publicly available audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by the MS Group, as provided in section 18(c)(ii) of the Securities Lending Agreement, that as of each time it borrows securities, there have been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

30. In exchange for the exclusive right to borrow certain securities from a client-plan, the MS Group will pay the plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. In light of this fee arrangement, all earnings generated by cash collateral will be returned to the MS Group. The clientplan will receive credit for all interest dividends or other distributions on any borrowed securities.

31. The exclusive borrowing agreement may be terminated by either party to the agreement at any time. MS&Co will agree that upon termination it will deliver any borrowed securities back to the client-plan within five business days of written notice of termination. If the MS Group fails to return the securities or the equivalent thereof, the client-plan will have certain rights under the agreement to realize upon the collateral. Pursuant to the terms of the agreement, the MS Group will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

32. With regard to those plans for which MSTC provides custodial, clearing and/or reporting functions relative to securities loans, MSTC and a plan fiduciary independent of MSTC and the MS Group will agree in advance and in writing to any fee that MSTC is to receive for such services. Such fees, if any, would be fixed fees (e.g., MSTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and any such fee would be in addition to any fee MSTC has negotiated to receive from any such client-plan for standard custodial or other services unrelated to the securities lending activity. The arrangement to have MSTC provide such functions relative to

securities loans to the MS Group will be terminable by the client-plan within five business days of receipt of written notice without penalty to the plan except for the return to the MS Group of part of any flat fee paid by the MS Group to the plan, if the client-plan has also terminated its exclusive borrowing agreement with the MS Group. Before entering into an agreement with a plan to provide such functions relative to securities loans to the MS Group, MSTC will furnish to the plan any publicly available information which it believes is necessary for the plan to determine whether to enter into or renew the

33. In summary, the applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Plan A requires approval of the form of a basic loan agreement and the execution of the Affiliated Broker-Dealer Lending Authorization by a plan fiduciary independent of the MS Group and MSTC before a client-plan lends any securities to the MS Group, while under Plan B, The MS&Co will directly negotiate exclusive borrowing agreements with a client-plan; (b) the lending arrangements will permit the client-plans to benefit from the MS Group's substantial market position as securities lenders and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (c) the client-plan will receive sufficient information concerning the MS Group's financial condition before the plan lends any securities to the MS Group; (d) the collateral on each loan to the MS Group initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81-6, and will be monitored daily by MSTC; (e) the client-plans will receive a weekly report and monthly report, so that an independent fiduciary of the client-plans also may monitor loan activity, fees, the level of the collateral and loan return/yield; (f) MSTC will have no discretionary authority or control over the plan's acquisition or disposition of securities available for loan; (g) the terms of each loan will be at least as favorable to the plans as those of a comparable arm'slength transaction between unrelated parties; and (h) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81-6 and PTE 82-63.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department,

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

Central Freight Lines Employees Profit Sharing and Retirement Plan (the Plan) Located in Waco, TX

[Application No. D-09994]

Proposed Exemption

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 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 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) shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Property) to Central Freight Lines, Inc. (the Employer), a party in interest with respect to the Plan.

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 with an unrelated party; (2) the sale is a onetime transaction for cash; (3) the Plan is not required to pay any real estate commissions or fees in connection with the proposed transaction; and (4) the Plan receives a sales price for the Property which is not less than the greater of (a) the fair market value of the Property as determined by a qualified, independent appraiser, or (b) the net acquisition cost of the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 3,149 participants and net assets available for benefits of approximately \$103,639,097 as of December 31, 1994. The trustee of the Plan and decisionmaker with respect to Plan investments is A.G. Edwards Trust Company of St. Louis, Missouri.

2. The Employer, which maintains its general offices in Waco, Texas, is a trucking company that is involved in the transportation and delivery of freight throughout the midwestern and southwestern United States. The Employer is a wholly-owned subsidiary of Roadway Services, Inc. (Roadway), a publicly-owned trucking company which maintains its corporate offices in Akron, Ohio.

3. Prior to 1989, the Plan, through two separate purchases, acquired a 38.810 acre tract of undeveloped land for a total purchase price of \$1,495,352. The