

Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, and the Protein Technologies International Retirement Plan (collectively, the Plans)<sup>1</sup> to the Dow Chemical Company (Dow), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Dow, for the period from October 25, 2000 until July 10, 2001; provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by a reputable, independent, third party market source;

(c) The Bonds were sold on July 10, 2001 for \$2,101,900 at a profit of \$126,580 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Dow or any other party in interest with respect to the Plans; and

(e) The transaction represented less than .02% of each Plan's total assets.

#### Effective Date of Exemption

The exemption is effective for the period from October 25, 2000 (the date of the acquisition of the Bonds by the Plans) until July 10, 2001 (the date the Bonds were sold).

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 3047.

**Written Comments:** The applicant (*i.e.*, DCMC) submitted a written comment with respect to the notice of proposed exemption (the Proposal). The comment is summarized below.

The applicant noted that in the operative language section of the Proposal, paragraph (c), it was erroneously indicated that the Bonds were sold for \$1,975,320 (rather than for \$2,101,900, as correctly stated in Item 5 of the Summary of Facts and Representations in the Proposal). Therefore, the Department has modified the language in paragraph (c) of the exemption to state that the Bonds were sold for \$2,101,900.

The Department also received over one hundred telephone calls from interested persons concerning the

Proposal. In addition, the Department received seven written inquiries from interested persons. All of the telephone calls and written inquiries requested additional information regarding the transactions and their possible affect on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to address the concerns that were raised. None of the additional comments made to the Department offered any suggestions for changes to the Proposal.

No other comments were received by the Department. Accordingly, the Department has determined to grant the exemption, as clarified above.

#### FOR FURTHER INFORMATION CONTACT:

Brian Buyniski of the Department at (202) 693-8545. (This is not a toll-free number).

#### DuPont Capital Management Corporation, (DCMC) Located in Wilmington, DE

[Prohibited Transaction Exemption 2003-16; Exemption Application Nos. D-11114, 11115, 11116, 11117, 11118]

#### Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the DuPont Dow Elastomers Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, the Protein Technologies International Retirement Plan, and the DuPont Savings and Investment Plan (collectively, the Plans) to ConAgra Foods, Inc. (ConAgra), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by ConAgra, for the period from September 5, 2001 until October 17, 2001; provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on October 17, 2001 for \$4,234,531 at a profit of \$185,638 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

#### Effective Date of Exemption

The exemption is effective for the period from September 5, 2001 (the date of the acquisition of the Bonds by the Plans) until October 17, 2001 (the date the Bonds were sold).

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 3048.

**Written Comments:** The applicant (*i.e.*, DCMC) submitted written comments with respect to the notice of the proposed exemption (the Proposal). The comments are summarized below.

The applicant states that the DuPont Dow Elastomers Pension and Retirement Plan was not included in the list of "Plans" in the Proposal.

Based on this comment, the Department has revised the appropriate language in the Proposal to include the DuPont Dow Elastomers Pension and Retirement Plan.

In addition, the applicant states that the information concerning the plan sponsor of, and number of participants covered under, the DuPont Dow Elastomers Pension and Retirement Plan was not included in Item 2 of the Summary of Facts and Representations contained in the Proposal (the Summary).

The applicant also noted that footnote 12 in the Proposal indicates that "the Plans are funded through the same trust" and should have indicated that the Dupont Savings and Investment Plan is funded through a separate trust. The Department acknowledges the applicant's clarifications to the information contained in the Summary.

The Department received seven written inquiries and over one hundred telephone calls concerning the Proposal from interested persons. All of the telephone calls and written inquiries requested additional information regarding the transactions and their possible affect on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to address the concerns that were raised. None of the additional comments made to the Department offered specific suggestions for changes to the Proposal.

No other comments were received by the Department. Accordingly, the Department has determined to grant the exemption, as modified herein.

#### FOR FURTHER INFORMATION CONTACT:

Brian Buyniski of the Department at

<sup>1</sup> Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this exemption treats the purchase of the Bonds by the Plans as a single transaction and information concerning such purchase is referred to on an aggregate basis.