this exemption have been met, except that—

(1) This record-keeping condition shall not be violated if, due to circumstances beyond the control of State Street and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than State Street and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section II(t)(1) of this exemption; and

(t)(1)Except as provided in section II(t)(2), below, of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in section II(s) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan, a State Street Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan, State Street Plan, or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, State Street Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in section II(t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of State Street or its affiliates or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this proposed exemption, the following definition shall apply:

(a) The term, ''affiliate'' or ''affiliates,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, or partner in any such person; and

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

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, ''State Street Plan(s),'' refer to employee benefit plans covered by the Act sponsored and maintained by State Street and/or an affiliate for its own employees;

(d) The term, ''Index Fund(s),'' refers to any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by State Street or a U.S. affiliate, in which one or more investors invest, and

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined, below, in section III(f) of this exemption, by either:

(A) Replicating the same combination of securities which compose such Index, or

(B) Sampling the securities which compose such Index based on objective criteria and data;

(2) For which State Street or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Plan Asset Regulation; and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the fund which is intended to benefit State Street or its affiliate or any party in which State Street or its affiliate may have an interest;

(e) The term, ''Model-Driven Fund(s),'' refers to any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by State Street or a U.S. affiliate, in which one or more investors invest, and

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of State Street or an affiliate, to transform an Index;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Plan Asset Regulation; and

(3) That involves no agreement, arrangement or understanding regarding the design or operation of the fund or the utilization of any specific objective criteria which is intended to benefit State Street, any affiliate of State Street, or any party in which State Street or any affiliate may have an interest;

(f) The term, ''Index,'' refers to a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of State Street; and

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of State Street; and

(g) The term, ''Clearing Broker,'' means a U.S. broker-dealer registered under the Securities Exchange Act of 1934 that is unrelated to State Street, that has net capital equal to at least $10 million and that regularly serves as a clearing broker for introducing brokers in the ordinary course of its business, but only in the context, and to the extent, of its service as a clearing broker for an Affiliated Broker Dealer that is acting as introducing broker.

For a complete statement of the facts and representations supporting the Department's decision to grant PTE 97–63, refer to the proposed exemption and the grant notice that are cited above.

Signed in Washington, DC, this 3rd day of February, 2003.

Ivan L. Strasfeld,

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

[FR Doc. 03–2962 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11059]

Notice of Proposed Individual Exemption To Replace Prohibited Transaction Exemptions (PTEs) 81–56, 85–19 and 89–5 Involving the Truman Arnold Companies Retirement Plan and Trust (the Plan) Located in Texarkana, TX

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to replace PTEs 81–56, 85–19 and 89–5.

SUMMARY: This document contains a notice of pendency before the

Department of Labor (the Department) of a proposed individual exemption which, if granted, will replace PTEs 81–56 (46 FR 36273, July 17, 1981), 85–19 (50 FR 3045, January 23, 1985) and PTE 89–5 (54 FR 4348, January 30, 1989). These are individual exemptions (the Prior Exemptions) that were previously issued by the Department to the Truman Arnold Companies (the Employer), a party in interest with respect to the Plan. Each of the Prior Exemptions permitted the Employer to contribute and/or lease from the Plan certain improved real property (the Properties) under the provisions of three distinct written leases.

If granted, the proposed exemption will incorporate many of the facts and representations contained in the Prior Exemptions and update information to the extent there have been changes. Because it appears that PTE 81–56 expired on September 30, 1999, and the parties have been not been covered by an administrative exemption since that time, the proposed exemption will provide retroactive exemptive relief from October 1, 1999, until September 30, 2002. In addition, to resolve uncertainty regarding the expiration dates of the leases described in PTEs 81–56 and PTE 85–19, the proposed exemption merges the leases, along with the lease described in PTE 89–5, under a new master lease (the Master Lease) and provides retroactive exemptive relief, effective October 1, 2002, with respect to such past and continued lease arrangements. This will ensure that the subject Properties are, at all times, covered by an administrative exemption.

Further, the proposed exemption will permit the replacement of AmSouth Bank (AmSouth), the Plan's former independent fiduciary, with Regions Bank (Regions), the Plan's current trustee. Thus, the proposed exemption will affect participants and beneficiaries of the Plan, as well as Plan fiduciaries.

EFFECTIVE DATE: If granted, this proposed exemption will be effective from October 1, 1999, until September 30, 2002, with respect to the leasing arrangement described in PTE 81–56. In addition, the proposed exemption will apply retroactively from October 1, 2002, with respect to the consolidation of the properties described in the Prior Exemptions under the Master Lease.

