

- Development and participation in a basinwide Conservation Implementation Program.

- Additional water supplies resulting from reasonably foreseeable actions that may be implemented during the proposed period of operation.

#### **Purpose of the Proposed Action**

The purpose of the proposed action is to operate the authorized features and facilities of the Project during varying hydrological conditions through March 2012 to meet Reclamation's legal obligations and responsibilities as described in the need for the proposed action in the following section.

Reclamation's goal is to retain Project viability in a manner that not only seeks to avoid jeopardizing federally listed threatened and endangered species, but also to conserve and protect those species and to address Reclamation's tribal trust obligation. The purpose of any new Federal actions stemming from the operations plan development that could result in changes or modification in Project operation or facilities would be to assist Reclamation in meeting its obligations and responsibilities related to annual and long-term Project operations.

#### **Need for the Proposed Action**

The need for the proposed action stems from an underlying need to reduce uncertainty, to the extent possible, by Reclamation, agricultural water users, tribes, national wildlife refuges, and other interested/affected parties about both short-term and long-term availability of Project water. There is a need to operate the Project consistent with applicable laws and to meet Reclamation's obligations related to operation of the Project. Those needs are:

- To deliver Project water in accordance with the Klamath Project water rights and contracts between Reclamation and agricultural water users;
- To comply with requirements of the ESA;
- To operate the Project in a manner that does not interfere with the Tribes' senior water rights;
- To provide adequate water to Lower Klamath and Tule Lake National Wildlife Refuges to fulfill their Federal reserved water rights, when in priority and when water is available.

#### **Scope of the Proposed Action**

The scope of the proposed action is developing a multi-year operations plan consistent with the purpose and need above. The scope of the DEIS consists of the range of actions, alternatives, and

potential impacts to be considered by Reclamation. Those actions involve all elements of Project operations that Reclamation can implement that may affect the Project water supply and demand. Such actions include, but are not limited to, Project water (1) storage volume, location, and timing; (2) source (surface and/or groundwater); (3) delivery quantity, timing, and duration, and (4) quality. The potential environmental impacts to be considered in the DEIS are direct, indirect, and cumulative effects that may arise from the proposed action and alternatives.

The geographic scope of the DEIS includes areas and resources affected by water diversion, storage and delivery for Project purposes. This includes, but is not necessarily limited to: (1) The sites of all Project features and facilities (such as dams, reservoirs, canals, drains, pumping plant/stations) and areas adjacent to those sites that are subject to Reclamation's ownership, management or control; (2) lands that receive Project irrigation or drainage water; and (3) areas adjacent to Clear Lake, Gerber Reservoir, Miller Creek, Lost River, Tule Lake, Lower Klamath Lake, Upper Klamath Lake, Link River, Lake Ewauna, and the Klamath River downstream from Link River Dam subject to fluctuating water levels and/or flows that result from Project operation.

#### **Summary**

Reclamation is redirecting its planning and EIS efforts to address a multiyear operations plan. The scope, magnitude, and intensity of the efforts required to develop alternatives in a different manner will be clarified in the EIS. In so doing, additional time may be necessary to develop and analyze the effects of the actions and to complete the EIS.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 24, 2003.

**Frank Michny,**

*Regional Environmental Officer, Mid-Pacific Region.*

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## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

[Exemption Application No. D-11068] et al.

#### **Prohibited Transaction Exemption 2003-07; Grant of Individual Exemptions; Archer Daniels Midland Company (Archer)**

**AGENCY:** Employee Benefits Security 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

## Archer Daniels Midland Company (Archer), Located in Decatur, Illinois

[Prohibited Transaction Exemption 2003-07; Exemption Application No. D-11068]

## Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Agrinational Insurance Company (Agrinational) in connection with insurance contracts sold by Minnesota Life Insurance Company (Minnesota Life), or any successor insurance company to Minnesota Life which is unrelated to Archer, to provide basic and supplemental life insurance benefits to participants in Archer's programs to provide such benefits to its employees (the Plans),<sup>1</sup> provided the following conditions are met:

