With regard to the creditworthiness of the lessees and their ability to pay, Ms. Partridge represents that she has reviewed the most recent financial statements for the Pension Plan, the Welfare Plan, the Apprenticeship Plan and the Union along with the lessees' hourly contribution rates set forth in the collective bargaining agreement. Based upon their steady stream of annual income, she believes that the lessees are creditworthy for the purposes of the lease transactions contemplated herein.

Besides the duties described above, Ms. Partridge will: (a) Oversee the collection of rent; (b) determine whether it is appropriate to renew or continue a leasing arrangement; and (c) take all actions that are necessary and property to enforce the rights of the Deferred Income Plan and protect the participants and beneficiaries of such Plan.

9. In addition to Ms. Partridge's review of the transactions, the Trustees represent that before the leases are consummated, they will review the investment needs of each of the related Plans, the terms and conditions of the leasing arrangements, including the initial rental rate and the subsequent appraisals by the independent, qualified appraiser. Based upon their consideration of such matters, the Trustees will determine whether the leasing arrangements are in the best interests of the Pension Plan, the Welfare Plan and the Apprenticeship Plan. The Trustees will also determine whether the amount of space leased by the Pension Plan, the Welfare Plan and the Apprenticeship Plan is appropriate and necessary for the needs of these Plans.

10. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the terms of all such leasing arrangements will be at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party; (b) Ms. Partridge, as the Deferred Income Plan's independent, qualified fiduciary, will approve of the leasing arrangements, will agree to monitor all leases on behalf of the Deferred Income Plan as well as the terms and conditions of the exemption at all times; (c) the rental charged by the Deferred Income Plan under each lease will be based upon the fair market rental value of the premises as determined by an independent, qualified appraiser; (d) the Building will be revalued annually by the independent, qualified appraiser; and (e) if appropriate, Ms. Partridge will adjust the rentals charged for the office

space based upon the annual appraisals of the Building; and (f) the Trustees will determine that the leasing arrangements are and continue to be in the best interests of the Pension Plan, the Welfare Plan and the Apprenticeship Plan.

#### **FOR FURTHER INFORMATION CONTACT:** Kathryn Parr of the Department,

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

### Wadco, Inc. Profit Sharing Plan and Trust (the Plan) Located in Spring, Texas

## [Application No. D-9820]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain shares of stock (the Stock) by the Plan to Peter Aswad, a disqualified person with respect to the Plan.<sup>2</sup>

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a onetime cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Plan receives a sales price equal to the fair market value of the Stock as determined by an independent, qualified appraiser; (5) the trustees of the Plan determine that the Sale is appropriate for the Plan and is in the best interests of the Plan and their participants and beneficiaries; and (6) within ninety days of the grant of this proposed exemption, Wadco files Forms 5330 with the Internal Revenue Service and pays all applicable excise taxes due with respect to past prohibited transactions.

# Summary of Facts and Representations

1. The Plan, established on December 4, 1990, is a profit sharing plan sponsored by Wadco, Inc. (Wadco). Wadco is an Illinois corporation previously engaged in the purchase and resale of molecular sieves used in the manufacturing of thermal-pane glass. Presently, Wadco is not actively involved in any type of business. As of December 31, 1993, the Plan had total assets of \$275,727 and two participants, Peter and Judith Aswad, who are also the trustees of the Plan (the Trustees). The Trustees have the sole investment discretion with regard to the Plan.

2. Among the assets of the Plan is the Stock. The Stock consists of 300 shares of stock in Titan Industries, Inc. (Titan), a closely-held Oklahoma corporation which engages in the manufacture of additive injection equipment. The Stock represents approximately fifty percent of the issued and outstanding stock of Titan. The remaining fifty percent of the issued and outstanding stock of Titan is owned by Gary Williams, the President of Titan. Mr. Aswad is the Chairman of the Board of Directors of Titan and is the acting sales manager for the western half of the United States and the Far East.

In 1987, Wadco acquired the Stock for approximately \$15,000 and contributed it to the Wadco, Inc. Defined Benefit Plan (the DB Plan), a gualified plan maintained by Wadco in the 1980's. The trustees of the DB Plan terminated the DB Plan, effective December 31, 1989, and distributed all of its assets on December 10, 1990, to the DB Plan's only participants, Mr. and Mrs. Aswad, in 1990. At this time, Mr. and Mrs. Aswad rolled over the Stock, worth approximately \$118,904, into the Plan. Wadco is aware of the fact that the contribution of the Stock constituted a prohibited transaction in violation of the Code. Accordingly, Wadco represents that within ninety days of the grant of this proposed exemption, it will file Forms 5330 with the Internal Revenue Service and will pay all applicable excise taxes due with respect to past prohibited transactions.

Ås of November 14, 1994, neither the Plan nor the DB Plan had received any dividends from the Stock. However, the Stock has appreciated approximately 50.5 percent per year since its acquisition in 1987. As of December 31, 1993, the Stock amounted to approximately eighty-six percent of the total assets of the Plan.

3. Because the Stock accounts for such a large percentage of the Plan's assets and cannot readily be liquidated due to the lack of a public market, the Trustees desire to sell the Stock out of the Plan. The Trustees anticipate that any efforts to sell the Stock to unrelated parties would result in a sale at a less than its fair market value (see Representation #4) due to the Stock's

<sup>&</sup>lt;sup>2</sup>Since Peter Aswad and his wife, Judith Aswad, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.