DATES: Written comments and requests for a public hearing should be received by the Department on or before March 24, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent by mail to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Notice of Proposed Individual Exemption to Replace Prohibited Transaction Exemptions 81–56, 85–19 and 89–5 Involving the Truman Arnold Companies Retirement Plan and Trust; Application No. D–11059). Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219–0204 or by electronic mail to *moffitb@pwba.dol.gov* by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will replace PTEs 81–56, 85–19 and 89–5. The Prior Exemptions provided exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code). The proposed exemption has been requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 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. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

The Plan is a defined contribution plan with 369 participants as of September 30, 2002. Also as of September 30, 2002, the Plan had total assets with a fair market value of $11,080,680. The Plan is sponsored by the Truman Arnold Companies, which are engaged in the petroleum wholesale business in Texarkana, Texas. Currently, Regions of Texarkana, Texas serves as the Plan trustee and the independent fiduciary for the leasing arrangements described herein.

Between 1981 and 1989, the Department granted the Prior Exemptions which provided exemptive relief primarily from the prohibited transaction provisions of sections 406(a), 406(b)(1) and (b)(2) of the Act [1] and from the sanctions resulting from the application of section 4975 of the Code, as amended, by reason of section 4975(c)(1)(A) through (E) of the Code. Specifically, PTE 81–56 permitted the Employer, which was then known as the ''Truman Arnold Distributing Company, Inc.,'' to contribute to the Plan a parcel of real property and the improvements situated thereon (the New Facilities Property), as part of the Employer's annual contribution to the Plan. The New Facilities Property is located on South Robison Road in Texarkana, Texas and it is contiguous to other property also owned by the Plan and leased to the Employer and its sister corporation, Truman Arnold Transport Company, Inc. (Transport) for use as the Employer's headquarters. During 1979, the Employer purchased the land portion of the New Facilities Property for $33,667 from unrelated parties and subsequently caused a building to be constructed thereon for $219,372, or an aggregate cost of $253,039. As of September 30, 1979, the Plan had $692,797 in total assets and as of March 12, 1980, it had 80 participants.

PTE 81–56 also permitted the Employer to lease the New Facilities Property from the Plan under the provisions of a written, triple-net lease for an initial annual rental of $37,800. Taxes, insurance or other costs incident to the ownership of the New Facilities Property were to result in a corresponding increase in the amount of the rental payment under the lease.

An independent appraisal report was prepared of the New Facilities Property on November 17, 1980, by Jim Freeman of P.M. Brown, Inc. Realtors in Texarkana, Texas. Mr. Freeman, a qualified independent appraiser and a senior member of both the American Society of Appraisers and the American Association of Certified Appraisers, placed the gross fair market rental value of such property at $38,405 and its net rental value (after expenses) at $34,560.

[1] It should be noted that exemptive relief from section 407(a) of the Act is also provided in PTE 81–56.

Thus, the initial net rental income to the Plan of $37,800 exceeded Mr. Freeman's net income estimate.

Mr. Freeman also placed the fair market value of the New Facilities Property at $270,000 as of November 17, 1980. This represented a $15,000 increase over an earlier appraisal which he had completed in February 1980. In an addendum to the November 1980 appraisal, Mr. Freeman represented that the New Facilities Property was a multipurpose property that could be easily converted to other uses.

Commercial National Bank in Shreveport, Louisiana (Commercial) was appointed as independent fiduciary to monitor both the contribution and subsequent leasing of the New Facilities Property on behalf of the Plan. Commercial was vested with full authority and responsibility to take all actions necessary to protect the interests of the Plan. Commercial, through its President and Chief Executive Officer, James E. Burt III, represented that it had over $700 million in assets and that it maintained no financial or other relationship with either the Employer or its principal shareholder, Mr. Truman Arnold. Commercial also represented that it had reviewed the transaction and determined that it was in the best interests of the Plan and its participants and beneficiaries.

Although the Employer was authorized to lease the New Facilities Property from the Plan until September 30, 1984, it was permitted to extend the lease for three, additional five year terms, provided Commercial approved each successive renewal option. The monthly rental payments for the New Facilities Property were again established on the basis of an independent appraisal conducted once every three years and Commercial was responsible for selecting the independent appraiser. Further, at each lease adjustment period, a lease payment could not be less than that of the preceding three year term, or less than 14 percent of the fair market value of the New Facilities Property. Finally, the Employer and Mr. Arnold agreed to indemnify the Plan against any decrease in the fair market value of the New Facilities Property below the Plan's original cost basis.

