Multi-Employer Citation Policy—1:30 to
2:30 p.m., Wednesday, June 9, in room
5–4215C.
Training—1p.m. to 4, Wednesday, June
9, in room N–5437D.
Other workgroups may meet after the
adjournment of the ACCSH meeting on
June 11, 1999. Interested persons may
submit written data, views or comments,
preferably with 20 copies, to
Theresa Berry, at the address above.
Submissions received prior to the
meeting will be provided to ACCSH and
will be included in the record of the
meeting.
Interested persons may also request to
make an oral presentation by notifying
Theresa Berry before the meeting. The
request must state the amount of time
desired, the interest that the person
represents, and a brief outline of the
presentation. ACCSH may grant
requests, as time permits, at the
discretion of the Chair of ACCSH.

Signed at Washington, DC, this 21st day of
May, 1999.
Charles N. Jeffress,
Assistant Secretary of Labor.

[FR Doc. 99–13511 Filed 5–26–99; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR
Pension and Welfare Benefits
Administration
Proposed Exemptions; MICO, Inc.
(MICO)
AGENCY: Pension and Welfare Benefits
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
Unless otherwise stated in the Notice of
Proposed Exemption, all interested
persons are invited to submit written
comments, and with respect to
exemptions involving the fiduciary
prohibitions of section 406(b) of the Act,
requests for hearing 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 exemption. A
request for a hearing must also state the
issues to be addressed and include a
general description of the evidence to be
presented at the hearing.
ADDRESS: All written comments and
requests for a hearing (at least three
copies) should be sent to the Pension
and Welfare Benefits Administration,
Office of Exemption Determinations,
Room N–5649, U.S. Department of
Labor, 200 Constitution Avenue, NW,
Washington, DC 20210. Attention:
Application No. stated in each Notice of
Proposed Exemption. The applications
for exemption and the comments
received will be available for public
inspection in the Public Documents
Room of Pension and Welfare Benefits
Administration, U.S. Department of
Labor, Room N–5507, 200 Constitution
Avenue, NW, Washington, DC 20210.
Notice to Interested Persons
Notice of the proposed exemptions
will be provided to all interested
persons in the manner agreed upon by
the applicant and the Department
within 15 days of the date of publication
in the Federal Register. Such notice
shall include a copy of the notice of
proposed exemption as published in the
Federal Register and shall inform
interested persons of their right to
comment and to request a hearing
(whether appropriate).
SUPPLEMENTARY INFORMATION: The
proposed exemptions were requested in
applications filed pursuant to section
408(a) of the Act and/or section
4975(c)(2) of the Code, and in
accordance with procedures set forth in
29 CFR Part 2570, Subpart B (55 FR
32836, 32847, 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. Therefore, these notices of
proposed exemption are issued solely by
the Department.
The applications contain
representations with regard to the
proposed exemptions which are
summarized below. Interested persons
are referred to the applications on file
with the Department for a complete
statement of the facts and
representations.
MICO, Inc. (MICO)
Located in North Mankato, Minnesota
[Exemption Application Number D–10621]
adjacent to MICO’s production facilities and offices. The applicant represents that the Original Parcel was acquired for investment purposes. The applicant represents that the Plan subsequently leased (the Lease) to MICO a portion of the Original Parcel and, in 1979, sold the Original Parcel portion to MICO (the Portion Sale). The portion of the Original Parcel which was not transferred to MICO (i.e., the Property) continues to be held as an asset of the Plan.

3. The Plan has incurred certain holding costs as a result of its ownership of the Property. In this regard, the Plan has paid approximately $90,000 in real estate taxes with respect to the Property. Additionally, the Plan has incurred a special assessment (the Assessment) which was imposed on the Property in 1998 for a principal amount of $29,127.97. The Trustees of the Plan elected to pay the Assessment over a 10 year period at the rate of $2,913.00 per year at an interest rate of 7.5%. The Plan has received income from the Property through an at-will oral agreement (the Agreement) with a sharecropper who has been farming the Property since 1984. As a result, the Plan has received approximately $1,350 each year from the Agreement. The Trustees represent, however, that the sharecropper has recently given notice to the Trustees that he is considering the discontinuation of the Agreement.

5. The applicant represents that during the Plan’s ownership of the Property, the Trustees received several offers to purchase a portion of the Property (the Offers). The applicant represents that the Trustees, after receiving each Offer, determined the extent to which a sale involving only a portion of the Property would reduce the value of the remaining Property. The applicant represents that the Trustees, after analyzing both the sale amount of each Offer and the resulting decline in value of the remaining Property, determined that each Offer would provide an unacceptable overall rate of return to the Plan for the Property. As a result, the Trustees determined that each Offer was not in the best interests of the Plan.

The Trustees represent they are currently not advertising the Property for sale since the Property’s limited marketability makes it unlikely that any advertisement of the Property would result in the Property’s sale.

6. The Property was appraised on November 26, 1997 (the Appraisal) by Gwen K. Gathercoal (Ms. Gathercoal), a Minnesota-licensed appraiser for the Robinson Appraisal Company, Inc. (the Robinson Co.). The Appraisal was reviewed by another Robinson Co. appraiser, James K. Simonson (Mr. Simonson). Ms. Gathercoal and Mr. Simonson each represent that they are independent of the Plan and MICO and their employment and compensation were not contingent on the appraisal value of the Property.

Ms. Gathercoal used the sales comparison approach and examined eight different transactions before determining that, as of November 26, 1997, the Property had a fair market value of $362,000. In the Appraisal, Ms. Gathercoal concluded that the “highest and best use” for the Property would be a combination of residential, commercial, and industrial use.

The value of the Property was reevaluated (the Reevaluation) by Mr. Simonson on November 23, 1998. The purpose of the Reevaluation was to establish whether the Property had appreciated in value since the Appraisal and to determine the extent to which a premium on the Property was necessary in the event that the Property was sold to MICO. In the Reevaluation, Mr. Simonson represented that the Property’s fair market value of $362,000 had not increased since the Appraisal. As a result, Mr. Simonson estimated that the Property had a fair market value of $362,000, as of November 23, 1998. Mr. Simonson represented further that, in the event the Property was sold to MICO, an adjacent landowner, a premium valued at $36,200, as determined by a qualified, independent appraiser; and (e) The Plan pays no fees or commissions connected to the Sale.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta at the United States Department of Labor, telephone (202) 219-8883 (this is not a toll free number).

Western Petroleum Company Profit Sharing Plan (the Plan)
Located in Eden Prairie, Minnesota
(Application No. D-10743)
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 Part 2570, Subpart B (55 FR 32836, 32847, 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 to the proposed sale by the individual account (the Account) of

The Applicants represent that the Lease and the Portion Sale are pursuant to ERISA sections 414(c)(2) and (c)(3). In this regard, the Department expresses no opinion herein as to whether the Lease and Portion Sale are made in accordance with the requirements of the Act.

The applicant represents that in the event that the proposed transaction is granted by the Department, the Plan will be responsible for paying the outstanding balance of the Assessment on the closing date of the Sale.

The Applicants represent that the Lease and the Portion Sale are pursuant to ERISA section 414(c)(2) and (c)(3). In this regard, the Department expresses no opinion herein as to whether the Lease and Portion Sale are made in accordance with the requirements of the Act.

The applicant represents that in the event that the proposed transaction is granted by the Department, the Plan will be responsible for paying the outstanding balance of the Assessment on the closing date of the Sale.

1. The Applicants represent that the Lease and the Portion Sale are pursuant to ERISA section 414(c)(2) and (c)(3). In this regard, the Department expresses no opinion herein as to whether the Lease and Portion Sale are made in accordance with the requirements of the Act.

2. The applicant represents that in the event that the proposed transaction is granted by the Department, the Plan will be responsible for paying the outstanding balance of the Assessment on the closing date of the Sale.

In the Reevaluation, Mr. Simonson stated that he customarily adjusts upward the appraised value of real property in instances where, as here, the purchaser of the real property owns real property located adjacent to the real property the purchaser seeks to buy. Mr. Simonson represents that this upward adjustment, commonly referred to as an “assemblage”, reflects the willingness of such purchasers to pay a premium above market value so as to avoid moving or to avoid business disruptions.

In the Reevaluation, Mr. Simonson stated that he customarily adjusts upward the appraised value of real property in instances where, as here, the purchaser of the real property owns real property located adjacent to the real property the purchaser seeks to buy. Mr. Simonson represents that this upward adjustment, commonly referred to as an “assemblage”, reflects the willingness of such purchasers to pay a premium above market value so as to avoid moving or to avoid business disruptions.
James W. Emison in the Plan of certain closely-held stock (the Stock) to Mr. Emison, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Account pays no commissions or other expenses relating to the sale; and (c) the Account receives an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan established by Western Petroleum Company (the Employer). The Employer is a Minnesota corporation and a petroleum wholesaler, located in Eden Prairie, Minnesota. As of February 8, 1999, the Plan had approximately 40 participants and beneficiaries. As of December 31, 1997, the Plan had total assets of approximately $4,012,415, and the Account had total assets of approximately $1,483,000. The trustees of the Plan are Mr. Emison and Mr. Lee Granlund. Mr. Emison (hereafter also referred to as "the Applicant") is also the President and a 100% shareholder of the Employer.

2. Among the assets of the Account is the Stock, which consists of 12,838 shares of Community Bank Group, Inc. (CBG), a closely-held bank holding company with four subsidiary banks: Community Bank Jordan, Community Bank Winsted, Community Bank New Ulm, and Community Bank St. Peter. The Applicant represents that the Account acquired 51 shares of the Stock in 1995 from Mr. Roy Terwilliger, an individual unrelated to the Plan and the Employer, for $82,875.00. In 1997, the Stock underwent a 100 for 1 stock split so that the Account held an additional 5,049 shares of the Stock. In 1997, the Account acquired 7,738 shares of the Stock from CBG for $154,763.00. Thus, the Account’s basis in the Stock is $237,638.00. Mr. Emison has been a director of CBG since 1984. In addition, Mr. Emison owns 70,480 shares of the Stock as trustee of the James Wade Emison Trust, which shares represent approximately 24.82% of the outstanding shares of the Stock as of December 31, 1998.4

3. The Applicant requests an exemption to purchase all 12,838 shares of the Stock from the Account. Due to business and income tax considerations, CBG seeks to elect Subchapter S status under the Code. However, section 1361 of the Code permits only "eligible shareholders" to hold stock in a Subchapter S corporation. Because the Account is not an eligible shareholder for purposes of the Code, the Applicant wishes to purchase the Stock from the Account in order to remove the impediment to CBG’s Subchapter S election.

4. The Stock was independently appraised by Paul W. Olander, AM, and William D. Thumstedter, of Olander Advisory Services, A Division of United Bankers’ Bank, located in Bloomington, Minnesota. Messrs. Olander and Thumstedter both specialize in the banking industry. The appraisal states that, as of December 31, 1998, there were 283,990 shares of CBG issued and outstanding held by 16 shareholders, and the Stock had an estimated fair market value of $34.55 per share. In addition, it was determined that the adjusted fair market value of a non-marketable, minority interest in the Stock, including the effect of the outstanding management stock options, was approximately $34.45 per share, based upon 4,800 options outstanding with an exercise price of $29.00 per share.

5. The Stock was independently appraised by Paul W. Olander, AM, and William D. Thumstedter, of Olander Advisory Services, A Division of United Bankers’ Bank, located in Bloomington, Minnesota. Messrs. Olander and Thumstedter both specialize in the banking industry. The appraisal states that, as of December 31, 1998, there were 283,990 shares of CBG issued and outstanding held by 16 shareholders, and the Stock had an estimated fair market value of $34.55 per share. In addition, it was determined that the adjusted fair market value of a non-marketable, minority interest in the Stock, including the effect of the outstanding management stock options, was approximately $34.45 per share, based upon 4,800 options outstanding with an exercise price of $29.00 per share.

The appraisal states that the proposed transaction is in the best interests of the Account because the sale of the Stock will enhance the liquidity and diversification of the assets of the Account.

6. In summary, the Applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the Account will pay no commissions or other expenses relating to the sale; (c) the Account will receive an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser; (d) the sale will enhance the liquidity and diversification of the assets of the Account; and (e) Mr. Emison will be the only participant of the Plan to be affected by the proposed transaction.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account, and Mr. Emison is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

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4 The Department expresses no opinion herein as to whether the Account’s acquisition and holding of the Stock violated any of the general fiduciary responsibility provisions of Part 4 of Title I of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan’s participants and beneficiaries when making investment decisions on behalf of the plan.
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 of disqualified person from certain other provisions of the Act and/or 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 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 410(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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the right of the participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material 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 of Labor in Washington, DC. The notices also invited 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 (where 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 met:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries;

(c) They are protective of the rights of the participants and beneficiaries of the plans.

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;

(c) They are protective of the rights of the participants and beneficiaries of the plans.

VECO Corporation (VECO)

Located in Anchorage, Alaska

[Prohibited Transaction Exemption 99–20 Exemption Application Number D–10622]

Object of the transaction

VECO Corporation (VECO), et al., and Norcon, Inc. (Norcon), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm’s length transaction with an unrelated party;

(b) Norcon will pay the greater of $2,940,000 or the fair market value of the Property on the date of the Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan’s participants and beneficiaries.

For a more complete statement of the facts and representations concerning this exemption, refer to the notice of proposed exemption published on March 8, 1999 at 64 FR 11052.

Written Comments: The Department received three letters signed by 49 current or former participants in the Plan endorsing the transaction as proposed in the Notice.

Signed at Washington, DC, this 24th day of May, 1999.

Ivan Strasfeld,
Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–13497 Filed 5–26–99; 8:45 am]
BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration


Grant of Individual Exemptions; VECO Corporation (VECO), 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 of Labor 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 (where 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 met:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries;

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Written Comments: The Department received three letters signed by 49 current or former participants in the Plan endorsing the transaction as proposed in the Notice.

Signed at Washington, DC, this 24th day of May, 1999.

Ivan Strasfeld,
Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–13497 Filed 5–26–99; 8:45 am]
BILLING CODE 4510–29–P