Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–87; Exemption Application No. D–9770, et al.]

Grant of Individual Exemptions; The Lubrizol Corporation Employees' Stock Purchase and Savings Plan et al.

AGENCY: Pension and Welfare Benefits 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (were appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 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 exemptions are administratively feasible;

- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) The are protective of the rights of the participants and beneficiaries of the plans.

The Lubrizol Corporation Employees' Stock Purchase and Savings Plan (the Plan)

Located in Wickliffe, Ohio [Prohibited Transaction Exemption 94–87; Exemption Application No. D–9770]

Exemption

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) of the Code, shall not apply to the cash sale by the Plan to the Lubrizol Corporation, the Plan sponsor and a party in interest with respect to the Plan, of the Plan's interest (the Interest) in certain securities (the Securities) issued by Columbia Gas Systems, Inc., provided: (a) no commissions or other expenses are paid by the Plan in connection with the sale; (b) the Plan will receive the greater of \$227,158.01 or the fair market value of the Plan's Interest in the Securities at the time of the sale as determined by Bankers Trust Company (BTC), the Plan's independent fiduciary; and (c) BTC has determined that the transaction is appropriate for the plan and in the best interest of the Plan and its participants and beneficiaries.

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 November 1, 1994 at 59 FR 54637.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number).

Wells Fargo Bank, N.A. (Wells Fargo) and Wells Fargo Institutional Trust Company, N.A. (WFITC)

Located in San Francisco, California [Prohibited Transaction Exemption 94–88; Application Nos. D–9718 and D–9719]

Exemption

The restrictions of sections 406(a)(1) (A) through (D) 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 (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan for which Wells Fargo, WFITC or an affiliated company (the Applicants) are fiduciaries,

provided that the following conditions are met:

- (A) The securities are loaned to a broker-dealer which is registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government Securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank (A Borrower):
- (B) Neither the Borrower nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;
- (C) The lending plan receives from the Borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the Borrower, collateral (the Collateral) consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding day, a market value or, in the case of letters of credit a stated amount, equal to not less than 100% of the then market value of the securities lent:
- (D) Prior to the loan of any securities, the Borrower furnishes the Applicants with the most recent available audited statements of the Borrower's financial condition and a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statements furnished to the plan, that has not been disclosed to the Applicants. Such representation may be made by the Borrower's agreeing that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;
- (E) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the lending plan as an arm's length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;
- (F) (1) The lending plan (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that