PTE 81–56 expired on September 30, 1999.

PTE 85–19 allowed the Plan, which had net assets of $2.4 million and 182 participants as of September 30, 1983, to continue leasing the land and buildings comprising the Employer's Texarkana, Texas headquarters (the Home Site Property) after June 30, 1984, under the provisions of a new lease. Previously, the Plan had been leasing the Home Site Property to the Employer and Transport under a transitional rule lease that was subject to the provisions of section 414(c)(2) of the Act.[2] However, in order to continue the leasing arrangement, the Employer requested an administrative exemption from the Department on essentially the same terms and conditions as those contained in PTE 81–56.

Mr. Freeman, the independent appraiser utilized in PTE 81–56, placed the fair market value of the Home Site Property at $256,000 as of September 15, 1983. He also determined that the gross fair market rental value of the Home Site Property was $33,480 per year and, adjusting such property for taxes, insurance, maintenance and management expenses, determined that the net fair market rental value of the Home Site Property was $28,705 per year. Further, Mr. Freeman opined that the Home Site Property was a multipurpose property that could easily be adapted to other uses.

In addition to determining the fair market rental value of the Home Site Property, Mr. Freeman placed the fair market value of such property at $256,000 as of September 15, 1983. Thus, the value of the New Facilities Property, whose lease was covered by PTE 81–56 and the Home Site Property, whose lease was covered by PTE 85–19, totaled $566,000 and constituted 23.5 percent of the Plan's assets at that time.

As in PTE 81–56, Commercial, acting as the independent fiduciary, negotiated the lease prior to July 1, 1984. The lease was a triple-net lease having a primary term of five years with three, additional five year renewal terms that could be exercised solely at Commercial's discretion. The initial annual rental under the lease was set at $35,840 based upon an independent appraisal and it provided a 14 percent rate of return to the Plan. Every third year of the lease term, the fair market rental value of the Home Site Property was to be adjusted by an independent appraiser selected by Commercial. Again the rental rate would be the greater of the fair market rental rate, as determined by the independent appraiser, or 14 percent of the fair market value of the Home Site Property. The Employer agreed to maintain adequate fire and casualty insurance on the Home Site Property, as determined by Commercial, with the Plan named as the loss payee of such insurance. Further, the Employer and Mr. Arnold agreed to indemnify the Plan against any decrease in the fair market value of the Home Site Property if it fell below its $256,000 fair market value.

Commercial, which had exclusive oversight authority over the leasing and potential sale of the Home Site Property, concluded that the Plan should retain the property after reviewing the Plan's financial records and asset portfolio. Commercial also concluded that the terms of the lease were arm's length and found the guaranteed 14 percent rate of return to be an attractive feature of the lease. Moreover, Commercial examined the Employer's past lease payment records and financial statements. Based upon such information, Commercial discovered that the Employer had never defaulted on any rental payments and it concluded that the Employer was a responsible lessee and financially healthy.

Finally, PTE 89–5 permitted the Employer to construct, contribute to the Plan (which had 214 participants and net assets of $5,029,632 as of September 30, 1987), and then lease from the Plan two buildings (the Buildings) located on the Home Site Property. PTE 89–5 also permitted the Employer and Mr. Arnold to indemnify the Plan against any decrease in the fair market value of the Buildings. PTE 89–5 became effective as of June 1, 1988.

Under the terms of its lease of the Home Site Property and with Commercial's approval, the Employer constructed the Buildings which connected the original office building portion of the Home Site Property at a total cost of $556,000. The Buildings were subsequently appraised by Mr. Freeman as having a combined fair market value of $587,000 as of October 1, 1987.

On June 1, 1988, the Employer, with Commercial's approval as independent fiduciary, contributed the Buildings to the Plan as part of its annual contribution and then leased back the Buildings from the Plan under a written lease. The subject lease is a triple net lease. It had an initial term of five years, also commencing June 1, 1988, and it has three renewal options, each of five years' duration. The initial annual rental under the lease, as determined by an independent appraisal, was $82,188. The rental amount was also equal to 14 percent of the appraised fair market value of the Buildings.

The lease provided for fair market rental adjustments every three years, again pursuant to an independent appraisal. Although the rental payments

[2] In relevant part, section 414(c)(2) of the Act states that the provisions of sections 406 and 407(a) of the Act would not apply until June 30, 1984, to a lease or joint use of property involving a plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract).

for each adjustment period were required to represent 14 percent of the appraised value of the Buildings, in no event could the lease payments be less than that of the preceding three year period. The lease required the Employer to maintain fire and casualty insurance on the Buildings and to name the Plan as the loss payee. As in the other two Prior Exemptions, both Mr. Arnold and the Employer agreed to indemnify the Plan against any decrease in the fair market value of the Buildings below their $567,000 appraised value.

