by a user with specific criteria, not necessarily representative of market value. Additionally, the report noted that the

property was currently listed for sale at \$2,000,000. The listing agent reported that there had been no offers.

9. On April 21, 1993, the Plan engaged in the Sale with McLane and received \$2,463,000 from McLane for the Properties. The Plan received \$763,000 for the Temple, Texas real estate and \$1,700,000 for the Goodyear, Arizona real estate. Special Warranty Deeds conveying title to these parcels from the Plan to McLane were signed on May 12, 1993 by Webster F. Stickney, Jr., as Trustee of the Plan. The purchase agreement entered into by the Plan and McLane that agreed to the Sale for a total of \$2,463,000 was also signed by Webster F. Stickney, Jr., as Trustee for the Plan and J.S. Harding, Jr., president of McLane, on May 12, 1993.

McLane represents that all parties involved in the Sale recognized that McLane was paying the Plan well in excess of the current fair market value for both properties and that this was clearly done to avoid having to advise Plan participants that they had incurred losses in their accounts due to a large decline in the real estate market at the time. McLane represents that both the Arizona and Texas properties appeared to be falling rapidly in value during 1992 and that the Sale prices for both properties reflected their estimated values in early 1992.

McLane also represents that, if McLane had treated the excess of the purchase price for the properties over their fair market values as a Plan contribution in 1993, the resulting allocations would not have violated the limitations of Internal Revenue Code section 415.

10. In summary, the Applicant represents that it now believes that the conditions of PTE 84-14 may not have been satisfied with respect to the Sale. As a result, it requests that the Department consider retroactive individual exemption relief under section 408(a) of ERISA. The Applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Sale was a one time transaction for a lump sum cash payment; (b) the Plan received more than the fair market values of the Properties at the time of the transaction; (c) the fair market values of the Properties have been determined by independent, qualified real estate appraisers; (d) a qualified, independent fiduciary has determined that the Sale was in the best interests of the Plan; and (e) the Plan paid no commissions or other expenses relating to the Sale.

**FOR FURTHER INFORMATION CONTACT:**  
Wendy McColough of the Department,

telephone (202) 219-8971. (This is not a toll-free number.)

### General Information

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 14th day of May, 1997.

**Ivan Strasfeld,**

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

[FR Doc. 97-13179 Filed 5-19-97; 8:45 am]

BILLING CODE 4510-29-P

Date Issued: May 15, 1997.

**Merceria L. Ludgood,**

Deputy Director, Office of Program  
Operations.

[FR Doc. 97-13193 Filed 5-19-97; 8:45 am]

BILLING CODE 7050-01-P

Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**  
Margaret S. Chatterton, (301) 415-2889.

**SUPPLEMENTARY INFORMATION:**  
**NRC Bulletin 96-01 Supplement 1:**  
**Control Rod Insertion Problems**

*Addressees*

This bulletin supplement is being sent to all holders of pressurized-water reactor (PWR) operating licenses (except those that have certified that they are permanently shutdown). It is expected that recipients will review the information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems. However, action is only requested from PWR licensees of Westinghouse and Babcock and Wilcox designed plants.

*Purpose*

The U.S. Nuclear Regulatory Commission (NRC) is issuing this supplement to Bulletin 96-01 to: (1) Alert addressees to the issues concerning incomplete control rod insertion as a result of distortion of the thimble tubes, (2) request all licensees of Westinghouse and Babcock and Wilcox designed plants take actions to ensure the continued operability of the control rods, and (3) require that all licensees of Westinghouse and Babcock and Wilcox designed plants send to the NRC a written response to this bulletin supplement relating to the actions and information requested in this supplement.

*Background*

Incomplete control rod insertion has been previously addressed by the NRC in Information Notice (IN) 96-12, "Control Rod Insertion Problems," dated February 15, 1996, and Bulletin 96-01, "Control Rod Insertion Problems," dated March 8, 1996. Bulletin 96-01 requested actions to ensure that all affected plants respond in a proactive manner to recent industry experience and support data collection that permitted the staff to more effectively assess this issue and determine whether further regulatory action was needed. Since Bulletin 96-01 was issued, there has been extensive investigation of the issue, including evaluation of plant data (trip, rod drop time, recoil and drag data), spent fuel pool testing, Zircaloy material property review, and review of worldwide experience.

**LEGAL SERVICES CORPORATION**

**1997 Grant Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients in Service Areas MPA, TX-7, PA-3 and OH-11**

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of 1997 Competitive Grant Awards.

**SUMMARY:** The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, for the service areas for which competition was reopened in 1997.

**DATES:** All comments and recommendations must be received on or before the close of business on June 19, 1997.

**ADDRESSES:** Legal Services Corporation—Competitive Grants, 750 First Street NE, 10th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:**  
Merceria Ludgood, Deputy Director,  
Office of Program Operations, (202)  
336-8848.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Corporation's announcement of funding availability on February 17, 1997 (62 FR 7070-7071) and April 14, 1997 (62 FR 18150-18151), LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Service area	Applicant name
MPA ....	Philadelphia Legal Assistance Center.
TX-7 ...	Coastal Bend Legal Services.
PA-3 ...	Legal Aid of Chester County, Inc. Delaware County Legal Assistance Assoc., Inc.
OH-11	Legal Aid Society of Columbus. Central Ohio Legal Aid Society, Inc. Ohio State Legal Services.

**NUCLEAR REGULATORY COMMISSION**

**Proposed Generic Communication; Control Rod Insertion Problems**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a bulletin supplement that will request addressees to take actions to ensure the continued operability of the control rods. These actions will ensure that adequate shutdown margin is maintained and that the control rods will satisfactorily perform their intended function of effectively terminating the fission process during all operating conditions in accordance with the current licensing basis for each facility. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed bulletin supplement presented under the Supplementary Information heading.

The proposed bulletin supplement has been endorsed by the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed bulletin supplement. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this bulletin supplement be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

**DATES:** Comment period expires June 19, 1997. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T-6D-69, Washington, DC 20555-0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm,