

Plans and their participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plans are paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plans with comparable claims experience.

14. In summary, the applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because: (a) The Plans' participants and beneficiaries are afforded insurance protection by Aetna, a carrier rated A or better by A.M. Best, at competitive market rates arrived at through arm's-length negotiations; (b) SCA Re, which will enter into the reinsurance agreements with Aetna, is a sound, viable insurance company that has been in business since the 1850s (though it incorporated into its present form in December 2000); (c) the protections described in representation 13, above, provided to the Plans and their participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a "captive" insurer, under the conditions of PTE 79-41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with, the insurer);⁸ (d) U.S. Trust, as the Plans' Independent Fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests

⁸The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should now be relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 250.404a-1).

of, the Plans and that there will be an immediate benefit to the Plans' participants as a result thereof by reason of an improvement in benefits under the terms of the Plans; and (e) U.S. Trust will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

Notice to Interested Persons

SCA will provide notice of the proposed exemption to all of its affected benefit Plan participants by posting copies of the proposed exemption (as published in the **Federal Register** on the date of publication) and a copy of the Supplemental Statement, as required pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and/or request a hearing. SCA will post this information on bulletin boards in prominent areas at those SCA work sites at which more than ten participants of the Plans work. All other SCA work sites will distribute the information by hand delivery to the Plan participants. Copies of the proposed exemption will also be available to Plan participants, upon request, at SCA work sites where the information is posted.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (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 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 29th day of April, 2004.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-54,485]

Burlington Industries, Hurt, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 12, 2004, in response to a petition filed by a company official on behalf of workers at Burlington Industries, Hurt, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 5th day of April, 2004.

Richard Church,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

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