Commercial was again designated as the independent fiduciary to approve and monitor the contribution and leaseback transactions on behalf of the Plan and to determine whether it would be appropriate to sell the Buildings. Commercial concluded that the transactions were in the best interests of the Plan and its participants and beneficiaries and found the Buildings to be of high quality. Moreover, Commercial examined the Plan's financial records and asset portfolio and concluded that the Plan had sufficient liquidity. Finally, Commercial determined that the terms of the lease were arm's length, the Employer was financially solvent and had never defaulted on rental payments to the Plan, and the Buildings were readily adaptable to other uses.

It is represented that there were never any defaults or delinquencies on the part of the Employer under its respective leases with the Plan. It is also represented that the terms and conditions of the leases were always complied with by the parties.

II. Replacement of Leases Described in the Prior Exemptions

When the Prior Exemptions were granted, it was the Employer's understanding that the New Facilities Property, the Home Site Property and the Buildings (collectively, the Properties) could be wrapped into a single lease such that the last lease would encompass all of the Properties. This mistake resulted in both a prohibited leasing arrangement with respect to the New Facilities Property and an inconsistency in the actual termination date of the lease involving the Home Site Property.

As stated above, PTE 81–56, permitted the Employer to lease the New Facilities Property from the Plan until September 30, 1984. However, the Employer was allowed to extend the lease for three additional five year terms, provided Commercial approved each such extension. Because the Employer extended the lease for the additional terms, it appears that the lease expired on September 30, 1999. As a result, the Employer continued to lease the New Facilities Property from the Plan without the benefit of an administrative exemption, even though the Employer represents that it had always been compliant with the other terms and conditions of the lease.

With the exception of its July 1, 1984, commencement date, the lease described in PTE 85–19 was based on terms that are identical to those described in PTE 81–56. However, it appears that both the lease (including all applicable extensions) is due to expire on June 30, 2004.[3] Nevertheless, it is represented that the Employer expected, with the approval of the independent fiduciary, to be able to extend such lease until June 30, 2008. Assuming the extension is approved by the independent fiduciary, the leasing arrangement would be prohibited, inasmuch as it would not be covered by an administrative exemption.

To correct the inconsistencies in the termination dates of the leases described in PTEs 81–56 and 85–19, and to consolidate these leases, with the lease described in PTE 89–5, into one master lease, the Plan and the Employer entered into a new leasing arrangement with respect to the Properties, effective October 1, 2002. Accordingly, an administrative exemption is requested from the Department to cover this past and continued leasing arrangement.

The Master Lease has a primary term of three years, which commenced on October 1, 2002, and will end on September 30, 2005. Under the Master Lease, the Employer is required to pay the Plan a monthly rental of $14,933.33 on the first day of each calendar month. The Master Lease may be renewed by the Employer for four additional three year terms, exercisable solely at the discretion of Regions, as independent fiduciary for the Plan. The monthly lease payments for each such renewal term are to be established by an independent appraisal. Regions is also responsible for selecting the independent appraiser to conduct the appraisals for the Plan. As in the provisions of the Prior Leases, the rental installments due for the renewal terms will be in an amount equal to a 14 percent return upon the appraised value of the properties covered under the Master Lease, and in no event will the lease payments be less than that of the preceding three year period. During each renewal term, all monthly rental installments will be due and payable on the first day of each month. In addition, the Employer is required to pay for all utilities, taxes and assessments, and to insure the Properties against loss.

As of August 27, 2002, the Properties that are subject to the Master Lease, had a combined fair market value of $1,280,000 according to an independent appraisal report prepared by Messrs. P.M. Brown, ASA, CRA, and Michael Hendrix, qualified, independent appraisers affiliated with the real estate appraisal firm of P.M. Brown Real Estate Appraisers, located in Texarkana, Texas. The appraisers also confirmed that in their opinion, net fair market rentals on comparable properties within the Texarkana marketing area were equal to or less than 14 percent of the market value of the subject Properties. Thus, the monthly fair market rental value of the Properties was set at $14,933.33 on the commencement date of the Master Lease.[4]

III. Independent Fiduciary Changes

Since the Prior Exemptions were granted, several unrelated banks succeeded Commercial as the independent fiduciary for the Plan with respect to the leases. In this regard, during 1990, Commercial was acquired by the Deposit Guaranty Bank (Deposit). In 1998, Deposit merged with First American Bank (First American). During 1999, First American merged with AmSouth. In each instance, these banks succeeded to the independent fiduciary responsibilities of Commercial under applicable banking laws. It is also represented that there were never any time lags between the departure and replacement of these independent fiduciaries.