(a) Agrinational—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Archer that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended; (4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in

which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Agrinational, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Minnesota Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plans only contract with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and Agrinational will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plans should Agrinational be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) Agrinational retains an independent fiduciary (the Independent Fiduciary), at Archer's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Archer or Agrinational (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in, Archer or Agrinational (or any Affiliate of either);

(3) Is not a corporation or partnership in which Archer or Agrinational has an ownership interest or is a partner;

(4) Does not have an ownership interest in Archer or Agrinational, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Archer, Agrinational, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Archer, Agrinational, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

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 March 3, 2003 at 68 FR 10043.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

## G.D. Castillo, M.D., Ltd, Profit Sharing Plan (the Plan), Located in Savoy, Illinois

[Prohibited Transaction Exemption 2003-08; Exemption Application Number D-11107]

## Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the

<sup>1</sup> Each Plan will be considered an "employee welfare benefit plan" as defined in section 3(1) of the Act.

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, effective August 23, 1999, to the sale of two parcels of unimproved real property (the Properties) by the Plan to Doctor G.D. Castillo (the Sales), a party in interest with respect to such Plan, provided that the following conditions are met:<sup>2</sup>

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property was not less than the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

#### Written Comment

The Department received one comment letter from an accountant (the Commenter) representing Doctor G.D. Castillo (Dr. Castillo) in response to the proposed exemption. In the letter, the Commenter noted that in addition to the Sales, the initial application (see footnote 1 above) requested relief for the acquisition (the Acquisition) of certain improved real property located in Golden, Colorado (the Improved Property) by the Plan and Dr. Laura Diaz Del Castillo Vraney (Dr. Vraney), the daughter of Dr. Castillo.<sup>3</sup>

In the initial application, Dr. Castillo stated that the purpose of Dr. Vraney's participation in the Acquisition was to enable the Plan to acquire a suitable investment. In this regard, Dr. Castillo represented that he directed the Plan to acquire the Improved Property upon extensively researching improved real properties located in areas of high growth. In a letter to the Department dated April 27, 2001, Dr. Castillo stated that, subsequent to the Acquisition, he has retained control over all decisions relating to the Improved Property. In addition, Dr. Castillo has represented that Dr. Vraney's role with respect to such property is limited to that of a passive investor.

<sup>2</sup> The application for this exemption, which was filed on January 19, 2001, was initially assigned the number D-10967 before being reassigned the above-referenced application number on July 22, 2002.

<sup>3</sup> On August 27, 1999, the Plan (at the direction of Dr. Castillo) and Dr. Vraney acquired the Improved Property from an unrelated third party for \$690,000. Of this amount, the Plan paid \$650,253.20 and Dr. Vraney paid \$36,746.80.

The Commenter seeks clarification from the Department regarding whether the acquisition of the Improved Property by the Plan and Dr. Vraney requires additional exemptive relief. As the Department noted in the preamble to a proposed individual exemption (52 FR 30965, 30973 (August 18, 1987)), section 406(a)(1)(D) of the Act prohibits the transfer to, or use by or for the benefit of, a party in interest (including the daughter of a plan fiduciary), of the assets of a plan. The Department further stated that section 406(a)(1)(D) is not violated merely because the party in interest may derive some incidental benefit from a transaction involving the simultaneous equity investment in an asset with the plan. We are assuming, for purposes of this analysis, that: (1) The fiduciary (or its designee) does not rely upon, and is not otherwise dependent upon, the participation of the plan in order to undertake its share of the investment; and (2) the terms of the transaction that are applicable to the plan are identical to the terms applicable to the party in interest.

Thus, with respect to the acquisition of the Improved Property through the co-investment of Plan assets and assets provided by Dr. Vraney, to the extent that the initial co-investment satisfied the criteria described above, it is the view of the Department that such transaction does not require additional relief pursuant to this exemption.

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 22, 2003 at 68 FR 3046.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Motta of the Department, telephone (202) 693-8544. (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 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) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of April, 2003.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-10992, et al.]

#### Proposed Exemptions; Local 705 International Brotherhood of Teamsters Pension Plan (the Plan)

**AGENCY:** Employee Benefits Security 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

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and 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