On December 17, 2002, the Employer appointed Regions, the Plan's current trustee,[5] as the successor independent fiduciary to AmSouth with respect to oversight of the Master Lease. Regions was selected by the Employer to serve as the independent fiduciary for the Plan for reasons of administrative convenience and to facilitate the handling of Plan-related matters. Moreover, Regions is not charging the Plan any additional fees for services

[3] The Employer, however, determined that the lease would expire on June 30, 2003.

[4] To the extent that the amount of rent paid by the Employer to the Plan under the Master Lease exceeds the fair market rental value of the subject Properties, the Employer represents that such excess rent, if any, when combined to the balance of the annual additions to the Plan, will not exceed the limitations prescribed by section 415 of the Code.

[5] The Plan's former trustee was State First National Bank (State First) of Texarkana, Texas. On March 10, 1994, State First was merged into First Commercial Corporation (First Commercial). On July 31, 1998, First Commercial was merged into Regions Bank Financial Corporation, the parent of Regions. On that same date, Regions also became the Plan trustee.

rendered as an independent fiduciary, aside from its trustee duties.

Regions, a subsidiary of Regions Bank Financial Corporation, a major Southern bank holding company, is one of the 25 largest banking companies in America with current assets in excess of $39 billion. Of these total assets, the Trust Division of Regions holds more than $23.5 billion in trust assets and the assets of the Plan constitute approximately 0.05 percent of Regions' total trust assets.

Mr. Arnold, the principal owner of the Employer, maintains a checking account with Regions. However, the total balance of Mr. Arnold's account with Regions represents a negligible portion of the bank's total deposits. In addition, the Employer maintains a checking account with Regions but funds are swept to another bank on a daily basis, so a zero balance is maintained. Further, neither Mr. Arnold nor the Employer has a lending relationship with Regions and no officer or director of Regions sits on the Board of Directors of the Employer or vice versa. Finally, there are no familial relationships existing between Mr. Arnold, his son, and Regions or between the Employer and Regions.

Regions represents that it is knowledgeable and experienced with lease transactions and it maintains a staff of qualified trust and investment professionals who provide legal, portfolio management and consulting services to clients.

As the successor independent fiduciary under the Prior Exemptions and the Master Lease, Regions has agreed to (a) represent the interests of the Plan for the duration of the initial term of the Master Lease and during each renewal term; (b) monitor the transactions on the Plan's behalf; (c) enforce compliance with all conditions of the leases; and (d) ensure that the transactions remain in the best interest of the Plan and protective of the Plan's participants and beneficiaries. In addition, Regions has also reviewed the Prior Exemptions and has evaluated the terms and conditions of the subject leases. Based upon this review, Regions believes the leasing arrangements should be continued under the Master Lease.

IV. Other Modifications

The Department has modified the operative language of the proposed exemption in order to clarify the relevant terms of the Master Lease and the role of the independent fiduciary, thereby replacing the Prior Exemptions:

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, (1) effective October 1, 1999, until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81–56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) to the leasing, effective October 1, 2002, by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85–19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property and described in PTE 89–5 (54 FR 4348, January 30, 1989). (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the ''Properties.'')

This proposed exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master Lease, at no time, exceeds 25 percent of the Plan's assets.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 14 days of the publication of the notice of proposed exemption in the **Federal Register**. With respect to active employees of the Employer, notice will be delivered in writing at such employees' place of employment. With respect to retired employees or participants having deferred vested interests in the Plan, notice will be provided by first class mail. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. All written comments and/or requests for a hearing are due within 44 days after the date of publication of the pendency notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

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

the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

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

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the Prior Exemptions and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption by regular mail, electronic mail or facsimile to the addresses or facsimile number noted above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 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, (1) effective October 1, 1999, until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81–56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) effective October 1, 2002, with respect to the leasing by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85–19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property, as described in PTE 89–5 (54 FR 4348, January 30, 1989). (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the ''Properties.'')

This proposed exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master Lease, at no time, exceeds 25 percent of the Plan's assets.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Prior Exemptions, refer to the proposed exemptions and the grant notices which are cited above.

Signed in Washington, DC, this 3rd day of February, 2003.

Ivan L. Strasfeld,

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

[FR Doc. 03–2961 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility